

ORDINANCE NO. 522

An Ordinance To Create Chapter 21 Of The General Ordinances Of The Village Of River Hills Related Restricting Residency Of Sex Offenders And Prohibiting Loitering In Child Safety Zones the Village of River Hills.

Whereas, The Wisconsin Statutes provide for punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community; and

Whereas, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically, at s. 980.08, Wis. Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

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 Wis. Stat. sec. 980.08 provides, under certain conditions, for the supervised release of such persons into the community; and

Whereas, according to the US 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 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 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 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 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, since 2007, there have been 3 Wisconsin court cases addressing the legality of sex offender residency restriction ordinances: City of Franklin v. Steven R. Hanke, 07-CV-9978 (Milw. County Cir. Ct. 2007), Village of Menomonee Falls v. Jason R. Ferguson, 2011 WI App 73 (Wis. Ct. App. 2011), and City of South Milwaukee v. Kester, 2013 WI App 50 (Wis. Ct. App. 2013); and

Whereas, in each of the 3 Wisconsin cases, the courts upheld the legality and enforceability of sex offender residency restriction ordinances; and

Whereas, the Village of River Hills is a unique community in the metropolitan area of Milwaukee County, in which substantially all of the land and real property has been developed for private single family residential purposes and all of the land in the Village is zoned for single family residential use only; and

Whereas, upon the recommendation of the Chief of Police and the Village Attorney, and pursuant to the power granted to the Village Board by Wis. Stat. sec. 61.34(1) to enact legislation to protect the health, safety and welfare of the residents of the Village of River Hills the Village Board has determined that adoption of this ordinance will be in the interest of the public health, safety, and general welfare of the Village.

THEREFORE, the Village Board of the Village of River Hills, Milwaukee County, Wisconsin, does hereby ordain as follows:

SECTION I. That Chapter 21 of the General Ordinances of the Village of River Hills is hereby created to read as follows:

“CHAPTER 21 DESIGNATED SEX OFFENDERS RESTRICTIONS

Section 21.01	Findings and Intent
Section 21.02	Definitions
Section 21.03	Residency Restrictions
Section 21.04	Child Safety Zone Restrictions
Section 21.05	Penalties

Section 21.01 Findings and Intent

This Chapter is a regulatory measure aimed at protecting the health and safety of children and youth in the Village of River Hills from the risk that convicted sex offenders may re-offend in locations close to their residences and against child victims. 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 need to protect children and youth 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 and youth frequent. The Village Board also finds and declares that in addition to schools and day care centers, children and youth congregate or play at parks, pools and other public and private places of enrichment activities, creation, entertainment and amusement. Therefore, finding that sex offenders are a serious threat to public safety as indicated above, the Village Board hereby declares the residency or presence of sex offenders in proximity to public and private places where children and youth may congregate or frequent under circumstances proscribed in this ordinance to be a public nuisance.

It is the intent of this chapter 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 sex offenders and sex predators are prohibited from residing and loitering.

Section 21.02 Definitions

The following terms shall be defined as follows in this chapter and the singular includes the plural and the plural includes the singular:

- A. "Child" means a person under the age of eighteen (18) years.
- B. "Offender" shall mean:
 - 1) Any person who is required to register under s. 301.45 Wis. Stats., for any offense against a child or any person who is required to register under s. 301.45 Wis. Stats., and who is subject to the Special Bulletin Notification process set forth in s. 301.46(2) and (2m) Wis. Stats.
 - 2) Any person subject to the sex crimes commitment provisions of s. 975.06 Wis. Stats.,
 - 3) Any person found not guilty by reason of disease or mental defect placed on lifetime supervision under s. 971.17(1j) Wis. Stats.
- C. "Permanent residence" shall mean a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.
- D. "Temporary residence" shall mean a place where a person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address or place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or non-consecutive days in any month and is not the person's permanent address.

- E. “Original domicile” means the offender’s true, fixed and permanent home, to which the offender intends to return and remain even though currently residing elsewhere.

