
ORDINANCE NO. 2017-07**ORDINANCE TO REPEAL AND RECREATE SECTION 54.132 OF
THE MUNICIPAL CODE OF THE VILLAGE OF PEWAUKEE RELATIVE
TO SEX OFFENDER LOITERING AND RESIDENCY**

SECTION I

Section 54.132 of the Municipal Code of the Village of Pewaukee is hereby repealed and recreated to read as follows:

Section 54.132 – Sex Offenders.

(a) Findings and Intent.

- (1) The Wisconsin legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community. Indeed, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons. The purpose of this Ordinance is to protect the public, to reduce the likelihood that convicted sex offenders will engage in such conduct in the future.

The United States Supreme Court has recognized that the risk of recidivism posed by sex offenders is high, and when convicted sex offenders re-enter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See Smith v. Doe, 538 US 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2003) and McKune v. Lile, 536 US 24, 34, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002), citing United States 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 (1997).

The Village Board has reviewed research on sex offenders, including the findings of a number of states across the United States, including, but not limited to Florida, Georgia, Alabama, Iowa and California as they pertain to laws adopted and which relate to imposing restrictions on sex offenders with respect to residency; and in addition, the United States Court of Appeals for the 8th Circuit Decision on Doe v. Miller, 405 F.3d 700, 716 (8th Cir. 2005) providing, in part, “the record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward or 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 re-offense. 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. (Citations 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”.

The Board finds the negative consequences of failing to regulate the movement of sex offenders is a hazard to children and the community. Thus, the Village has a duty and need to regulate where sex offenders reside and loiter within the Village once they are reintegrated into the community. This Chapter is a regulatory measure aimed at protecting the health and safety of the children in the Village of Pewaukee from the risk that convicted sex offenders may reoffend in locations close to their residences. It is the intent of this section not to impose a criminal penalty but rather 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 sexual offenders and sexual predators are prohibited from establishing residence; and by regulating certain activities that may be used by sexual offenders to prey on children.

- (2) The Village finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. 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 near schools, day-care centers and other places children frequent. The Village finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.

The Board notes that Wisconsin Statute Section 61.34 authorizes the Village Board to enact legislation for the health, safety and welfare of the public. In addition, Wisconsin Statute Section 61.34(5) notes that the powers, rights and privileges accorded villages under said Chapter are to be liberally construed in order to promote the general welfare, peace, good order and prosperity of the village.

- (3) This Ordinance will not apply to sexually violent persons, as defined in Wisconsin Statute §980.01(7), because these persons are controlled under the regulations of Wisconsin Statute §980.

(b) Definitions. As used in this Chapter and unless the context otherwise requires:

- (1) *Child* is a person under the age of 18.
- (2) *Child Safety Location* is the site upon which any of the following are located:

- a. A public park, parkway, parkland, park facility;
 - b. A public beach;
 - c. A public library;
 - d. A recreational trail;
 - e. A public playground, including privately owned playgrounds for common use;
 - f. A school for children;
 - g. Athletic fields used by children;
 - h. A day-care center;
 - i. A tutoring facility;
 - j. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;
 - k. Any facility for children [which means a public or private school or a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a foster home, as defined in § 48.02(6), Wis. Stats.; a treatment foster home, as defined in § 48.02(17q), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day-care program established under § 120.13(14), Wis. Stats.; a day-care provider certified under § 48.651, Wis. Stats.; or a youth center, as defined in § 961.01(22), Wis. Stats.].
- (3) *Child Safety Zone* is any place within the Village that is physically located within 750 feet of any Child Safety Location.
- (4) *Designated Offender* means any person who is required to register under Wisconsin Statute §301.45 for any sexual offense against a child or any person who is required to register under Wisconsin Statute §301.45 and who has been designated as “Special Bulletin Notification (SBN)” Sex Offender pursuant to Wisconsin Statute §301.46(2) and (2m).
- (5) *Minor* means a person under the age of seventeen (17).
- (6) *Permanent residence* means a place where a person abides, lodges or resides for fourteen (14) or more consecutive days.
- (7) *Temporary Residence* means 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 fourteen (14) or more consecutive or non-consecutive days in any month and which is not the person’s permanent residence.
- (8) *A sexually violent offense* shall have the meaning as set forth in §980.01(6) Wis. Stats., as amended from time to time.

(c) Residency Restrictions

- (1) *Child Safety Zone Restriction.* Subject to the definitions in Sections (a) above and the exceptions set forth in Section (d) below, it is unlawful for a designated offender to establish a permanent residence or a temporary residence within a Child Safety Zone or any other place designated by the Village as a place where children are known to congregate.
- (2) *Measurement of Distance.* For purposes of determining the minimum distance separation, the restriction shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of a school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the Village where children are known to congregate. The Village Clerk shall maintain an official map showing prohibited locations as defined by this Ordinance. The Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones. These shall be designated on the map as Child Safety Zones.

(d) Residency Restriction Exemptions:

- (1) A Designated Offender residing within a prohibited area as described above, does not commit a violation of this section if any of the following apply:
 - a. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wisconsin Statute §301.45 before the effective date of this Ordinance.
 - b. The person is a minor is not required to register under Wisconsin Statute §301.45 or §301.46.
 - c. The school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the Village as a place where children are known to congregate within 750 feet of the person's permanent or temporary residence was opened after the person established the permanent residence or temporary residence and registered the residence pursuant to Wisconsin Statute §301.45.
 - d. The residence is also the primary residence of the person's parents, grandparents, siblings, spouse or children.

