

CHAPTER VII

SEXUAL PREDATORS RESIDENCY RESTRICTIONS

7.1. SEXUAL OFFENDER RESIDENCY RESTRICTIONS.

(a) Finding and intent.

(1) Repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to public safety. Sexual offenders are likely to use physical violence; and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. Thus, the cost of sexual offenders to society at large is difficult to calculate.

(2) It is the intent of this chapter not to impose a criminal penalty, but instead 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 the locations where children regularly congregate in concentrated numbers wherein certain sex offenders and sex predators are prohibited from entering or residing.

(3) This Chapter is not intended to limit any persons from exercising their right to assemble or engage in any other constitutionally protected activity. The Chapter only applies to individuals with the requisite intent to induce or lure a child away from a child's location within a Child Safety Zone.

(b) Definitions. The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

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 the federal government, having like elements necessary for conviction, respectively: § 940.22(2) Sexual Exploitation by Therapist; § 940.30 False Imprisonment where victim was a minor and not the offender's child; § 940.31 Kidnapping where 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.

Child or Children means person(s) under the age of 18 years for purposes of this chapter.

Designated Offender means a person who (1) has been convicted of a Crime Against Children; (2) has been adjudicated delinquent for a Crime Against Children; (3) has been found guilty by reason of disease or mental defect of a Sexually Violent Offense and/or a Crime Against Children; (4) is or was required to register under Section 301.45, Wisconsin Statutes, for any sexual offense; or (5) any person who is or was required to register under Section 301.45, Wisconsin Statutes, and who has been designated a Special Bulletin (SBN) sex offender pursuant to Sections 301.46(2) and (2m), Wisconsin Statutes.

Minor means a person under the age of 17 years.

Permanent Residence means a place where the Designated Offender lodges or resides for 14 or more consecutive days.

Sexually Violent Offense shall have the meaning as set forth in Wis. Stat. § 980.01(6), as amended from time to time.

Temporary Residence means either: (1) 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 (b) a place where the person routinely abides, lodges or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's Permanent Residence.

7.2 PROHIBITED LOCATION OF RESIDENCE FOR DESIGNATED SEX OFFENDERS.

(a) Protected Locations. No Designated Offender shall establish a Permanent Residence or Temporary Residence on property that is within 750 feet (Resolution #2016-01) of real property consisting of any of the following uses:

(1) A "public school" as defined by Wis. Stat. § 115.01(1); a "private school" as defined by Wis. Stat. § 115.001(3); a "charter school" as defined by Wis. Stat. § 115.001(1); a "specialty school," meaning any specialized school for children, including, but not limited to, a gymnastics academy, dance academy, or music school.

(2) A "day care center" means a facility that has been licensed under Wis. Stat. § 48.65 to provide care and supervision of children and includes "before- and after-school daycare," which has the meaning as defined by Wis. Stat. § 120.125(1).

(3) A "library" means any library that is held open for use by the public where such library includes a collection of material specifically intended for use by children.

(4) A "park" means any area held open for use by the public for active or passive leisure purposes, including, but not limited to, any park, recreation area or beach.

(5) A "playground" means any public outdoor area set aside for recreation and play and includes any area with playground equipment including, but not limited to, swings, slides, sandboxes, seesaws, and any area where athletics may be played and is public property.

(6) "House of worship" means a church, synagogue, mosque, temple or any other building where congregations gather for prayer.

(7) "Swimming pool" means any swimming pool, wading pool, or other aquatic facility held open for use by the public.

(8) Racine County North Shore Trail that runs in a north/south direction near the eastern boundary line of the Village from the northern boundary line to the southern boundary line as mapped and identified by Racine County.

(b) Original Domicile Restriction. In addition to and not the exclusion or prejudice of the foregoing, no Designated Offender shall be permitted to reside in the Village of Elmwood Park unless the person was domiciled in the Village of Elmwood Park at the time of the offense resulting in the person's most recent conviction or a Designated Offender crime.

(c) Distances; Child Safety Zones. For purposes of this chapter, distances shall be measured from the closest boundary line of the real property supporting the residence of a person to the closest real property boundary line of the applicable above-enumerated use(s). A map depicting the above-enumerated uses and the resulting residency restriction distances of 750 feet (referred to herein as the "Child Safety Zones"), as amended from time to time, is on file at the office of the Village Clerk for public inspection pursuant to section 7.6 of this chapter.

(d) Exceptions. A Designated Offender residing within a prohibited area as described in subsection 7.2(a) or 7.2(b) does not commit a violation of section 7.2 if any of the following apply:

(1) The person established the Permanent Residence or Temporary Residence and reported and registered the residence pursuant to Wis. Stats. § 301.45 (if required to register) before the effective date of this chapter.

(2) The person was a Minor at the time of the offense and is not required to register under Wis. Stats. § 301.45 or § 301.46.

(3) The applicable use described in subsection 7.2(a) began after the person established the Permanent Residence or Temporary Residence and reported and registered the residence pursuant to Wis. Stats. § 301.45.

(4) The residence is also the primary residence of the Designated Offender's parents, grandparents, siblings, spouse or Child (ren), provided that such person established the residence at least one year before the Designated Offender established residence at the location and the Designated Offender resides with such person(s) at this residence.

