

ARTICLE III. - OFFENSES INVOLVING PUBLIC SAFETY^[3]

 Menomonee Falls, WI

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State Law reference— *Public safety offenses, Wis. Stats. ch. 941.*

DIVISION 1. - GENERALLY

Sec. 62-51. - Sex offender residency restrictions; child safety zones.

(a) *Purpose and intent.*

- (1) The village 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 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 and daycare centers. The village finds and declares that, in addition to schools and daycare centers, children congregate or play in a number of public places, including public parks and other facilities for children.
- (2) This section is a regulatory measure aimed at protecting the health and safety of children in Menomonee Falls from the risk that convicted sex offenders may re-offend 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 temporary or permanent residence; and by creating child safety zones where children regularly congregate in concentrated numbers wherein access by certain sexual offenders and sexual predators to such zones shall be restricted or excluded.
- (3) This section seeks to balance the village's compelling interest of protecting the children of the village from recidivism with the constructive and safe assimilation of certain offenders into the community on an individualized exemption basis.

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

- (1) *Crime against children* means 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 and involving a person under the age of 18

years, respectively:

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Wisconsin Statute Sections

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- 940.225(1) First Degree Sexual Assault;
- 940.225(2) Second Degree Sexual Assault;
- 940.225(3) Third Degree Sexual Assault;
- 940.22(2) Sexual Exploitation by Therapist;
- 940.30 False Imprisonment-victim was minor and not the offender's child;
- 940.31 Kidnapping-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;

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948.13 Convicted Child Sex Offender Working with Children;
948.130 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.

- (2) *Facility for children* means a public or private school, a *group home*, as defined in Wis. Stats. § 48.02(7), a *residential care center for children and youth*, as defined in Wis. Stats. § 48.02(15d), a *shelter care facility*, as defined in Wis. Stats. § 48.02(17), a *foster home*, as defined in Wis. Stats. § 48.02(6), a *treatment foster home*, as defined in Wis. Stats. § 48.02(17q), a *daycare center licensed under Wis. Stats. § 48.65*, a *daycare program established under Wis. Stats. § 120.13(14)*, a *daycare provider certified under Wis. Stats. § 48.651*, or a *youth center*, as defined in Wis. Stats. § 961.01(22).
- (3) *Offender* means a person who has been convicted of or has been found delinquent of or has been found not guilty by reason of disease or mental defect of a sexually violent offense and/or a crime against children.
- (4) *Permanent residence* means a place where the person sleeps, abides, lodges, or resides for 14 or more consecutive days.
- (5) *Sexually violent offense* shall have the meaning as set forth in Wis. Stats. § 980.01(6), as amended from time to time.
- (6) *Temporary residence* means residence or premise meeting either of the following criteria:
 - a. A place where the person sleeps, abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not that person's permanent residence as defined in (b)(4) above; or
 - b. A place where the person routinely sleeps, abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not that person's permanent residence as defined in (b)(4) above.
- (c) *Residency restrictions*.
 - (1) An offender shall not reside within 1,500 feet of real property that supports or upon which there exists any of the following uses:
 - a. Any facility for children;
 - b. A public park, parkway, parkland, park facility;
 - c. A public swimming pool;
 - d. A public library;
 - e. A recreational trail;

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- f. A public playground;
 - g. A school for children;
 - h. Athletic fields used by children;
 - i. A daycare center;
 - j. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school; or
 - k. Aquatic facilities open to the public;
- (2) *Measurement of distance.* The distance shall be measured from the closest boundary line of the real property supporting the residence of an offender to the closest boundary line of the real property that supports or upon which there exists any of the uses enumerated in (c)(1) above.
- (3) *Residency restriction exceptions.* An offender residing within 1,500 feet of real property that supports or upon which there exists any of the uses enumerated in (c)(1) above does not commit a violation of this section if any of the following apply:
- a. The offender is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
 - b. The offender has established a permanent or temporary residence and reported and registered that residence pursuant to Wis. Stats. § 301.45 prior to the effective date of this section.
 - c. The use enumerated in (c)(1) above began after the offender established a permanent or temporary residence and reported and registered that residence pursuant to Wis. Stats. § 301.45.
 - d. The offender is a minor or ward under guardianship.
- (4) *Original domicile restriction.* Subject to (c)(3) above, no offender shall be permitted to reside in the Village of Menomonee Falls, unless that person was domiciled in the Village of Menomonee Falls at the time of the most recent offense giving rise to that person's status as an offender.
- (d) *Child safety zones.*
- (1) No offender shall enter or be present upon any real property that supports or upon which there exists any facility used for or that supports any one or more of the following uses:
- a. A public park, parkway, parkland, park facility;
 - b. A public swimming pool;
 - c. A public library;
 - d. A recreational trail;