(e) Renting Real Property:

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 permanent or temporary residence by a person prohibited from establishing such permanent or temporary residence pursuant to this Ordinance if such place, structure or part thereof, or trailer or other locale is located within a prohibited Child Safety Zone as described hereunder.

(f) Holiday Events and Public Gatherings:

- (1) It is unlawful for a Designated Offender to actively take part in any public holiday event involving children under 18 years of age where the distributing of candy or other items to children takes place, including but not limited to holiday parades or similar gatherings, Halloween trick or treating, 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 wearing any other costume reasonably expected to attract children in a public place, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a sex offender.
 - (2) Exception. This section does not apply to any event in which the Designated Offender is the parent or guardian of the child(ren) involved, and the Designated Offender's child(ren) are the only child(ren) present.
- (g) Loitering.
- (1) It shall be unlawful for any Designated Offender as defined in section (b) above, to loiter or prowl within 750 feet of any school or school property, recreational trail, playground or park, any specialized school for children including, but not limited to, gymnastics academy, martial arts academy, dance academy, music school, public beach or public library in a place at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of children 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 law enforcement officer, refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object.
 - (2) Unless flight by an actor or other circumstances makes it impractical, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the actor 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 actor was true, and, if believed by law enforcement at the time, would have dispelled the alarm.
 - (3) A Designated Offender does not commit a violation of loitering in a Child Safety Zone as stated above and the enumerate uses may allow such person on the property supporting such use if any of the following apply:
 - a. The property supporting an enumerated use also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:
 - (i) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - (ii) Written advance notice is made from the person to an individual in charge of the church, and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the person; and

- (iii) The person shall not participate in any religious education programs, which include individuals under the age of 18.
 - b. The property supporting an enumerated use 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:
 - (i) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
 - (ii) 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.
 - c. The property supporting an enumerated use also supports a polling location in a local, state or federal election, subject to the following conditions:
 - (i) The person is eligible to vote; and
 - (ii) The designated polling place for the person is an enumerated use; and
 - (iii) The person enters the polling place property and proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the person vacates the property immediately after voting; and
 - (iv) The property supporting an enumerated use also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.
- (h) **Child Safety Zone Map**

The Village Clerk's Office shall maintain an official map showing the Child Safety Zones within the Village. The Village Clerk's Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the Village Clerk. 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 persecution or conviction of any sex offender under this Ordinance.
- (i) **Sex Offender Residency Appeal Board.**

The above requirements of this Ordinance may be waived upon approval of the Sex Offender Residency Appeal Board through an appeal made by the affected party. Such appeal shall be made to the Village Clerk's Office, who shall forward the request to the Sex Offender Residency Appeal Board, which shall receive reports from the Police Department as to the criminal background of the applicant and the nature and circumstances of the underlying offense requiring the registration under Wisconsin Statute §301.45 or §301.46. The Board shall convene and shall hear from the applicant, as well as the Police Department or others who would be affected by this decision. The Board shall consider the amount of time which has passed since the original offense was committed; whether there has been evidence of any re-offense; whether the applicant is employed and the duration of that employment; whether the applicant has shown remorse; whether there has been evidence of rehabilitation; and finally, any factors that would suggest a likelihood of re-offense.

The Sex Offender Residency Appeal Board shall consist of five (5) persons appointed by the Village President and ratified by the Village Board. Each member shall be a resident of the Village. The members of the Sex Offender Residency Appeal Board shall serve in staggered, three (3) year terms, with the initial Board having two members with three year terms; two members with two year terms; and a single member with a one year term. The Chief of Police, or his designee, will be a liaison to the Board and will provide resources for it.

(j) **Violations and Penalties**

If a person violates Section (c), above, by establishing a residence or occupying residential premises within 750 feet of those premises as described therein, without any exception(s) as also set forth above, the Village Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police 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 interferes substantially with the comfortable enjoyment of life, health or safety of another or others, shall bring an action in the name of the Village in the Circuit Court for Waukesha County to permanently enjoin such residency as a public nuisance. If a person violates Section (c) and (g), in addition to the aforesaid injunctive relief, such person shall be subject to the general penalty provisions set forth under Section 1.102 of the Municipal Code. Each day a violation continues shall constitute a separate offense. In addition, the Village may undertake all other legal and equitable remedies to prevent or remove a violation of this chapter

SECTION II

All ordinances or parts of ordinances contravening the terms and conditions of this ordinance are hereby to that extent repealed.

SECTION III

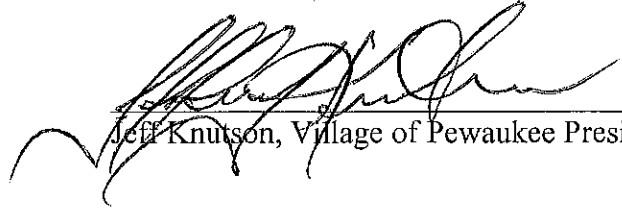
The several sections of this ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the ordinance.

SECTION IV

This ordinance shall take effect upon passage and publication as approved by law, and the Village Clerk shall so amend the Code of Ordinances of the Village of Pewaukee, and shall indicate the date and number of this amending ordinance therein.

Passed and adopted this 20~~16~~ day of June 2017 by the Village Board of the Village of Pewaukee.

APPROVED:



Handwritten signature of Jeff Knutson, Village of Pewaukee President.

Jeff Knutson, Village of Pewaukee President

Countersigned:



Handwritten signature of Chaz Schumacher, Village of Pewaukee Clerk.

Chaz Schumacher, Village of Pewaukee Clerk