

Ordinance No. 2017-03

**AN ORDINANCE TO AMEND SECTION 70-40 OF THE CODE OF ORDINANCES
FOR THE VILLAGE OF UNION GROVE PERTAINING TO
RESIDENCY RESTRICTIONS FOR SEXUAL OFFENDERS**

The Village Board of the Village of Union Grove, Racine County, Wisconsin, ordains as follows:

1. That Section 70-40 of the Code of Ordinances for the Village of Union Grove be, and hereby is, amended to read as follows:

“Sec. 70-40. Residency restrictions for sexual offenders.

(a) Recitals, Findings and Intent.

(1) Recitals.

- (a) Whereas, after reviewing and discussing examples of sex offender residency restriction ordinances from several other Cities, Towns and Villages, including maps of prohibited locations for the residency of sex offenders corresponding to such ordinances, the locations of places where children are known to congregate in the Town and a power point presentation on Sex Offender Residency Restrictions, after several public meetings, the Village Board adopted the first version of this ordinance on August 8, 2008.
- (b) Whereas the United States District Court for the Eastern District of Wisconsin issued an Order on April 17, 2017, in the case titled *Hoffman v. Village of Pleasant Prairie*, which contained holdings that directly impact the terms of the Village's Municipal Code Section 70-40 and make it necessary to amend the terms of this Section to comply with the District Court's holdings.
- (c) Whereas, on September 26, 2017 and October 17, 2017, the Village's Police Commission held public meetings on proposed revisions to the Village's Residency Restrictions Sexual Offenders. At these meetings, the Committee reviewed and discussed the existing ordinance, proposed revisions to the existing ordinance and discussed the following written materials:
 - 1. “Recidivism of Adult Sexual Offenders.” U.S. Department of Justice, July 2015, SOMAPI (Sex Offender Management Assessment and Planning Initiative); and
 - 2. “An Overview of Sex Offender Management.” July 2002, U.S. Department of Justice, CSOM (Center for Sex Offender Management); and

3. "There goes the Neighborhood? Estimates of the Impact of Crime Risk on Property Values from Megan's Laws." May 2006, National Bureau of Economic Research; and
 4. Order of the Honorable J.P. Stadtmueller of the United States District Court, Eastern District of Wisconsin, Hoffman et al. v. Village of Pleasant Prairie, Case No. 16-CF-697-JPS.
- (d) Whereas, the Village Board held a public meeting on November 13, 2017 on this ordinance. At this meeting the Village Board reviewed the existing ordinance, proposed revisions to the existing ordinance and discussed the same materials as the Commission as set forth under subsection (d) above.
- (2) **Findings.** This ordinance is a regulatory measure aimed at protecting the health and safety of children in the Village from the risk that convicted sex offenders may reoffend in locations close to their residences. The Village Board finds and declares that repeat sexual offenders who use physical violence and sexual offenders who prey on children, are sexual offenders who present an extreme threat to the public safety and the health of children. 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 and the community where they reside, while incalculable, clearly exorbitant. It is further believed that such persons present an alarmingly high risk of re-offending once released and as such it is better for sex offenders to reside in their home community where their support systems exist rather than in a community where the sex offender may not have a support network. The Village Board finds the risk of recidivism increases if the sex offender recently offended and if the sex offender does not have a strong social network, including community and familial ties. The Village Board is aware of many studies and reports concerning recidivism of sex offenders and the effectiveness of sex offender residency restrictions. The Village Board acknowledges that literature on the subject includes some studies that support the practice of sex offender residency restrictions and others that are critical of the practice. As such, the Village hereby establishes regulations which restrict certain offenders from residing or congregating in areas that are at or near where there is a high concentration of children in order to provide better protection for children in the Village by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism.
- (3) **Intent.** It is expressly not the intent of this Ordinance to impose additional punishment on sex offenders, 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 sex offenders and sex predators are prohibited from establishing residency. The Village establishes these regulations in order to provide protection to children in the Village by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism. Due to the high rate of recidivism for sexual offenders, and because reducing both opportunity and temptation would help minimize the risk of reoffense,

there is a compelling need to protect children where they congregate or play in public places.

