

ORDINANCE # 2017-8

AN ORDINANCE REPEALING AND RECREATING CHAPTER 27 OF THE CODE OF ORDINANCES OF THE VILLAGE OF WILLIAMS BAY

WHEREAS, the Village Board of the Village of Williams Bay finds that it is of paramount importance to provide for the safety of children within its boundaries; and

WHEREAS, the Village Board of the Village of Williams Bay finds that special safety concerns for children arise due to the presence of sex offenders; and

WHEREAS, for the reasons set forth in Section 27.01 below, the Village Board of the Village of Williams Bay finds it to be in the best interests of the residents of, and visitors to, the Village provide for the regulation of sex offenders while they are located within the village.

NOW, THEREFORE, the Village Board of the Village of Williams Bay, Walworth County, Wisconsin do ordain as follows:

SECTION I

Chapter 27 of the Municipal Code of the Village of Williams Bay is hereby repealed and recreated to read as follows:

Chapter 27 - Sex Offenders.

27.01 Findings and Intent.

- (1) The Wisconsin legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community.
- (2) The United States Supreme Court has recognized that the risk of recidivism posed by sex offenders is high, and when convicted sex offenders re-enter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See *Smith v. Doe*, 538 US 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2003) and *McKune v. Lile*, 536 US 24, 34, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002), citing United States 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 (1997).
- (3) The Eighth District has found that up to 2,000 feet restriction on the residence of sex offenders is reasonable given that reducing the frequency of contact between sex offenders and children is likely to reduce temptation and opportunity, which in turn is important to reducing the risk of harm to children. See *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005).

- (4) The Village of Williams Bay Board finds that the negative consequences of failing to regulate the movement and residency of sex offenders is a hazard to children and the community. Thus, the Village of Williams Bay has a duty and need to regulate where sex offenders reside and loiter within the Village once they are reintegrated into the community. This Chapter is a regulatory measure aimed at protecting the health and safety of the children in the Village of Williams Bay from the risk that convicted sex offenders may reoffend in locations close to their residences. It is the intent of this Chapter not to impose a criminal penalty but rather to serve the Village's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Village by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing residence or loitering; and by regulating certain activities that may be used by sexual offenders to prey on children.
- (5) The Village of Williams Bay finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. 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, day-care centers and other places children frequent. The Village finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.
- (6) The Village Board notes that Wisconsin Statute Section 61.34 authorizes the Village Board to enact legislation for the health, safety and welfare of the public. In addition, Wisconsin Statute Section 61.34(5) notes that the powers, rights and privileges accorded villages under said section are to be liberally construed in order to promote the general welfare, peace, good order and prosperity of the Village.
- (7) This Chapter will not apply to sexually violent persons, as defined in Wisconsin Statute §980.01(7), because those persons are controlled under the regulations of Wisconsin Statute §980.

27.2 Definitions. As used in this Chapter and unless the context otherwise requires:

- (1) Child is a person under the age of 18.
- (2) *Child Safety Location* is the site upon which any of the following are located:
 - a. A public park, parkway, parkland, park facility;
 - b. A public beach;
 - c. A public library;
 - d. A recreational trail;
 - e. A public playground;
 - f. A school for children;
 - g. Athletic fields used by children;
 - h. A day-care center;

- i. A tutoring facility;
- j. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;
- k. Any facility for children [which means a public or private school or a group home, as defined in §48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in §8.02(15d), Wis. Stats.; a shelter care facility, as defined in §48.02(17), Wis. Stats.; a foster home, as defined in §48.02(6), Wis. Stats.; a treatment foster home, as defined in §48.02(17q), Wis. Stats.; a day-care center licensed under §48.65, Wis. Stats.; a day-care program established under §120.13(14), Wis. Stats.; a day-care provider certified under §48.651, Wis. Stats.; or a youth center, as defined in §961.01(22), Wis. Stats.].

(3) *Child Safety Zone* is any place within the Village that is physically located within 1,500 feet of any Child Safety Location.

(4) *Crime Against Children* is any of the 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, respectively:

Wisconsin Statute Sections

- 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; and
- 975.06 Sex Crimes Law Commitment.

(5) *Sex Offender* is a person who has been convicted of or has been found delinquent of or has been found not guilty by reason of disease or mental defect of a sexually violent offense and/or a crime against children.

- (6) A *residence* is a structure where a person sleeps, which may include more than one location and may be mobile or transitory.
- (7) A *sexually violent offense* shall have the meaning as set forth in §980.01 (6) Wis. Stats., as amended from time to time.

27.03 Residency Restrictions

- (1) *Child Safety Zone Restriction.* Subject to the definitions in Section 27.02 above and the exemptions set forth in Section 27.04 below, no sex offender shall reside within a Child Safety Zone.
- (2) *Measurement/Distance.* The distance shall be measured from the closest boundary line of the real property supporting the residence of an offender to the closest boundary line of real property that supports or upon which there exists any of the applicable above-enumerated use(s).

