

ORDINANCE NO. 271

AN ORDINANCE #256 entitled ESTABLISHING SEX OFFENDER RESIDENCY AND LOITERING RESTRICTIONS is hereby repealed and recreated as AN ORDINANCE dealing with SEX OFFENDERS RESIDENCY, PROHIBITED ACTIVITIES, AND LOITERING RESTRICTIONS WITHIN THE VILLAGE OF OCONOMOWOC LAKE

WHEREAS, the Wisconsin State legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release in the community, and

WHEREAS, Ch. 980 of the Wis. Stats provides for the civil commitment of sexually violent persons. The purpose of the statute is to protect the public, to treat convicted sex offenders who are at a high risk to reoffend, to reduce the likelihood that they will engage in such conduct in the future, and following such commitment sec. 980.08 Wis. Stats. provides, under certain conditions, for the supervised release of such persons into the community; and

WHEREAS, according to the U.S. Department of Justice, Bureau of Justice Statistics, in 2001 there were approximately three hundred eighty-six thousand (386,000) convicted sex offenders registered in forty-nine (49) states and the District of Columbia, and

WHEREAS, according to a 1997 report prepared by the US Department of Justice titled "Sex Offenses and Offenders", nearly two-thirds of victims of convicted rape and sexual assault offenders serving time in state prison were under the age of eighteen (18); the median age of victims of imprisoned sexual assault offenders was less than thirteen (13) years; the median age for rape victims was about twenty-two (22) years; an estimated twenty-four percent (24%) of those serving time for rape and nineteen percent (19%) of those serving time for sexual assault had been on probation or parole at the time of the offense, and

WHEREAS, the United States Supreme Court has recognized that the risk of recidivism posed by sex offenders is "frightening and high" and "when convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault". *Smith v. Doe*, 538 U.S. 84 (2003) and *McKune v. Lile*, 536 U.S. 24, 34 (2002) citing *U.S. Department of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders*, 27 (1997); U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1983*, page 6 (1997); and

WHEREAS, the Village Board is aware that a number of states across the United States, including but not limited to Florida, Georgia, Alabama, Iowa and California, impose restrictions on sex offenders with respect to residency; and

WHEREAS, the decision of the United States Court of Appeals for the 8th Circuit in *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir., 2005), provides, in part, "the record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward, fear of, or a bare desire to harm a politically unpopular group. [Citation omitted] Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the risk of re-offense. Even experts in the field could not predict with confidence whether a particular sex offender will reoffend, whether an offender convicted of an offense against a teenager will be among those who "cross over" to offend against a younger child, or the degree to which regular proximity to a place where children are located enhances the risk of re-offense against children. One expert in the district court opined that it is just "common sense" that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense. [Citation omitted.] The policymakers of Iowa are entitled to employ such "common sense," and we are not persuaded that the means selected to pursue the State's legitimate interest are without rational basis"; and

WHEREAS, sec. 61.34(1), Wis. Stats. grants the Village Board "power to act for the government and good ... and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means"; and

WHEREAS, the Wisconsin Court of Appeals stated in *Village of Menomonee Falls v. Ferguson* (2011 WI App 73, 334 Wis.2d 131, 799 N.W.2d 473) that "Wisconsin does not have a sex offender residency restriction statute. Instead, Wisconsin municipalities are allowed and commonly do enact sex offender residency restriction ordinances"; and

WHEREAS, although the Village Board has previously by Ordinance 256 entitled AN ORDINANCE ESTABLISHING SEX OFFENDER RESIDENCY AND LOITERING RESTRICTIONS WITHIN THE VILLAGE OF OCONOMOWOC LAKE since adoption of the same, several Wisconsin Courts have issued guidance on this topic; and

WHEREAS, the Village Board finds that the adoption of residency and loitering restrictions for sexual offenders will promote the health, safety and welfare of the public.

Now, Therefore, the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin DOES ORDAIN AS FOLLOWS:

SECTION 1. An ordinance #256 for the Village of Oconomowoc Lake Municipal Code, entitled "Sex Offenders Residency and Loitering Restrictions," is hereby repealed

and recreated to read as follows:

SEX OFFENDERS RESIDENCY, PROHIBITED ACTIVITIES, AND
LOITERING RESTRICTIONS.