- (b) **Definitions.** The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except when the context clearly indicates a different meaning:
- (1) "Child" or "Children" means person(s) under the age of eighteen (18) years for purposes of this Ordinance.
 - (2) "Crime Against Children" shall mean 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 or adjudication, respectively: § 940.22(2) Sexual Exploitation by Therapist; § 940.30 False Imprisonment where victim was a minor and not the offender's child; § 940.31 Kidnapping where 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; § 948.13 Convicted Child Sex Offender Working with Children; § 948.30 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.
 - (3) "Designated Offender" means any person who (1) has been convicted of a Crime Against Children; (2) has been adjudicated delinquent for a Crime Against Children; (3) is required to register under Section 301.45, Wisconsin Statutes, for any sexual offense; or (4) any person who is required to register under Section 301.45, Wisconsin Statutes, and who has been designated a Special Bulletin (SBN) sex offender pursuant to Sections 301.46(2) and (2m), Wisconsin Statutes.
 - (4) "Juvenile" means a person under the age of eighteen (18) years.
 - (5) "Residence" means a place where the Designated Offender resides or dwells or is used by a Designated Offender as the primary location for basic life functions such as sleeping or eating, whether short or long-term but for an aggregate of 14 or more days in any one-year period.
 - (6) "Protected Location" means any School Property, Day Care Center, Library, Park, Recreational Trail, Playground, Athletic Fields used by children, Place of Worship, Swimming Pool, the Village Hall, or any other place designated in the Map adopted by the Village under Sec. 70-40(c)(3) as a place where children are known to congregate. The defined terms included in the definition of Protected Location are:
 - a. "School Property" means any public school as defined by Wis. Stat. § 115.01(1); a private school as defined by Wis. Stat. § 115.001(3); a charter school as defined by Wis. Stat. § 115.001(1); a specialty school, including,

but not limited to, a Montessori school, a gymnastics academy, dance academy, or music school.

- b. "Day Care Center" means a facility that has been licensed under Wis. Stat. § 48.65 to provide care and supervision of children and includes "before- and after-school daycare," which has the meaning as defined by Wis. Stat. § 120.125(1).
- c. "Library" means any library that is held open for use by the public where such library includes a collection of material specifically intended for use by children.
- d. "Park" means any area held open for use by the public for active or passive leisure purposes, including, but not limited to, any park, recreation area or beach. "Park" shall also mean any privately owned neighborhood parks and open spaces where children congregate such as those owned by a homeowners association of a subdivision.
- e. "Playground" means any public outdoor area set aside for recreation and play and includes any area with playground equipment including, but not limited to, swings, slides, sandboxes, seesaws.
- f. "Place of Worship" means a church, synagogue, mosque, temple or any other building where congregations gather for prayer.
- g. "Swimming Pool" means where children swim or wade in a pool or other aquatic facility held open for use by the public or where no lifeguard is on duty and children are known to congregate.
- h. "Recreational Trail" means a trail where children walk, ride bicycles, or ride horses, whether publicly or privately owned.

(c) **Sex Offender and Sex Predator Residence; Prohibitions, Zones and Exceptions.**

- (1) Child Safety Zones. The following distance restriction provides areas within which Designated Offenders are not allowed to reside based upon specific criteria. These areas are referred to in this Ordinance as "Child Safety Zone(s)."
 - a. It is unlawful for any Designated Offender to establish a Residence within 500 feet (500') of a Protected Location.
 - b. A Designated Offender shall not establish a Residence within a one hundred foot (100') radius of an existing Residence of another Designated Offender.
- (2) Determination of Minimum Distance Separation. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight and shortest line from the outer property boundary line of the Residence of a Designated Offender to the nearest outer property boundary line of a Protected Location.
- (3) Maps. A map depicting the above Protected Locations and the resulting residency restriction distances known as Child Safety Zones shall be adopted by Resolution of the Village Board, and which map may be amended from time-to-time, is on file in the Office of the Village Clerk for public inspection. This Map is a tool that the Village chooses to utilize to provide notice to the public of the requirements of the Ordinance. In the event of a conflict between the Map and this Ordinance where a Protected Location is inadvertently omitted from the Map, the written provisions of this Ordinance shall control.

- (4) Notification. A Designated Offender must notify the Village Clerk a minimum of twenty-eight (28) days prior to establishing a Residence within the Village of Union Grove.
- (5) Exceptions. A Designated Offender shall not be in violation of this Ordinance if any of the following apply:
 - a. The Designated Offender established the Residence and reported and registered the residence pursuant to Section 301.45, Wisconsin Statutes, before the original effective date of this Ordinance of April 19, 2008.
 - b. The Designated Offender is a Juvenile placed with a guardian.
 - c. The Protected Location situated within Five Hundred (500) feet of the Designated Offender's Residence was opened or established after the Designated Offender established the Residence and reported and registered the Residence pursuant to Section 301.45, Wisconsin Statutes.
 - d. The residence is also the primary residence of the Designated Offender's parents, spouse or adult children, provided that such parent, spouse or adult children established the residence at least two (2) years before the Designated Offender established residence at the location and the residence is owner-occupied.
 - e. The person is a Designated Offender that has been adjudicated a sexually violent person pursuant to Wisconsin Statutes Chapter 980 if the Designated Offender is subject to supervised release under Wisconsin Statutes Chapter 980, the Designated Offender is residing where he or she is ordered to reside under Wis. Stat. §980.08, and the Sex Offender is in compliance with all court orders issued under Wisconsin Statutes Chapter 980.
 - f. The Designated Offender had not attained the age of 19 at the time of the offense, was determined by the Circuit Court to meet the criteria under Wis. Stat. § 301.45(1m)(a) and is not required to register pursuant to Wis. Stats. § 301.45 or § 301.46.
 - g. The Designated Offender is a ward under guardianship, is placed in accordance with the guardianship orders, and is living with the appointed guardian;
 - h. In such cases involving a ward or Juvenile placed in accordance with an exception, when the ward or Juvenile turns 18 years of age, the ward or Juvenile would be allowed to continue to reside at the already established residence.
- (d) **Property Owners Prohibited From Renting Real Property To Certain Sexual Offenders and Sexual Predators.** It shall be unlawful for any property owner to lease or rent any place, structure, mobile home, trailer or any part thereof, with the knowledge that it will be used as a Residence by any Designated Offender prohibited from establishing a Residence therein pursuant to this Ordinance, if such place, structure, or mobile home, trailer or any part thereof, is located within a Child Safety Zone as defined in this ordinance.
- (e) **Public Nuisance.** Any violation of this Chapter shall be deemed a public nuisance affecting peace and safety and the Village may proceed under Chapter 42 of the Code of Ordinances and/or Chapter 823 of the Wisconsin Statutes to abate the nuisance.

