

ORDINANCE NO.

AN ORDINANCE CREATING SECTION 62-150 RESIDENCY RESTRICTION FOR SEX OFFENDERS.

WHEREAS, the Village Board of the Village of Kewaskum, Washington County, Wisconsin, deems it a priority to act in the interest of public safety within our community, particularly in the interest of our children: and

WHEREAS, according to the U.S. Department of Justice, there are a record number of convicted sex offenders living in our communities¹; and

WHEREAS, all convicted child sex offenders have proven themselves to be dangerous²; and

WHEREAS, research in this area has established sex offenders are rearrested for *sex crimes* four times more frequently than non-sex offenders³; and

WHEREAS, the reduction of crime and criminal recidivism are inextricably linked to public safety within our community; and

WHEREAS, the creation of Sex Offender Residency Restrictions and Safety Zones by municipal ordinance around locations where children regularly congregate is a reasonable step toward protecting our children and deterring recidivism by reducing the opportunity for new offenses within our community; and

WHEREAS, the majority of the larger population centers in Washington County, including the Village of Germantown, the City of Hartford, the Village of Jackson, the Village of Newburg, the Village of Richfield, and the Village of Slinger, have already adopted Sex Offender Residency Restrictions, which increases the likelihood that, barring the adoption of such an ordinance, an inordinate number of sex offenders could be placed within our community; and

WHEREAS, adopting an ordinance containing a specific domicile clause prohibiting residency of sex offenders who were not from the Village of Kewaskum at the time of their offense will reasonably limit Kewaskum's intake of sex offender residents to its own constituents; and

¹ Sex Offender Management Assessment and Planning Initiative, July 2015, *"This includes offenders returning to the community upon release from incarceration as well as offenders who are serving or who have been discharged from community-based sentences."*

² Kester, 2013 WI App 50, ¶ 30.

³ Sex Offender Management Assessment and Planning Initiative, July 2015, Langan, P., Schmitt, E., & Durose, M. (2003). *Recidivism of Sex Offenders Released From Prison in 1994.*

WHEREAS, adoption of this ordinance will not exclude all areas of the Village of Kewaskum from sex offender residency, nor will it serve to completely banish these offenders from residing within our municipality; and

WHEREAS, the Village Board having considered the proposed amendment to the Municipal Code to create residency restrictions for certain sex offenders and additional provisions to further protect the children of our community:

NOW, THEREFORE, THE KEWASKUM VILLAGE BOARD, WISCONSIN DOES ORDAIN AS FOLLOWS:

DRAFT

CHAPTER 62, ARTICLE V – SEX OFFENDER RESIDENCY RESTRICTIONS

62-150 RESIDENCY AND SAFETY RESTRICTIONS FOR SEX OFFENDERS. The Wisconsin Statutes govern the punishment of individuals who commit sex crimes. The Village of Kewaskum has no authority or intent to intervene in either area. The Village of Kewaskum recognizes statutory residency restrictions and the limited exemptions enumerated in Wisconsin § 980.135 for sex offenders released pursuant to Wisconsin § 980.08. Nothing in this ordinance should be construed to apply to an offender currently in compliance with all court orders issued under Chapter 980 of the Wisconsin Statutes or to a person providing housing to the offender in compliance with those court orders.

(1) **PURPOSE.** This ordinance is a non-punitive, civil regulatory measure aimed at protecting the public health, safety and welfare of the children and citizens of the Village of Kewaskum from the risk that convicted sex offenders may re-offend in locations close to their residences. The Village finds and declares that sex offenders who prey upon children are a serious threat to public safety and it is necessary for the Village to enact reasonable measures to reduce the opportunity and minimize the risk of re-offense by protecting children where they congregate or play in public places in addition to the protections afforded by state law near schools and other places children frequent.

(2) **DEFINITIONS.**

(a) **Sex Offender.** A person who:

(1) Is required to register under § 301.45, Wis. Stats., for any sexual offense against a child;

(2) Is required to register under § 301.45, Wis. Stats., and who has been designated a special bulletin (SBN) sex offender pursuant to § 301.44 (2) and (2m), Wis. Stats; or

(3) Within the ten years prior to establishing a permanent or temporary residence within the Village, has been convicted of or found not guilty by reason of disease or mental defect of a violation of § 940.30, Wis. Stats., False Imprisonment, if the Victim was a Minor and Not Offender's Child or § 940.31, Wis. Stats., Kidnapping, if the Victim was a Minor and Not Offender's Child.

(b) **Sexually Violent Offense.** Shall have the meaning set forth in § 980.01(6).