27.04 Residency Restriction Exemptions:

A person residing within a Child Safety Zone does not commit a violation of this Chapter if any of the following apply:

- 1. During a person's incarceration, if the person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
- 2. The person is a minor or ward under guardianship.
- 3. The person established a residence prior to the effective date of this Chapter, which is within a Child Safety Zone.
- 4. The applicable enumerated use identified in Section 27.02(2), above, is newly established after the effective date of this Chapter and it is located within such 1,500 feet of a residence of a person which was established prior to the newly established enumerated use.

27.5 Renting Real Property:

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 or temporary residence by a sex offender contrary to the provisions of Section 27.03 above, unless said individual is exempted under Section 27.04 above.

27.06 Holiday Events and Public Gatherings:

- (1) It is unlawful for a sex offender to actively take part in any public holiday event involving children under 18 years of age where the distributing of candy or other items to children takes place, including but not limited to holiday parades or similar gatherings, Halloween trick or treating, wearing a Santa Claus costume in a public place in relationship to Christmas, wearing an Easter Bunny costume in a public place in relationship to Easter, or wearing any other costume reasonably expected to attract children in a public place, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a sex offender.

- (2) Exception. This section does not apply to any event in which the sex offender is the parent or guardian of the child(ren) involved, and the sex offender's child(ren) are the only child(ren) present.

27.07 Loitering

- (1) It shall be unlawful for any sex offender as defined in Section 27.02(5), above, to loiter or prowl within a Child Safety Zone at a time or in a manner not usual for law abiding individuals and under circumstances that warrant alarm for the safety of children 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.
- (2) Unless flight by an 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 law enforcement at the time, would have dispelled the alarm.
- (3) An offender does not commit a violation of loitering in a Child Safety Zone as stated above and the enumerated uses may allow such person on the property supporting such use if any of the following apply:
- (a) The property supporting an enumerated use also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:
 - (i) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - (ii) Written advance notice is made from the person to an individual in charge of the church, and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the person; and
 - (iii) The person shall not participate in any religious education programs, which include individuals under the age of 18.
 - (b) The property supporting an enumerated use also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:
 - (i) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
 - (ii) Written advance notice is made from the person to an individual in charge of the use upon the property, and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the person.

- (c) The property supporting an enumerated use also supports a polling location in a local, state or federal election, subject to the following conditions:
 - (i) The person is eligible to vote; and
 - (ii) The designated polling place for the person is an enumerated use; and
 - (iii) The person enters the polling place property and proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the person vacates the property immediately after voting; and
- (d) The property supporting an enumerated use also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.

27.08 Child Safety Zone Map

The Village Clerk's Office shall maintain an official map showing the 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 section preclude the persecution or conviction of any sex offender under this section.

27.9 Violations and Penalties

- (1) Any violation of this section shall be subject to the general penalty provisions set forth in Section 20.05 of the Municipal Code. Each day of each violation shall constitute a separate offense.
- (2) Violation of this section shall constitute a public nuisance, which, in addition to monetary forfeitures, shall be subject to action by the Village to abate and enjoin such nuisance.
- (3) If a person violates any residency provision of this section, without any applicable exceptions set forth in this section, the Village Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the purpose of this section such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health or safety of another or others, shall bring an action in the name of the Village in the Circuit Court for Walworth County to permanently enjoin such residency as a public nuisance.

27.10 Appeal

The above restrictions in this Chapter may be waived upon approval of the Village of Williams Bay Village Board through appeal by the affected party if clear and convincing evidence can be provided which shows the affected party has a substantially reduced risk of reoffending when compared to other sexual offenders and that an undue hardship would fall on the affected party if no waiver is provided. Such appeal shall be made to the Village Clerk's office, who shall forward the request to the Village Board president, which shall receive reports from the police department

on such appeal. The Village Board shall convene and consider the public interest, risk to the public, as well as the affected party's presentation and concerns. After deliberation, the Village Board shall forward its decision in writing to the police department for their information and action. A written copy of the decision shall be provided to the affected party.

SECTION II

All ordinances or parts of ordinances contravening the terms and conditions of this ordinance are hereby to that extent repealed.

SECTION III

The several sections and subsections of this ordinance shall be considered severable. If any section or subsection shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the ordinance.

SECTION IV

This ordinance shall take effect upon passage and publication as approved by law.

Passed and adopted this 18th day of September, 2017 by the Village Board of the Village of Williams Bay.

APPROVED:

William Duncan,
Village of Williams Bay President

Attest:

Elizabeth Gasparac,
Village of Williams Bay Clerk

First Reading: 09-18-2017

Second Reading: Waived

Date Adopted: 09-18-2017

Date Published: 09-28-2017