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1. Findings and Intent.

(a) This Ordinance is a regulatory measure aimed at protecting the health and safety of children from the risk that convicted sex offenders may re-offend in locations close to their residences. The Village Board finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new sexual assault. The Village Board further finds that, given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools, and other places children frequent. The Village Board finds and recognizes that, in addition to schools, there are other areas where children congregate or play.

(b) This Ordinance is not intended to impose a criminal penalty or punishment of sexual offenders, but rather to serve the municipality's compelling interest to promote, protect, and improve the health, safety, and welfare of children in the municipality by creating areas around locations where children regularly congregate in concentrated numbers where sexual offenders and sexual predators are prohibited from loitering and/or establishing temporary or permanent residence and by regulating certain activities that may be used by sexual offenders to prey upon children.

(c) Due to the high rate of recidivism for sexual offenders, and because reducing both opportunity and temptation would help minimize the risk of re-offense, the Village Board finds that there is a compelling need to protect children where they congregate or play in public places.

2. Definitions.

- (a) Child, unless otherwise indicated, means a person under the age of 18.
- (b) Children, unless otherwise indicated, mean two or more persons under the age of 18.
- (c) Child Safety Location means the site upon which any of the following are located without regard to whether such site is located within the geographic limits of the Village:
1. Club
 2. Lake
 3. River
- (d) Child Safety Zone means any place within the Village that is physically contiguous to any Child Safety Location.
- (e) Club means a building or grounds used for regular or periodic meetings or gatherings of a group of persons organized for business or nonprofit purposes. Club also means the Oconomowoc Lake Club.
- (f) Crime Against Children means any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or the federal government, having like elements necessary for conviction where the victim is a child, respectively:
- § 940.225(1), First degree sexual assault;
 - § 940.225(2), Second degree sexual assault;
 - § 940.225(3), Third degree sexual assault;
 - § 940.22(2), Sexual exploitation by therapist;
 - § 940.30, False imprisonment - victim was minor and not the offender's child;
 - § 940.31, Kidnapping - victim was minor and not the offender's child;
 - § 944.01, Rape (prior statute);
 - § 944.06, Incest;
 - § 944.10, Sexual intercourse with a child (prior statute);
 - § 944.11, Indecent behavior with a child (prior statute);
 - § 944.12, Enticing child for immoral purposes (prior statute);
 - § 948.02(1), First degree sexual assault of a child;
 - § 948.02(2), Second degree sexual assault of a child;
 - § 948.025, Engaging in repeated acts of sexual assault of the same child;
 - § 948.05, Sexual exploitation of a child;
 - § 948.055, Causing a child to view or listen to sexual activity;
 - § 948.06, Incest with a child;
 - § 948.07, Child enticement;
 - § 948.075, Use of a computer to facilitate a child sex crime;
 - § 948.08, Soliciting a child for prostitution;
 - § 948.095, Sexual assault of a student by school instructional staff;

§ 948.11(2)(a) or (am), Exposing child to harmful material-felony sections;
§ 948.12, Possession of child pornography;
§ 948.13, Convicted child sex offender working with children;
§ 948.30, Abduction of another's child;
§ 971.17, Not guilty by reason of mental disease - of an included offense;
§ 975.06, Sex Crimes Law, commitment.

