

ORDINANCE NO. 290

AN ORDINANCE TO REPEAL ORDINANCE 271, AND TO CREATE AN AMENDED ORDINANCE TO REGULATE SEX OFFENDER RESIDENCY, PROHIBITED ACTIVITIES, AND LOITERING RESTRICTIONS WITHIN THE VILLAGE OF OCONOMOWOC LAKE

WHEREAS, the Village of Oconomowoc Lake Village Board adopted what is now Ordinance Number 271 entitled, "An Ordinance #256 entitled Establishing Sex Offender Residency and Loitering Restrictions is hereby repealed and recreated as an Ordinance dealing with Sex Offender Residency, Prohibited Activities, and Loitering Restrictions within the Village of Oconomowoc Lake;" and

WHEREAS, the Village of Oconomowoc Lake Village Board hereby intends to revisit this issue in light of current laws, current knowledge of the effectiveness of sex offender restrictions, reports, data and court decisions; and

WHEREAS, the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin, deems it a priority to act in the interest of public safety within our community, particularly in the interest of our children: and

WHEREAS, according to the U.S. Department of Justice, there are a record number of convicted sex offenders living in our communities¹; and

WHEREAS, all convicted child sex offenders have proven themselves to be dangerous²; and

WHEREAS, research in this area has established sex offenders are rearrested for sex crimes four times more frequently than non-sex offenders³; and

WHEREAS, the reduction of crime and criminal recidivism are inextricably linked to public safety within our community; and

WHEREAS, the risks posed by sex offenders against children, are nationally recognized in such landmark legislation as the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act; 1996 Megan's Laws; and the

¹ Sex Offender Management Assessment and Planning Initiative, July 2015, "This includes offenders returning to the community upon release from incarceration as well as offenders who are serving or who have been discharged from community-based sentences."

² Kester, 2013 WI App 50, ¶ 30.

³ Sex Offender Management Assessment and Planning Initiative, July 2015, Langan, P., Schmitt, E., & Durose, M. (2003). Recidivism of Sex Offenders Released from Prison in 1994.

2006 Adam Walsh Child Protection and Safety Act; and these risks are also recognized by legislation in every State in the United States of America including Wisconsin; and

WHEREAS, the Village Board finds that the data concerning child sex offenders is horrific and demonstrates the need for action, including the following⁴:

- “sex crimes are unfortunately fairly common in the United States.”
- “It is estimated that one in every five girls and one in every seven boys are sexually abused by the time they reach adulthood.”
- “Children are particularly vulnerable. Approximately 67% of all victims of reported sexual assaults are under the age of 18, and more than half of these victims are under the age of 12.”
- “Most sexual offenses are committed by someone the victim knows ... or acquaintance.”
- “No single factor or combination of factors can fully explain why someone offends sexually, though some factors may combine to increase people’s tendency to offend. These factors are ... [physiological, sociocultural, developmental] and situational/circumstantial (e.g. having easy access to victims...)”
- “About 12% to 24% of sex offenders will reoffend.”

WHEREAS, the Village Board also finds these statistics of the U.S. Department of Justice to be shocking and a call to action⁵:

- “Approximately 1.8 million adolescents in the United States have been victims of sexual assault.”
- “An estimated 60% of perpetrators of sexual abuse are known to the child but are not family members, e.g. family friends, babysitters, child care providers, neighbors.”

WHEREAS, in September of 2015 the State of Wisconsin Department of Corrections conducted an extensive study of sex offender recidivism between 1997 and 2010, and found that in total there were 631 instances (4.9% of all releases) of sexual re-offending, and the top two types of re-offense were second degree sexual assault of a child (103 offenses), first degree sexual assault of a child (100 offenses); and within the top 10 re-offenses also were sex with a child ages 16 or older (46 offenses) and repeated sexual assault of the same child (33 offenses); and the study concludes that of all the repeat offenses committed by sex offenders, “sex offenses that specifically reference children represent a greater proportion of the whole;”⁶

⁴Center for Sex Offender Management (CSOM) statistics. CSOM is a collaborative effort of the U.S. Department of Justice, Office of Justice Programs, the National Institute of Corrections, the State Justice Institute, and the American Probation and Parole Association, and these quoted statistics are from its “Fact Sheet: What You Need to Know about Sex Offenders”.

⁵ U.S. Department of Justice, National Sex Offender Public Website “Facts and Statistics”

⁶ Joseph R. Tatar II, Ph.D. and Anthony Streveler, M.S.W., Sex Offender Recidivism After Release from Prison, Office of the Secretary, Research and Policy Unit. State of Wisconsin Department of Corrections (September 2015).

