

**AN ORDINANCE CREATING SECTION 2.12 OF
THE GENERAL ORDINANCES OF THE VILLAGE OF
OOSTBURG, SHEBOYGAN COUNTY, WISCONSIN
RELATING TO SEXUAL OFFENDER RESIDENCY RESTRICTIONS**

AN ORDINANCE creating Section 2.12 of the General Ordinances of the Village of Oostburg relating to sexual offender residency restrictions.

WHEREAS, the Wisconsin State Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community; and

WHEREAS, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically, at Sec. 980.08, Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

WHEREAS, the Village of Oostburg places a high priority on maintaining public safety through highly skilled and trained law enforcement as well as dependency upon laws that deter and punish criminal behavior; and

WHEREAS, sex offenders have very high recidivism rates, and according to 1997 and 2003 reports by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend and prey on the most innocent members of our society, and more than two-thirds of the victims of rape and sexual assault are under the age of 18 and sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon; and

WHEREAS, the Village Board is aware and has been informed of a number of Legislatures of these United States, including Wisconsin, and including, but not limited to Pennsylvania, Alabama, Iowa, Florida, Maine and Louisiana, as they pertain to laws adopted which relate to and in part impose restrictions upon sex offenders with respect to residency; and

WHEREAS, the Village Board having also reviewed the decision of the United States Court of Appeals for the 8th Circuit, in *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, fear of, or a bare desire to harm a politically unpopular group. 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 reoffense. 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 reoffense 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. 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;"

and

WHEREAS, the Village Board having considered this proposed ordinance to provide residency and other restrictions for sexual offenders to further protect children, and upon all of the records, files, reports and proceedings pertaining to the subject matter, and all of the prior actions and experience of the Village of Oostburg in protecting the community from sexually violent persons, finds this ordinance will serve to protect the health, safety and welfare of the community.

NOW, THEREFORE, THE VILLAGE BOARD OF THE VILLAGE OF OOSTBURG DO ORDAIN AS FOLLOWS:

Section 1. Section 2.12 of the Village of Oostburg General Ordinances relating to Residency Restrictions for Sexual Offenders is hereby created to read as follows:

"Section 2.12 SEXUAL OFFENDER RESIDENCY RESTRICTIONS

(1) *Finding and intent.*

(a) 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 extremely likely to use physical violence and to repeat their offenses; 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. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(b) It is the intent of this article 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.

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

(a) **Child** means a person under the age of 16 for the purposes of this article.

(b) **Designated Offender** means: any person who is required to register under Wis. Stat. § 301.45 for any sexual offense against a child or any person who is required to register under Wis. Stat. § 301.45 and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Wis. Stat. §§ 301.46(2) and (2m).

(c) **Minor** means a person under the age of 17.

(d) **Permanent Residence** means a place where the person abides, lodges, or resides for 14 or more consecutive days.

(e) **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 permanent residence.

(3) *Sexual offender and sexual predator residence; prohibition; penalties; exceptions.*

(a) *Prohibited location of residence.* It is unlawful for any designated offender to establish a permanent residence or temporary residence within 2,000 feet of any school, licensed day care center, park, recreational trail, playground or place of worship.

(b) *Prohibited activity.* It is unlawful for any designated offender to participate in a holiday event involving children under 18 years of age, such as distributing candy or other items to children. Holiday 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 the event.

(c) *Measurement of distance.*

(1) For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, licensed day care center, park, recreational trail, playground or place of worship.

(2) The Village Engineer shall prepare, maintain and file with the Village Clerk an official map showing prohibited locations as defined by this article. The Engineer shall update the map at least annually to reflect any changes in the location of prohibited zones and file said updated map with the Village Clerk. These shall be designated on the map as child safety zones.

(d) *Penalties.* A person who violates any provision of this article shall be punished by a forfeiture not exceeding \$500.00. Each day a person maintains a residence in violation of this article constitutes a separate violation. The Village of Oostburg may also seek equitable relief.

(e) *Exceptions.* A designated offender residing within a prohibited area as described in Section 2.12(3)(a) does not commit a violation of this section 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. Stat. § 301.45 before the effective date of this article.
- (2) The person is a minor and is not required to register under Wis. Stat. § 301.45 or § 301.46.
- (3) The school, licensed day care center, park, recreational trail or playground within 2,000 feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. § 301.45.
- (4) The residence is also the primary residence of the person's parents, grandparents, siblings, spouse or children, provided that such parent, grandparent, sibling, spouse or child established the residence at least two years before the designated offender established residence at the location.

(4) *Property owners prohibited from renting real property to certain sexual offenders and sexual predators; penalties.*

(a) It is unlawful to let or rent any place, structure, or part thereof, 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 this article, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in Section 2.12(3)(a), and not subject to an exception set forth in Section 2.12(3)(e) above.

(b) A property owner's failure to comply with this section shall constitute a violation of this article, and shall subject the property owner to the penalties set forth in Section 2.12(3)(d).

(5) *Appeal.* The above 2,000 foot requirements may be waived upon approval of the Safety Committee and Village Board through appeal by the affected party. Such appeal shall be made in writing to the Village Clerk's Office, who shall forward the request to the

Village Board for referral to the Safety Committee, which shall receive reports from law enforcement agencies on such appeal. The Safety Committee shall convene and consider the public interest as well as the affected party's presentation and concerns. After deliberation, the Safety Committee shall forward its recommendation to the Village Board for consideration. The Village Board shall forward its decision in writing via the minutes or otherwise to the Sheboygan County Sheriff's Department for their information and action. A written copy of the decision shall be provided to the affected party.

Section 2. *Severability.* The provisions of this ordinance shall be deemed severable and it is expressly declared that the Village Board would have passed the other provisions of this ordinance irrespective of whether or not one or more provisions may be declared invalid. If any provisions of this ordinance or the application to any person or circumstance is held invalid, the remainder of this ordinance or the application of such other provisions to other persons or circumstances shall not be affected.

Section 2. Effective Date. This Ordinance shall take effect upon enactment and publication.

Enacted this 13 day of October, 2008.

VILLAGE OF OOSTBURG

By: _____
JACK E. HOFFMANN, President

By: _____
JILL E. LUDENS, Clerk/Treasurer

CERTIFICATE OF ENACTMENT

This is to certify that the foregoing Ordinance was duly enacted by the Village Board of the Village of Oostburg on the date indicated above.

Dated: October 13 2008

JILL E. LUDENS, Clerk/Treasurer
Village of Oostburg