(c) **Prohibited Activity.** Participate in any event involving children less than eighteen (18) years of age, such as but not limited to, distributing candy or other items to children on Halloween, wearing a Santa Claus, Easter Bunny, or any other type of costume, or participating in a parade where there will be direct contact with children. Events in which the offender is the parent or guardian of the children

involved, and no non-familial children are present, are exempt from this paragraph. Participation is to be defined as actively taking part in an event.

(d) **Residence.** A place where a person sleeps, abides, lodges, or resides on a permanent or temporary basis. For purposes of this definition, a "permanent basis" means 14 or more consecutive days and a "temporary basis" means 14 or more aggregate days during any calendar year or four or more consecutive or nonconsecutive days in any month. A person may have more than one residence, and may be mobile or transitory.

(3) **RESIDENCY RESTRICTION.**

(a) Except as otherwise provided in this Ordinance, a Sex Offender may not establish a permanent or temporary residence within 750 feet of any real property upon which there exists any of the following uses:

- (1) A school for children.
- (2) A public park, parkway, parkland, park facility, or recreational trail.
- (3) A daycare licensed by the State of Wisconsin.
- (4) A public library.
- (5) A public playground.
- (6) A public athletic field used by children.
- (7) A public swimming pool.
- (8) Facilities for children's clubs, e.g. Boy Scout / Girl Scout Club Houses
- (9) An aquatic facilities open to the public.
- (10) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school.

(b) For purposes of this section, distance is to be measured in a straight line from the closest boundary line of the real property upon which the residence is located to the closest boundary line of the real property of the applicable use. If any portion of a tax parcel contains a prohibited location, the entire tax parcel shall be considered a prohibited location.

(c) The Village Clerk shall maintain an official map showing the prohibited locations and safety zones within the Village. The Village shall update the map at least annually to reflect any changes in the prohibited locations and safety zones. The map shall be available in the Village Clerk's office and posted to the Village website. A Sex Offender establishing a temporary or permanent residence pursuant to this Section may rely on the most current map maintained by the Village at the time of establishing a residence.

(4) **RESIDENCY RESTRICTION EXCEPTIONS.** A Sex Offender residing within an area otherwise prohibited by Sections 3 or 8 does not commit an offense if any of the following apply:

(a) The Sex Offender had established a Permanent Residence at the location prior to the effective date of this Ordinance.

(b) The Sex Offender had established a Permanent Residence prior to the date of the relevant offense and maintained continuous ownership or leasehold of the Permanent Residence during any jail, prison or other sentence served for the offense.

(c) The use enumerated in Section 3 was established after the Sex Offender established a residence at the location.

(d) The Sex Offender is required to serve a sentence at a jail, prison, juvenile facility, or other facility located at the otherwise prohibited location.

(e) The Sex Offender is a minor or ward under guardianship and is not required to register under §301.48 and §301.46 Wis. Stats.

(5) SAFETY ZONES.

(a) No Sex Offender may enter or be present on any real property upon which there exists any facility used for or which supports the use of:

- (1) A school for children.
- (2) A public park, parkway, parkland, park facility, or recreational trail.
- (3) A daycare licensed by the State of Wisconsin.
- (4) A public library.
- (5) A public playground.
- (6) A public athletic field used by children.
- (7) A public swimming pool.
- (8) Facilities for children's clubs, e.g. Boy Scout / Girl Scout Club Houses
- (9) An aquatic facilities open to the public.
- (10) Any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school.

(6) SAFETY ZONE EXCEPTIONS.

(a) A Sex Offender present in an area otherwise prohibited by Section 5 does not commit an offense if any of the following apply:

(1) The property supporting a use enumerated in Section 5 also supports a church, synagogue, mosque, temple, or other house of religious worship, subject to the following conditions:

- (i). The Sex Offender does not enter the portion of the building devoted to uses enumerated in Section 5; and

(ii). The person may not participate in any religious education programs that include individuals under the age of 18.

(2) The property supporting a use enumerated in Section 5 also supports a use lawfully attended by the Sex Offender's natural or adopted child or children, which child's use reasonably requires the attendance of the Sex Offender, provided that entrance and presence on the property occurs only during hours of activity related to the use by the child or children.

(3) The property supporting a use enumerated in Section 5 also supports a polling location in a local, state, or federal election, subject to the following conditions:

(i). The Sex Offender is eligible to vote.

(ii). The polling location is the designated polling location for the Sex Offender.

(iii). The Sex Offender casts his or her ballot with whatever usual and customary assistance is available and vacates the property immediately after voting.