WHEREAS, data within the Village of Oconomowoc Lake may not provide a large enough sample size for statistical analysis, however, there is no reason to believe the outcomes would be different in the Village than were demonstrated statewide by the Department of Corrections data; and

WHEREAS, the creation of Sex Offender Residency Restrictions and Safety Zones by municipal ordinance around locations where children regularly congregate is a reasonable step toward protecting children and deterring recidivism by reducing the opportunity for new offenses within our community; and

WHEREAS, the Village Board has reviewed many studies and reports concerning recidivism of sex offenders and the effectiveness of sex offender residency restrictions⁷, and has been fully advised in the matter; and

WHEREAS, the literature on the subject includes some studies that support the practice of imposing sex offender residency restrictions and others that are critical of the practice; and

WHEREAS, the Village Board finds it to be significant that some of the key studies that have concluded that sex offender residency restrictions have limited effectiveness have added significant qualifications to that conclusion; e.g. in "An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri," (Huebner, et al., 2013), the authors generally do not support sex offender residency restrictions, but nevertheless find that following adoption of sex offender residency restrictions "the rate of recidivism for technical violations significantly decreased for Missouri sex offenders..." (id. at 9) and "the number of sex offense convictions did decline..." in Missouri (id. at 10); and

WHEREAS, the Village Board recognizes the merits, mentioned in some studies, of individualized consideration of the risks and benefits of residency restrictions on an offender-by-offender basis, and the Village has carefully considered how it can best

⁷ These include but are not limited to: Recidivism of sex offenders released from prison in 1994, U.S. Department of Justice, Office of Justice Programs, copyright November 2003; The final report of the Commission to Improve Community Safety and Sex Offender Accountability, of the State of Maine, dated January 2004; Sex Offender Recidivism Prediction, Correctional Service of Canada dated October 14, 2004; Recidivism of Sex Offenders, May 2001, Center for Sex Offender Management; Treating Sex Offenders, Wisconsin Lawyer Magazine, October 1994; The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review, Marcus Nieto and Professor David Jung, California Research Bureau, California State Library, August 2006; Sex Offenders: You Are Now Free to Move About the Country, and Analysis of Doe v. Miller's Effects on Sex Offender Residential Restrictions, UMKC Law Review, Spring 2005; There Goes the Neighborhood? Estimates of the Impact of Crime Risk on Property Values from Megan's Laws, Linden and Rockoff, National Bureau of Economic Research, May 2006; The Effect of Proximity to a Registered Sex Offender's Residence on Single-Family Housing Selling Price, Goliath Appraisal Journal, July 2003; Sex Offenders, Sexually Violent Predators, Punishment, Residence Restrictions and Monitoring, California Proposition 83, Analysis by the Legislative Analyst; An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri, Huebner, et al., 2013.

provide this individualized consideration, and hereby intends to create an Appeals Board to ensure that the ordinance does not banish sex offenders from the Village; and

WHEREAS, the Village Board recognizes that it cannot eliminate all risk of child sex offender re-offense, and it must balance all of the competing public policies, but intends by these regulations to strike the legislative balance that is appropriate for the circumstances of the Village of Oconomowoc Lake; and

WHEREAS, it is not the intent of this ordinance to banish sex offenders from residing within the Village of Oconomowoc Lake, and careful attention has been given to ensure that there are ample locations for sex offenders to reside within the Village of Oconomowoc Lake in compliance with the requirements of this ordinance:

NOW, THEREFORE, the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin DOES ORDAIN AS FOLLOWS:

SECTION 1. Ordinance Number 271 entitled, "An Ordinance #256 entitled Establishing Sex Offender Residency and Loitering Restrictions is hereby repealed and recreated as an Ordinance dealing with Sex Offender Residency, Prohibited Activities, and Loitering Restrictions within the Village of Oconomowoc Lake;" is hereby repealed and recreated to read as follows:

SEX OFFENDERS RESIDENCY, PROHIBITED ACTIVITIES, AND
LOITERING RESTRICTIONS.

1. Findings and Intent.....	4
2. Definitions.	5
3. Residency Restrictions for Sex Offenders, Exceptions.....	7
4. Renting Real Property to Sex Offenders, Restricted.....	8
5. Prohibited Activities by Sex Offenders, Exception.	8
6. Loitering by Sex Offender Prohibited, Exception.....	8
7. Child Safety Zone Map.....	9
8. Penalties.....	9
9. <u>Petition for Exemption</u>.....	9

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.
- (p) Sexually Violent Offense has the meaning set forth in Wis. Stat. sec. 980.01(6), as amended from time to time.
- (q) Temporary Residence means a place where the person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the person's permanent address.
- (r) Village means the Village of Oconomowoc Lake.

