

AN ORDINANCE CREATING CHAPTER 129
OF THE VILLAGE CODE OF ORDINANCES REGARDING
SEX OFFENDER RESIDENCY RESTRICTIONS AND CHILD SAFETY ZONES

WHEREAS, state law provides for the punishment, treatment, supervision, and release of persons convicted of sex crimes against children and sexually violent crimes; and

WHEREAS, the Village of Elm Grove places a high priority on maintaining public safety through laws that deter and punish unlawful conduct and through its highly skilled and trained law enforcement; and

WHEREAS, according to a 1997 report by the U.S. Department of Justice, sex offenders have high rates of recidivism which are much higher than recidivism rates for other types of violent crimes; sex offenders are the least likely to be cured and the most likely to re-offend and prey on the most vulnerable members of our community; and more than two-thirds of the victims of rape and sexual assault are under the age of 18; and

WHEREAS, the Board of Trustees has been advised of the decision of the United States Court of Appeals for the 8th Circuit, in Doe v. Miller, 405 F.3d 700 (8th Cir. 2005), which provides in part at page 716 of that decision as follows:

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. [Citations 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 reoffense. 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 reoffense 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 a rational basis....; and

WHEREAS, Federal and Wisconsin State Fair Housing Statutes prohibit unlawful discrimination, they do not extend the same protections to a Sex Offender (as hereafter defined) with respect to a place of Residency (as hereafter defined) where a Safety Zone (as hereafter defined) has been established; and

WHEREAS, the establishment of a Safety Zone (as hereafter defined) and Residency Restrictions (as hereafter detailed) is the most reasonable and least intensive means of protecting children from further crimes by a Sex Offender (as hereafter defined); and

WHEREAS, the Elm Grove Board of Trustees acknowledges relevant contents of City of Milwaukee Legislative file No. 070231 which lend rational support for the objectives of this ordinance.

WHEREAS, after consideration of the foregoing recitals and related reports and proceedings pertaining to this subject matter; and upon the prior experience of the Village of Elm Grove in protecting the members of the community from sexually violent persons, the Board of Trustees of the Village of Elm Grove finds the proposed ordinance creating residency restrictions for sex offenders will serve to protect the health, safety, and welfare of the community.

NOW THEREFORE, THE VILLAGE BOARD OF THE VILLAGE OF ELM GROVE DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 129 of the Village of Elm Grove Code of Ordinances, entitled “ Sex Offender Residency Restrictions,” is hereby created to read as follows:

Section 129-1 Purpose and Intent.

- A. The Village 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 sexually based crime. 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. The Village finds and declares that, in addition to schools and daycare centers, children congregate or play in a number of public places, including public parks and other facilities for children. It is the intent of this ordinance to serve the Village’s compelling interest to promote, protect, and improve the health, safety, and welfare of Village citizens by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders are prohibited from entering or establishing residency.

Section 129-2 Definitions.

- A. A “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”.
- B. A “Sexually Violent Offense” shall have the meaning as set forth in Wisconsin Statute § 980.01(6), as amended from time to time.
- C. A “Crime Against Children” shall mean any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or federal government, having like elements necessary for conviction, 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
- § 944.02 Rape (prior statute, see now 940.225)
- § 944.06 Incest
- § 944.10 Sexual Intercourse with a Child (prior statute, see now 948.02)
- § 944.11 Indecent Behavior with a Child (prior statute, see now 948.02)
- § 944.12 Enticing Child for Immoral Purposes (prior statute, see now 948.07)
- § 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 a 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 or an Included Offense
- § 975.06 Sex Crime Law Commitment

D. A "Residence" is a place where a person sleeps, abides, lodges, or resides either on a permanent or temporary basis. For purposes of this Chapter, a permanent residence means a place where the person sleeps, abides, lodges, or resides for 14 or more consecutive days and a temporary residence means a place that is not a permanent residence and is a place where the person sleeps, abides, lodges or resides for a period of 14 or more days in the aggregate during any calendar year or four or more days in any month. A Residence may be mobile or transitory.

E. A "Safety Zone" is any real property that supports or upon which there exists any facility used for or that supports a school for children, a public park, park facility, pathway or a daycare center.