Section 21.03 Residency Restrictions

- A. Restriction. An offender shall not establish a permanent or temporary residence within two thousand (2,000) feet of any of the following:
- 1) Private or public schools;
 - 2) Public park, parkway, parkland, or nature preserve;
 - 3) Private or public clubs or facilities where golf, tennis and swimming pool facilities are used by children;
 - 4) Recreational trail;
 - 5) Public library;
 - 6) Licensed daycare center, as defined in s. 48.65 Wis. Stats.;
 - 7) Specialized school for children, including, but not limited to a gymnastics academy, dance academy, or music school;
 - 8) Group home for children, as defined in s. 48.02(7) Wis. Stats.;
 - 9) Residential care center for children, as defined in s. 48.02(15d) Wis. Stats.
- B. Measuring Distance and Map of Restricted Locations. For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the residence to nearest outer property line of the establishments listed above in subsection (A). The Village Clerk shall maintain an official map showing prohibited locations as defined by this section. The Village Clerk shall update the map at least annually to reflect any changes in the prohibited areas.
- C. Exceptions. An offender residing within a prohibited area as described in subsection (A) does not commit a violation of this section if any of the following apply:
- 1) The offender is required to serve a confined sentence at a jail or other correctional institution or facility located within a prohibited area.
 - 2) The offender established a permanent or temporary residence and reported and registered the residence pursuant to s. 301.45 Wis. Stats., before the effective date of this section. Once said offender no longer resides in the restricted area, another convicted sex offender may not establish residency in said residence in the restricted area.
 - 3) The prohibited area described in subsection (A) that lies within two thousand (2,000) feet of the offender’s permanent or temporary residence was opened after the offender established the permanent or temporary residence and reported and registered the residence pursuant to s. 301.41 Wis. Stats.
 - 4) The offender is a minor or ward under guardianship.
- D. Property owners prohibited from renting real property to certain offenders.

- 1) It is unlawful to let or rent any place, structure, or part thereof, with the knowledge that it will be used as a permanent or temporary residence by any offender prohibited from establishing such permanent or temporary residence pursuant to this ordinance.

Section 21.04 Child Safety Zone Restrictions

- A. "Child Safety Zones" shall include any real property upon which there exists any route, path, area, or facility used for or which supports a use of:
 - 1) Private or public schools;
 - 2) Public park, parkway, parkland, or nature preserve;
 - 3) Private or public clubs or facilities where golf, tennis and swimming pool facilities are used by children;
 - 4) Recreational trail;
 - 5) Public library;
 - 6) Licensed daycare center, as defined in s. 48.65 Wis. Stats.;
 - 7) Specialized school for children, including, but not limited to a gymnastics academy, dance academy, or music school;
 - 8) Group home for children, as defined in s. 48.02(7) Wis. Stats.;
 - 9) Residential care center for children, as defined in s. 48.02(15d) Wis. Stats.
- B. Restriction. It shall be unlawful for any offender to loiter or prowl in any child safety zone at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of 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 police officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstances make it impracticable, a police officer shall, prior to any arrest for an offense under this subsection, afford the actor an opportunity to dispel any alarm which would otherwise be warranted by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this subsection if the police 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 police officer at the time, would have dispelled the alarm.
- C. Map of Restricted Locations. The map required under 21.03 (B) above shall be used for depicting the child safety zones as defined by this section. The Village Clerk shall update the map at least annually to reflect any changes in the restricted locations.
- D. Exceptions. This section shall not apply where the offender is a minor accompanied by and under the care of his or her parent, guardian or other adult person having his or her care, custody or control, or where the offender was exercising First Amendment rights protected by the U.S. Constitution or Wisconsin Constitution, including freedom of speech, the free exercise of religion, or the right of assembly.

Section 21.05 Penalties


- A. Any person, firm or corporation found guilty of the violation of any provision of this Chapter, unless another penalty is therein provided, shall be subject to a forfeiture of not less than Ten (\$10.00) Dollars nor more than Two Thousand (\$2,000.00) Dollars together with the costs of the action; and in default of payment thereof, shall be subject to imprisonment in the County Jail or House of Correction of Milwaukee County until such forfeiture and costs, together with any subsequent costs have been paid, but in any event, not to exceed ninety (90) days. Each day a violation continues constitutes a separate offense.
- B. Violations of this Chapter shall constitute a public nuisance, which, in addition to any other penalties shall also be subject to action by the Village to abate and enjoin such nuisance."

SECTION II. The several parts and sections of this ordinance are declared to be severable. If any subsection, section or portions of this ordinance or the application thereof to any persons as enacted hereunder is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions hereof and the validity of the ordinance in all other respects shall not be affected thereby.


SECTION III. That all ordinances or parts of ordinances conflicting with the provisions of this ordinance are hereby to such extent repealed.

SECTION IV. This Ordinance shall take effect upon passage and publication as provided by law.

PASSED AND ADOPTED by the Village Board of the Village of River Hills, Milwaukee County, Wisconsin this 17th day of September, 2014.


Robert C. Brunner, Village President

Countersigned:


Christopher B. Lear, Village Clerk

