

## **Chapter 40**

### **SEXUAL OFFENDER RESIDENCY, PROHIBITED ACTIVITIES AND LOITERING RESTRICTIONS**

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## **Sec. 40-1. Findings and Intent.**

- (a) This Chapter is a regulatory measure aimed at protecting the health and safety of a Child or Children from the risk that convicted Sex Offenders may re-offend in locations close to their residences. The Governing Body 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 Governing Body 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 a Child or Children where they congregate or play in public places in addition to the protections afforded by state law near schools, and other places a Child or Children frequent. The Governing Body finds and recognizes that, in addition to schools, there are other areas where a Child or Children congregate or play.
- (b) This Chapter is not intended to impose a criminal penalty or punishment of Sex Offenders, but rather to serve the Municipality's compelling interest to promote, protect, and improve the health, safety, and welfare of a Child or Children in the Municipality by creating areas around locations where a Child or Children regularly congregate in concentrated numbers where Sex 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 Sex Offenders to prey upon children.
- (c) Due to the high rate of recidivism for Sex Offenders, and because reducing both opportunity and temptation would help minimize the risk of re-offense, the Governing Body finds that there is a compelling need to protect a Child or Children where they congregate or play in public places.
- (d) The Village Board has closely considered this issue and has made numerous findings and expressions of intent within the preamble to the ordinance which adopted these Code provisions, which is incorporated herein by reference.

## **Sec. 40-2. Definitions.**

For purposes of this Chapter, the following terms shall have the following meaning unless the context otherwise requires:

- (a) Child means a person under the age of 18.
- (b) Children means 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 of North Prairie:
  1. Facility for children;
  2. Group home, as defined in Wis. Stats. sec. 48.02(7);
  3. Library, that is held open for use by the public;
  4. Licensed day care center as defined in Wis. Stats. sec 48.65;
  5. Public or private primary, elementary, secondary, middle, junior high, or high school;

6. Recreational trail, playground or park;
  7. Specialized school for children, including, without limitation, a gymnastics academy, dance academy, or music school'
  8. Swimming pool, wading pool, or aquatic facility held open for use by the public;
  9. A public or private golf course or range; and
  10. Church or places of worship.
- (d) Child Safety Zone means any property within the Municipality that is physically located within two hundred feet (200') of any Child Safety Location. In the event that any portion of the property falls within a Child Safety Zone, the entire property will be considered part of the Child Safety Zone.
- (e) Domicile means an individual's fixed and permanent residence 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. A residence being used for any Special or Temporary Purpose is not considered a domicile. A jail, prison, juvenile facility, or other correctional institution or mental facility where a Sex Offender is court ordered to reside is not considered a domicile.
- (f) 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.
- (g) Governing Body means the Village Board of the Village of North Prairie.
- (h) Minor means a person under the age of 17.
- (i) Municipality means the Village of North Prairie.
- (j) Permanent Residence means a place where a person abides, lodges, or resides for 14 or more consecutive days.
- (k) Sex Offender or Sexual Predator means any person who is required to register under §301.45, Wis. Stats., for any sexual offense against a child and any person who is required to register under §301.45, Wis. Stats., and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to §301.46(2) and (2m), Wis. Stats. The term "Sex Offender" also includes any person subject to the Sex Crimes Commitment Provisions of Section 975.06, Wisconsin Statutes, and any person found not guilty by reason of disease or mental defect placed on lifetime supervision under Section 971.17(1j), Wis. Stats.
- (l) 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 domicile.

(m) Special or Temporary Purpose means a situation that is out of the ordinary, such as but not limited to, an immediate family member who requires extra care due to severe health issues from a stroke, Alzheimer's disease, etc.