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- e. A public playground;
 - f. A school for children;
 - g. Athletic fields used by children;
 - h. A daycare center;
 - i. Any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
 - j. Aquatic facilities open to the public; or
 - k. Any facility for children.
- (2) *Child safety zone exceptions.* An offender does not commit a violation of (d)(1) above, and may be allowed on the property used for or supporting a use enumerated in (d)(1) above if any of the following apply:
- a. The property used for or supporting a use enumerated in (d)(1) above also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to all of the following conditions:
 - 1. The offender's entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - 2. The offender sends advance written notice to an individual designated by the church to be in charge and receives advance approval from that individual allowing the offender's attendance; and
 - 3. The offender shall not participate in any religious education programs which include individuals under the age of 18.
 - b. The property used for or supporting a use enumerated in (d)(1) above also supports a use lawfully attended by an offender's natural or adopted child, which child's use reasonably requires the attendance of the offender as the child's parent upon the property, subject to all of the following conditions:
 - 1. The offender's entrance and presence by the offender upon the property occurs only during hours of activity related to the use as posted to the public; and
 - 2. The offender sends advance written notice to an individual designated by the property owner to be in charge of the property's enumerated use, and receives advance approval from that individual allowing the offender's attendance.
 - c. The property used for or supporting a use enumerated in subsection (d)(1) above also supports a polling location in a local, state or federal election; subject to all of the following conditions:
 - 1. The offender is eligible to vote;
 - 2. The designated polling place for the person is an enumerated use; and

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

d. The property used for or supporting a use enumerated in subsection (d)(1) above also supports an elementary or secondary school lawfully attended by an offender as a student, subject to the condition that the offender may only enter upon the property supporting the school at which the person is enrolled for such purposes and at such times as are reasonably required for the educational purposes of the school.

(e) *Penalties and remedies.*

(1) Forfeitures. Any person found guilty of violating this section shall be subject to a forfeiture as provided in [section 1-7](#) of this Code. Each violation and each day a violation continues or occurs shall constitute a separate offence. Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the village from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this section.

(2) Injunction.

a. *Violation of residency restrictions.* If an offender establishes a permanent or temporary residence in violation of subsection (c) above, the chief of police may refer the matter to the village attorney. The referral shall include a written determination by the chief of police that, upon all of the facts and circumstances and the purpose and intent of this section, such violation interferes substantially with the comfortable enjoyment of life, health, safety of another or others. Upon such referral, the village attorney shall bring an action in the name of the village in circuit court to permanently enjoin such residency as a public nuisance.

b. *Violation of child safety zones.* If an offender violates subsection (d)(1) above more than once in any twelve-month period, the chief of police may refer the matter to the village attorney. The referral shall include a written determination by the chief of police that, upon all of the facts and circumstances and the purpose and intent of this section, such violations interfere substantially with the comfortable enjoyment of life, health, safety of another or others. Upon such referral, the village attorney shall bring an action in the name of the village in circuit court to permanently enjoin such violations as a public nuisance.

(f) *Petition for exemption.*

(1) The chief of police may grant an offender an exemption from this section. An offender requesting an exemption from this section must submit a written request for exemption, including any pertinent rationale for an exemption, to the chief of police prior to establishing a residence that would be in violation of this section or within 30 days after

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notification that the offender is in violation of this section. The chief of police or his/her designee shall conduct a review of the request for an exemption using any pertinent information and criteria set forth below. The chief of police shall approve, approve an exemption subject to necessary conditions (hereafter "conditional exemption"), or deny the request. The chief of police or his/her designee shall issue the decision within 30 days of receiving the request for exemption and shall provide a written copy of that decision to the offender, village clerk, and the village attorney's office. Any request for an exemption which has not been approved, approved for a conditional exemption, or denied by the chief of police within 30 days of the request shall be deemed to be denied for the purpose of this section.

- (2) An offender may appeal the decision of the chief of police by submitting a written appeal to the village clerk's office within 30 days of the decision. The village clerk shall schedule a committee of the whole meeting for the appeal to be heard by the board of trustees during which any pertinent information and accept oral and written statements from any person may be reviewed and considered.
- (3) The chief of police and/or the village board shall base their decision upon any factors related to the village's interest in promoting, protecting, and improving the health, safety, and welfare of the community, including, but not limited to:
 - a. The nature of the predicate offense causing the appellant to be an offender.
 - b. Police reports related to the predicate offense if available.
 - c. Proximity of the requested residence to the victim.
 - d. The age of the offense, offender, and victim.
 - e. Recommendation of the probation or parole officer, if one exists.
 - f. Recommendation of the police department.
 - g. Recommendation of any treatment practitioner.
 - h. Proposals for safety measures and assurances by the offender.
 - i. Conditions to be placed on any exception or variance from the requirements of this section.
 - j. Support systems in place by the offender.
 - k. Who the offender will be or is living with at the prohibited location.
 - l. Statements of the surrounding community or victim.
 - m. Treatment, sobriety, or rehabilitative measures taken by the offender.
 - n. The offender's current employment or social activities.
 - o. The offender's criminal history.