(5) The Designated Offender is subject to release supervised by the Wisconsin Department of Corrections under Ch. 980 of the Wisconsin Statutes, is residing under an order under such supervised release, and such person is in compliance with all court orders issued under Ch. 980 of the Wisconsin Statutes. (Intent: This exception is intended to comply with Wis. Stat. Sec. 980.135).

7.3 DESIGNATED OFFENDER PRESENCE AT PROTECTED LOCATIONS.

No Designated Offender shall enter, loiter or otherwise be present upon any real property supporting an enumerated use under section 7.2(a).

7.4 EXCEPTIONS TO PRESENCE AT PROTECTED LOCATIONS.

A person does not commit a violation of section 7.3 and the enumerated uses under Section 7.2(a) may allow such person on the property supporting such use if any of the following apply:

(1) The property supporting an enumerated use under section 7.2 also supports a church, synagogue, mosque, temple, or other house of religious worship, subject to the following conditions:

- a. Entrance and presence upon the property occurs only during hours of worship or other religious program/services as posted to the public; and
- b. Written advance notice is made from the person to an individual in charge of the property and approval from an individual in charge of the property as designated by the property is made in return, of the attendance by the person; and
- c. The person shall not participate in any religious education programs which include individuals under the age of 18.

(2) The property supporting an enumerated use under section 7.2 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:

- a. Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and

b. 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; and

(3) The property surrounding an enumerated use under section 7.2 also supports a polling location in a local, state or federal election, subject to the following conditions:

a. The person is eligible to vote;

b. The designated polling place for the person is an enumerated use; and

c. The person enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the designated sex offender vacates the property immediately after voting; and

(4) The attendance is authorized by the Designated Offender's conditions of supervision, if on parole.

7.5 OTHER PROHIBITED ACTIVITY.

It is unlawful for any Designated Offender to participate in a holiday event in the Village of Elmwood Park involving one or more Children by means of: distributing candy or other items to such Child or Children on Halloween; wearing a Santa Claus costume on or during any of the 30 days preceding Christmas; wearing an Easter Bunny costume on or during any of the 30 days preceding Easter; or by engaging in any other similar type(s) of activity that may, under the circumstances then present, tend to entice a Child to have contact with a Designated Offender. Holiday events in which the Designated Offender is the parent or legal guardian of the Child or Children involved, and no other Children are present, are exempt from this paragraph.

7.6 CHILD SAFETY ZONE MAP.

The Village Clerk shall maintain an official map showing locations identified in subsection 7.2(a) of this chapter and the resulting Child Safety Zones under subsection 7.2(c). The Village Clerk shall cause such map to be updated at least annually to reflect any changes in the location of protected locations and Child Safety Zones. The map is to be displayed in the office of the Village Clerk. In the event of a conflict between the map and the written terms of this Chapter, the written terms of this Chapter shall control.

7.7 PENALTIES.

(a) Any violation of this Chapter shall be subject to a forfeiture not exceeding \$1,000.00. Each day of each violation that exists shall constitute a separate offense.

(b) Violation of this Chapter 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 in accordance with applicable ordinance and Wisconsin Statutes.

7.8 INJUNCTIVE RELIEF.

If a person violates any provision of this Chapter, without any exception(s) as set forth above, the Village Attorney, upon referral from the Village Board and the written determination that upon all of the facts and circumstances and the purpose of this Chapter, such residence occupancy presents an activity or use of property that violates this Chapter and interferes substantially with the comfortable enjoyment of life, health, safety of another or others, shall bring an action in the name of the Village in the Circuit Court for Racine County to permanently enjoin such residence as a public nuisance.

7.9 PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO SEXUAL OFFENDERS.

It is unlawful to let or rent any place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a Permanent Residence or Temporary Residence by any person prohibited from establishing such Permanent Residence or Temporary Residence pursuant to the terms of this Chapter, if such place, structure or part thereof, manufactured home, trailer, or other conveyance, is located within a Child Safety Zone, which is not currently rented to a Designated Offender on the effective date of this Ordinance.

7.10 NOTIFICATION.

Consistent with state requirements, the state agency working with the Designated Offender must notify the Village Board and the Racine County Sheriff's Department a minimum of 28 days prior to establishing either a Permanent Residence or Temporary Residence within the Village of Elmwood Park.

7.11 APPEAL FOR AN EXEMPTION.

(a) A Designated Offender may seek an exemption from this Chapter by appealing to the Village Board.

(b) The Village Board shall approve of an official appeal form. A Designated Offender shall fill in the official form and submit it to the Village clerk, who shall forward it to the Village Board. The Village Board shall hold a hearing on each appeal, during which the Village Board may review any pertinent information and may accept oral and written statements from any person. The Village Board shall consider the public interest as well as the affected party's presentation and concerns. In making its determination under this provision, the Village Board may consider any or all of the following factors that may be applicable in the particular request:

(1) The circumstances of the case(s) that have led to the Designated Offender status including:

- a. Relationship of offender and victim.
- b. Presence or use of force.
- c. Presence of enticement.
- d. Proximity in time.
- e. Time out of incarceration.
- f. Credibility of offender.
- g. Remorse.
- h. Proximity of proposed residence to a child safety zone.
- i. Support network of offender.
- j. Counseling and treatment history.

(c) The Village Board shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or be set to a certain address or time. A written copy of the decision shall be provided to the Racine County Sheriff's Department for its information and to the applicant. Any decision of the Village Board may be appealed to circuit court.

(Reviewed and Approved on 6/13/19)