### **Sec. 40-3. Residency Restrictions for Sex Offenders, Exceptions**

- (a) Child Safety Zone Restriction. Subject to the exceptions in Section 40-3(c), no Sex Offender shall establish a permanent residence or temporary residence within the Municipality that is within a Child Safety Zone, as determined by following a straight line from the outer property line of the Domicile or Temporary Residence to the nearest outer property line of any Child Safety Location.
- (b) Original Domicile Restriction. In addition to Section 40-3(a), but subject to the exceptions in Section 40-3(c), no Sex Offender shall establish a permanent or temporary residence within the Municipality and no supervised release of a Sex Offender shall be established in the Municipality unless such person was domiciled in the Municipality at the time of the offense resulting in becoming a Sex Offender as defined herein. This ability for certain Sex Offender's to return to the Municipality shall not apply if the Sex Offender establishes a Domicile outside of the Municipality prior to returning to the Municipality.
- (c) Exceptions. A Sex Offender may not be found to be in violation of the residency restrictions in Section 40-39a) if the Sex Offender establishes that any of the following apply:
1. The Sex Offender was domiciled in the Municipality prior to September 12, 2013, provided, however, that if the Sex Offender was then subject to Wis. Stats. Sec. 301.45, the Sex Offender must have also reported and registered the residence pursuant to Wis. Stats. Sec. 301.45 prior to such date to take advantage of the exception.
  2. The Sex Offender 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 Domicile or Temporary Residence and reported and registered the residence if required pursuant to Wis. Stats. 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.
  5. An exception has been granted by the Residence Board.
  6. Exception for Placements under Chapter 980 of the Wisconsin Statutes.  
To the extent required by Section 980.135 of the Wisconsin Statutes, and notwithstanding the foregoing provisions of this Chapter, the Village of North Prairie hereby exempts and may not enforce any portion thereof that restricts or prohibits a Sex Offender from residing at a certain location or that restricts or prohibits a person from providing housing to a Sex Offender against an individual who is released under Wisconsin Statutes Section 980.08, or against a person who provides housing to such individual, so long as the individual is subject to supervised release under Chapter 980 of the Wisconsin Statutes, the individual is residing where he or she is ordered to reside under Section 980.08 of the Wisconsin Statutes, and the individual is in compliance with all court orders issued under Chapter 980 of the Wisconsin Statutes.

(d) Petition for Exemption.

1. A Sex Offender may seek an exemption from this Ordinance by petitioning to the Sex Offender Residence Board (“Residence Board”).
2. The Residence Board shall consist of three citizens residing in the Village. Members shall be selected by the Village Board. Members shall serve for a term of five (5) years and shall serve no more than two (2) consecutive terms. The terms for the initial members of the Residence Board shall be staggered with one member serving one (1) year, a second serving three (3) years and the third serving five (5) years.
3. The Residence Board shall approve an official petition form. The 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:
  - a. Nature of the offense that resulted in sex offender status
  - b. Date of offense
  - c. Age at time of offense
  - d. Recommendation of probation or parole officer
  - e. Recommendation of Police Department
  - f. Recommendation of any treating practitioner
  - g. Counseling, treatment and rehabilitation status of sex offender
  - h. Remorse of sex offender
  - i. Duration of time since sex offender’s incarceration
  - j. Support network of sex offender
  - k. Relationship of sex offender and victim(s)
  - l. Presence or use of force in offense(s)
  - m. Adherence to terms of probation or parole
  - n. Proposals for safety assurances of sex offender
  - o. Conditions to be placed on any exception from the requirements of this Ordinance.
4. 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 Sex Offender.

**Sec. 40-4. 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 Domicile or Temporary Residence by a Sex Offender contrary to the provisions of Section 40- 3 of this Ordinance.

#### **Sec. 40-5. Prohibited Activities by Sex Offenders, Exception**

- (a) Prohibited Activities by Sex Offenders. Except as provided in Subsection 40-5(b), no Sex Offender shall participate in any event in the Municipality involving a Child or Children by means of distributing candy or other items to such Child or Children. Examples of such events would include, but not limited to; Halloween, 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 other activities that may, under the circumstances then present, tend to entice a Child or Children 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 40-5(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, and that the Sex Offender's participation in such event complies with any restrictions set by the court or any other governing authority with legal jurisdiction, i.e. Probation, Parole, Department of Corrections, etc.

#### **Sec. 40-6. 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 person 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 person or other circumstances makes it impractical, a law enforcement officer shall prior to any arrest for an offense under this section, afford the person 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 person 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 40-6(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 Sex Offender was exercising First Amendment rights produced by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.

#### **Sec. 40-7. Child Safety Zone Map**

The Village Clerk's Office shall maintain an official map showing Child Safety Zones within the Municipality. The Village Clerk's Office shall update the map, at a minimum, annually to reflect any changes in the location of Child Safety Zones. The map will be available in the Village Clerk's Office. 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.

**Sec. 40-8. Penalties**

- (a) A person who violates provisions of Sections 40-3, 40-4, 40-5 or 40-6 of this ordinance shall be subject to a forfeiture of not less than \$500.00 and no more than \$2,000.00 for each violation. Each day a person is in violation of this ordinance constitutes a separate violation. The Municipality may also seek equitable relief to gain compliance.
- (b) In addition and not to the exclusion or prejudice of such other penalties and remedies as may apply, violation of Sections 40-3, 40-4, 40-5 or 40-6 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. Any person who shall violate any provision of this chapter or any order, rule or regulation made herein shall be subject to a penalty as provided in Sec. 1.11 of the Municipality's Municipal Code.

(Ord. No. 1-2013, §1, 09-27-13, updated Ord. No. 01-2018, 06-25-18)