- (g) Contiguous means parcels of property that are in direct physical contact along a boundary or a point. A parcel of property is also contiguous to another for purposes of this ordinance when such parcels are separated from direct physical contact along a boundary or a point only by a stream, tributary, river, public or private road, street, or highway.
- (h) Designated Sex Offender means any person who is required to register under Wis. Stats. Sec. 301.45 for any sexual offense against a child or any person who is required to register under Wis. Stats. Sec. 301.45 and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Wis. Stat. Sec. 301.46(2) and (2M).
- (i) Domicile means an individual's fixed and permanent home where the individual intends to remain permanently and indefinitely and to which whenever absent the individual intends to return provided, however, that no individual may have more than one domicile at any time. Domicile does not include a residence for any special or temporary purpose.
- (j) Facility for children means a public or private school, a group home, as defined in Section 48.02(7), Wisconsin Statutes, a residential care center for children and youth, as defined in Section 48.02(15d), Wisconsin Statutes, a shelter care facility, as defined in Section 48.02(17), Wisconsin Statutes, a daycare center licensed under Section 48.65, Wisconsin Statutes, a daycare program established under Section 120.13(14), Wisconsin Statutes, a daycare provider certified under Section 48.651, Wisconsin Statutes, or a youth center, as defined in Section 961.01(22), Wisconsin Statutes or a club.
- (k) Lake means Oconomowoc Lake and its tributaries.
- (l) Minor means a person under the age of 17.
- (m) Parcel of Property means all real property, whether platted or unplatted, having the same tax key number irrespective of whether such real property is divided into two or more parts by reason of any public right-of-way, mill tax road, stream, or other body of water.
- (n) Permanent Residence means a place where the person abides, lodges, or resides for 14 or more consecutive days.
- (o) River means the Oconomowoc River.

4. Renting Real Property to Sex Offenders, Restricted.

No person shall let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by a sex offender contrary to the provisions of Section (3) of this Ordinance.

5. Prohibited Activities by Sex Offenders, Exception.

- (a) Prohibited Activities by Sex Offenders. Except as provided in subsection 5(b), no sex offender shall participate in a holiday event in the Village involving one or more child by means of distributing candy or other items to such child or children in relationship to Halloween, wearing a Santa Claus costume in a public place in relationship to Christmas, or wearing an Easter Bunny costume in a public place in relationship to Easter, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a sex offender.
- (b) Exception. Events in which the sex offender is a parent or legal guardian of the child or children involved are exempt from the provisions of Section (5)(a) of this Ordinance provided that no child or children other than a child or children of the sex offender are present at the event.

6. Loitering by Sex Offender Prohibited, Exception.

- (a) Loitering by Sex Offender. No sex offender shall loiter or prowl on or within 200 feet of any Child Safety Location, at a time, or a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of the persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object. Unless flight by the actor or other circumstances makes it impractical, a law enforcement officer shall prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by the law enforcement officer at the time, would have dispelled the alarm.
- (b) Exception. The prohibitions set forth in section 6(a) of this Ordinance shall not apply where the sex offender is a minor who is with one or both of his or her parents or guardian at the time of the offense or the actor was exercising First Amendment rights produced by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.

7. Child Safety Zone Map.

The Village Clerk's Office shall maintain an official map showing Child Safety Zones within the Village. The Village Clerk's Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the Village Clerk. In the event of a conflict, the terms of this Ordinance shall control. In no event shall a failure to update the map in compliance with this Ordinance preclude the prosecution or conviction of any sex offender under this Ordinance.

8. Penalties.

(a) In addition to such other penalties and remedies as may apply, violations of this ordinance shall be subject to the penalties described in Village of Oconomowoc Lake Ordinance No. 149, entitled "An Ordinance to Repeal and Recreate the Penalty Provisions of All Previously Adopted Village of Oconomowoc Lake Ordinances", including such amendments and re-created provisions as may be made thereto from time to time.

(b) In addition and not to the exclusion or prejudice of such other penalties and remedies as may apply, violation of Section 3 or Section 4 of this Ordinance shall also constitute a public nuisance, which the Village may enforce by action or proceeding to enjoin or abate such public nuisance.

SECTION 2. SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3. EFFECTIVE DATE.

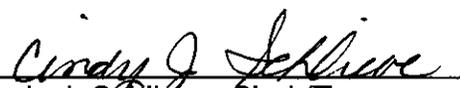
This ordinance shall take effect upon passage and publication or posting as provided by law.

Dated this 19th day of August, 2013.

VILLAGE OF OCONOMOWOC LAKE:

By: 
Joseph Birbaum, Village President

ATTEST:


Cindy J. Schlieve, Clerk/Treasurer

Published and/or posted this 20th day of August, 2013.