3. **Residency Restrictions for Sex Offenders, Exceptions.**

- (a) Child Safety Zone Restriction. Subject to the exceptions in Section 3(c), no sex offender shall establish a permanent residence or temporary residence within the Village that is within a Child Safety Zone, as determined by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of any Child Safety Location.
- (b) Original Domicile Restriction. In addition to Section 3(a), but subject to the exceptions in Section 3(c), no sex offender, shall establish a permanent or temporary residence within the Village and no supervised release of a sex offender shall be established in the Village unless such person was domiciled in the Village at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime against children.

(c) Exceptions. A sex offender may not be found to be in violation of the residency restrictions in Section 3(a) if the sex offender establishes that any of the following apply:

1. The person was domiciled in the Village prior to [Insert effective date of Ordinance] provided, however, that if the person was then subject to Wis. Stat. Sec. 301.45, the person must have also reported and registered the residence pursuant to Wis. Stat. Sec. 301.45 prior to such date to take advantage of the exception.
2. The person is a minor and is not required to register under Wis. Stats. Sec. 301.45 and Sec. 301.46.
3. The Child Safety Location began after the sex offender had established the permanent residence or temporary residence and reported and registered the residence if required pursuant to Wis. Stat. Sec. 301.45.
4. The sex offender is subject to an active court order to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental facility within the Child Safety Zone.

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.

9. Petition for Exemption

- a. A Designated Sex Offender may seek an exemption from this Ordinance by petitioning to the Sex Offender Residence Board ("Residence Board").

- b. The Residence Board shall consist of the members of the Village of Oconomowoc Lake Village Board.
- c. The Residence Board shall approve an official petition form. The Designated Sex Offender seeking an exemption must complete the petition and submit it to the Village Clerk who shall forward it to the Residence Board. The Residence Board shall hold a hearing on each petition, during which the Residence Board may review any pertinent information and accept oral or written statements from any person. The Residence Board shall base its decision on factors related to the Village's interest in promoting, protecting, and improving the health, safety and welfare of the community. Applicable factors for the Residence Board's consideration shall include, but are not limited to:
- i. Nature of the offense that resulted in sex offender status
 - ii. Date of offense
 - iii. Age at time of offense
 - iv. Recommendation of probation or parole officer
 - v. Recommendation of Police Department
 - vi. Recommendation of any treating practitioner
 - vii. Counseling, treatment and rehabilitation status of sex offender
 - viii. Remorse of sex offender
 - ix. Duration of time since sex offender's incarceration
 - x. Support network of sex offender
 - xi. Relationship of sex offender and victim(s)
 - xii. Presence or use of force in offense(s)
 - xiii. Adherence to terms of probation or parole
 - xiv. Proposals for safety assurances of sex offender
 - xv. Conditions to be placed on any exception from the requirements of this Ordinance
- d. The Residence Board shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or limited to a certain address or time, or subject to other reasonable conditions. The Residence Board's decision shall be final for purposes of appeal. A written copy of the decision shall be provided to the Designated Sex Offender.

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. CONTINUATION OF EXISTING PROVISIONS.

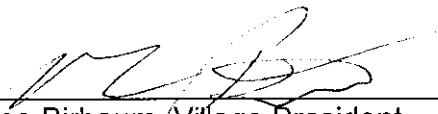
The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution or proceeding brought for the enforcement of any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provisions is stayed pending the final resolution of such actions, including appeals

SECTION 4. EFFECTIVE DATE.

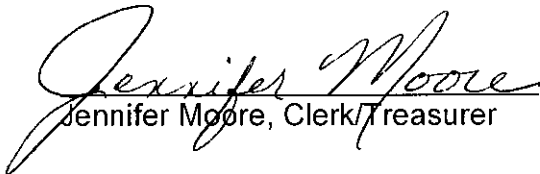
This ordinance shall take effect upon passage and publication or posting as provided by law.

Dated this 18th day of June, 2018.

VILLAGE OF OCONOMOWOC LAKE:

By: 
Joe Birbaum, Village President

ATTEST:


Jennifer Moore, Clerk/Treasurer

Published and/or posted this 30th day of July, 2018.

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