(4)

The village board shall issue a decision by a majority vote to deny an exemption, issue an exemption, or issue a conditional exemption. A written copy of the decision shall be provided to the offender in person or by first-class mail at the offender's last-known address. An offender must consent to the terms of the conditional exemption for the conditional exemption to be valid, and must demonstrate acceptance of the terms of the conditional exemption by signing and dating a copy of the decision and conditions. The offender must provide a copy of the signed conditional exemption to the village clerk's office and the police department. The offender will have 14 days from the date the written conditional exemption is issued to accept and return a signed copy to the appropriate locations or the conditional exemption will be deemed as void and the appeal denied. An offender need not sign an exemption that has been denied by the village board or an exemption approved without any necessary conditions.

- (5) A conditional exemption may include, but is not limited to, containing the following terms:
 - a. Curfew restrictions.
 - b. Cohabitation restrictions or requirements.
 - c. Sobriety restrictions.
 - d. Conduct restrictions.
 - e. Residency restrictions.
- (6) Any exemption or conditional exemption issued under this section:
 - a. Only applies to the specific offender who applied for the exemption at the requested residence and shall not be transferable to any other or to any other locations.
 - b. Expires when the offender who was granted said exemption changes his/her domicile and/or changes his/her residence, whether within the village or outside the village.
- (7) Revocation. An exemption issued pursuant to this section may be revoked by the chief of police if the offender is found to have violated the conditions or there is probable cause to believe the offender has committed an act, whether committed before or after the exemption was issued, that would cause a person to be classified as an offender. The chief of police shall provide written notice to the offender that the exemption or conditional exemption has been revoked. The notice shall be deemed properly delivered if sent by either first class mail to offender's last known address or if delivered in person to the offender's last known address. If the offender cannot be located, the notice shall be deemed to be properly delivered if a copy is left at the offender's address which had been exempted in the presence of some competent member of the family at least 14 years of age or a competent adult currently residing there. If notice cannot so be served, it may be served by publishing a class 1 notice. The revocation of an exemption by the chief of police may be appealed to the village board pursuant to the above procedure.
- (8) For the purposes of this section, pursuant to Wis. Stats. § 68.16, the village is specifically electing not to be governed by Wis. Stats. ch. 68.

(9) If the village board denies the request for exemption or upholds a revocation of exemption or conditional exemption, the offender may appeal the decision within 30 days to the circuit court.

(Ord. No. 380-O-07, § 1, 6-18-07; Ord. No. 835-O-21, §§ 1, 2, 10-18-21)

Sec. 62-52. - Unauthorized practice of massage or bodywork therapy. ⋮

- (a) No person who is required to hold a license, certificate of registration or other credential pursuant to Wis. Stats. ch. 460 shall practice that profession within the corporate limits of the city unless that person holds a valid, unexpired license, certificate of registration or credential issued by the state.
- (b) No person who is required to hold a license, certificate of registration or other credential pursuant to Wis. Stats. ch. 460 shall advertise the availability of services to be performed within the corporate limits of the city unless that person holds a valid, unexpired license, certificate of registration or credential issued by the state.
- (c) No business whose employees are required to hold a license, certificate of registration or other credential pursuant to Wis. Stats. ch. 460 shall allow employees to practice that profession within the corporate limits of the city unless the employees hold a valid, unexpired license, certificate of registration or credential issued by the state.
- (d) No business whose employees are required to hold a license, certificate of registration or other credential pursuant to Wis. Stats. ch. 460 shall advertise the availability of services to be performed within the corporate limits of the city unless the employees hold a valid, unexpired license, certificate of registration or credential issued by the state.

(Ord. No. 787-O-20, § 1, 4-6-20)

Secs. 62-53—62-65. - Reserved. ⋮

DIVISION 2. - FIREWORKS^[4] ⋮

Footnotes:

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Cross reference— *Fire prevention and protection, ch. 46.*

State Law reference— *Fireworks, Wis. Stats. § 167.10; local regulation of fireworks, Wis. Stats. § 167.10(5).*

Sec. 62-66. - Fireworks defined. ⋮

Pursuant to Wis. Stats. § 167.10(5)(a)1, the term "fireworks" shall be defined as including all items under Wis. Stats. § 167.10(1) (Intro.) and including all items under Wis. Stats. § 167.10(1)(k)—(1)(n). The terms "caps," "toy snakes" and "sparklers," as set forth in Wis. Stats. § 167.10(1)(e), (f) and (i) are