Section 129-3 Residency Restrictions.

A. A Sex Offender shall not reside within one thousand, five hundred (1,500) feet of any real property that supports or upon which there exists any of the following uses:

- (1) a school for children
- (2) a public park, park facility or park pathway
- (3) a daycare center

B. The distance shall be measured from the closest boundary line of the real property supporting the residence of a Sex Offender to the closest boundary line of the real property that supports or upon which there exists any of the uses enumerated in Section 129-3 A. above.

C. It is unlawful to let or rent any place, structure, or part thereof with the knowledge that it will be used as a residence by a Sex Offender if such place, structure, or part thereof is located within one thousand, five hundred (1,500) feet of any of the uses enumerated in Section 129-3 A. above. A person letting or renting a place or structure shall be deemed to have such knowledge if, at least ten (10) days prior to letting or renting the place, the Sex Offender's name appears on the Wisconsin Department of Corrections sex offender registry and the person letting or renting the place knew the Sex Offender would be residing at the subject place or structure.

D. Residency Restriction Exceptions.

A Sex Offender residing within one thousand, five hundred (1,500) feet of any real property that supports or upon which there exists any of the uses enumerated in Section 129-3 A. above, does not commit a violation of this ordinance if any of the following apply:

- (1) The Sex Offender established, reported and registered a residence pursuant to Wisconsin Statute § 301.45 prior to the effective date of this ordinance.
- (2) The use enumerated in Section 129-3 A. above is commenced after the Sex Offender established a residence and reported and registered that residence pursuant to Wis. Stats. § 301.45.
- (3) The Convicted Sex Offender is a minor or ward under guardianship.

Section 129-4 Safety Zones.

- A. A Sex Offender shall not enter upon or be present upon or within a Safety Zone.
- B. Safety Zone Exceptions.

A Sex Offender who enters upon or who is present upon or within a Safety Zone does not commit a violation of this ordinance if any of the following apply:

- (1) The property also supports a church, synagogue, mosque, temple or other house of religious worship, subject to all of the following conditions:
 - (a) The Sex Offender's entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - (b) The Sex Offender shall not participate in any religious education programs that include individuals under the age of 18.
- (2) The property also supports a use lawfully attended by a Sex Offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the Sex Offender as the child's parent upon the property, subject to the following condition:
 - (a) The Sex Offender's entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public.
- (3) The property also supports a polling location in a local, state or federal election, subject to all of the following conditions:
 - (a) The Sex Offender is eligible to vote;
 - (b) The property is the designated polling place for the Sex Offender; and
 - (c) The Sex Offender enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is to any member of the electorate, and vacates the property immediately after voting.
- (4) The property also supports a school lawfully attended by a Sex Offender as a student under which circumstances the Sex Offender may enter upon the property supporting the school at which the Sex Offender is enrolled, for such purposes and at such times as are reasonably required for the educational purposes of the school.
- (5) The property also supports a court, government office or room for public governmental meetings, subject to all of the following conditions:
 - (a) The Sex Offender is on the property only to transact business at the government office or place of business, other than a public library, or attend an official meeting of a governmental body; and
 - (b) The Sex Offender leaves the property immediately upon completion of the business or meeting.

Section 129-5 Penalties and Remedies.

- A. Forfeitures. Any person who shall violate any provision of this Chapter or any regulation, rule or order made herein shall be subject to a forfeiture as set by Resolution and amended from

time to time. Each day a violation continues shall constitute a separate offense. Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the Village from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this Chapter.

- B. Injunction. If an offender establishes a residence in violation of Section 129-3 above, or enters or is present upon or within a Safety Zone in violation of Section 129-4 above, the Village Attorney may bring an action in the name of the Village in Circuit Court to permanently enjoin any such violation as a public nuisance.

SECTION 2: If any section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of such ordinance.

SECTION 3: This ordinance shall take effect and be in full force from and after passage and publication.

Passed and approved this 28th day of August 2007

VILLAGE OF ELM GROVE

Neil H. Palmer, Village President

Mary S. Stredni, Village Clerk