(4) The property supporting a use enumerated in Section 5 also supports a school lawfully attended by the Sex Offender as a student, provided that the Sex Offender may only remain on the property at such times that are reasonably required for his or her educational purposes.

(5) The property supporting a use enumerated in Section 5 also supports a police station, Village Hall, or other governmental building, provided that the Sex Offender vacates the property immediately after completing the activity that required his or her presence at the property.

(6) The Sex Offender was exercising his First Amendment rights protected by the U.S. Constitution or Wisconsin Constitution, including freedom of speech and the right of assembly.

(7) **PROHIBITED ACTIVITY.** It is unlawful for a sex offender to participate in a prohibited activity.

(8) **ORIGINAL RESIDENCY RESTRICTION.** No Sex Offender may establish a residence in the Village of Kewaskum unless he or she was a resident of the Village of Kewaskum at the time of the most recent offense resulting in the person's designation as a Sex Offender. This restriction does not apply if 10 years have passed since the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release for the sex offense provided the Sex Offender has not been convicted of an additional sex offense as described in § 301.45

(1d) (b), Wis. Stats., a Sexually Violent Offense, Wis. Stats., or an offense described in Section 62-150(2)(a)(3) of the Village of Kewaskum Municipal Code.

(9) LOSS OF EXEMPTION OR ORIGINAL RESIDENCY.

(a) Any Sex Offender maintaining a residence within the Village of Kewaskum that is exempted from the restrictions of this ordinance pursuant to Sections 4(a), (b) or (c) shall lose the exemption if the Sex Offender's ownership or leasehold of the property ceases at any point in time, at which time the Sex Offender shall be subject to the restrictions of Sections 3.

(b) Any Sex Offender maintaining a residence within the Village of Kewaskum who ceases to maintain a Permanent Residence within the Village shall be subject to the terms of Section 8.

(10) RENTAL OF PROPERTY FOR USE BY SEX OFFENDERS.

(a) No person may rent any place, structure, or part thereof with knowledge that it will be used as a residence by any Sex Offender that is prohibited from establishing residence therein by this Ordinance.

(b) Notice to Property Owner. A Sex Offender shall notify any property owner from whom the Sex Offender intends to lease, or rent any place, structure, mobile home, trailer, or any part thereof, that the Sex Offender is a Sex Offender as defined in paragraph (2)(a) of this Section, prior to entering into any lease or rental agreement.

(c) Notice to Police Department. A Sex Offender and any property owner who leases or rents any place, structure, mobile home, trailer, or any part thereof, with the knowledge that it will be used as a Permanent or Temporary Residence by a Sex Offender, must each notify the Kewaskum Police Chief in writing a minimum of twenty-eight (28) days prior to entering into a lease or rental agreement establishing a Permanent or Temporary Residence within the Village, providing the term of the lease or rental agreement and prior to any renewal or extension of the lease or rental agreement providing the term thereof. Any property owner governed by this paragraph shall also provide notice upon the termination of the Sex Offender's tenancy for any reason whatsoever.

(11) APPEAL FOR AN EXEMPTION.

(1) A designated offender may seek an exemption from this chapter by appealing to the Protection and Public Safety Committee for an individualized risk assessment.

(2) The Sex Offender seeking an individualized risk assessment shall submit the appeal to the Village Clerk, who shall forward it to the Committee. The Committee shall hold a hearing on each appeal, during which the committee may review any pertinent information and may accept oral and written statements from any person. The committee shall consider the public interest as well as the affected party's presentation and concerns. In making its determination under this provision, the committee may consider the circumstances of the case(s) that have led to the designated offender status including, but not limited:

- 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.

(3) The committee shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or to a certain address or time. A written copy of the decision shall be provided to the police department for their information and to the affected party. Any decision of the committee may be appealed to circuit court.

(12) **ENFORCEMENT.** Any person violating Section 62-150 may be required to forfeit an amount within the range shown in Chapter 1-11(e) of the Municipal Code for each violation. For purposes of calculating forfeitures, each day that a violation exists shall constitute a separate offense. Violations of this Ordinance are also deemed public nuisances, and the Village may bring an action in circuit court to enjoin or abate any violation.

(13) **SEVERABILITY.** The terms and provisions of this Ordinance are severable. Should any term or provision of this Ordinance be found invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect, or, to the extent permitted by law, the court is authorized to substitute an alternative term or provision for the invalid term or provision.

(14) **RULES OF CONSTRUCTION.** In the construction of this ordinance, references to the singular include the plural. References to "person" extends to natural persons, firms, corporations, partnerships, limited liability companies, or other entities.