- (f) **Injunction for Violation of Residency Restrictions.** If an offender establishes a Residence in violation of subsection (c) above, the Village Clerk, in conjunction with the Village's law enforcement officer may refer the matter to the Village Attorney. The referral shall include a written determination by the law enforcement officer that, upon all of the facts and circumstances and the purpose and intent of this Ordinance, such violation interferes substantially with the comfortable enjoyment of life, health, and 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.

(g) **Appeal for an exemption.**

- (1) A Designated Offender may seek an exemption from this ordinance by appealing to the sex offender residency board (the "Appeals Board").
- (2) The Appeals Board shall consist of three citizens and one alternate, who are residents of the Village, who shall serve without compensation. For the initial appointments to the Appeals Board, the Village President shall appoint three members to staggered terms of one, two or three years, subject to confirmation by the Village Board and one alternate for a term of three years. After the initial appointment of members to a term of one, two and three years respectively, the Village President shall annually appoint one member for a term of three years and one alternate for a term of three years every third year, subject to confirmation by the Village Board, commencing on May 1st. At the first meeting held of the Appeals Board after the first Monday of May of each year, the members of the Appeals Board shall vote by majority vote to select a chair for its meetings and appeals that come before it.
- (3) The Appeals Board shall approve of an official appeal form, establish filing procedures, a hearing schedule and deadlines for filing an appeal. An offender shall complete this official form and submit it to the Village Clerk, who shall forward it to the Appeals Board. The filing fee for the appeal may be set by resolution of the Village Board from time-to-time. Notice in the form of an agenda shall be posted and/or published as required by law and provided to the Appeals Board, the property owner if not the applicant, and published on the Village's website at least seven days prior to the hearing date.
- (4) The Village elects not to be bound by Wis. Stat. Ch. 68 with respect to administrative procedure in the appeals process. The Appeals Board shall hold a hearing on each appeal to conduct an individual risk assessment in each case, during which the Appeals Board may review any pertinent information and may accept oral and written statements from any person. The Designated Offender that filed the appeal shall appear at any hearing held, unless otherwise approved by the Appeals Board. The Appeals Board shall consider the public interest as well as the applicant's presentation and concerns, giving the applicant a reasonable opportunity to be heard. The Appeals Board shall also consider any oral, emailed, and written statements from any person at the hearing or received in advance of the hearing. The Appeals Board shall consider the specific facts and circumstances of each applicant and determine whether the applicant presents a threat to public safety if he or she resides at that proposed location. The Appeals Board shall consider factors which may include, but are not limited to, the following:
 - a. Circumstances surrounding the offense.
 - b. Relationship of offender and victim.

- c. Presence or use of force.
 - d. Presence of enticement.
 - e. Need to protect victim or similarly situated individuals.
 - f. Current dangerousness of the offender.
 - g. Proximity in time from original offense.
 - h. Any criminal offenses, ordinance or rule violations committed since original offense including failures to register or comply with restrictions set by bond, parole or probation.
 - i. Time out of incarceration.
 - j. Current supervision status by the Department of Corrections.
 - k. Counseling and treatment history.
 - l. Credibility of offender.
 - m. Remorse.
 - n. Proximity of proposed residence to a child safety zone.
 - o. Support network of offender near proposed residence.
 - p. Alternative options for housing.
- (5) The Appeals Board shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or be conditional to a certain address or period of time. In the case of an approval or denial, the Appeals Board shall provide a written copy of the decision containing the reasons therein for its decision to the Village Clerk, the law enforcement officer and to the applicant. The decision of the Appeals Board may be appealed to the Racine County Circuit Court by any aggrieved party within 30 days of filing of the final decision in the Village's Clerk's office, a copy of which shall be mailed to the Designated Offender who appealed. The review shall be a review by certiorari and the Circuit Court may affirm or reverse the final decision, or remand to the decision maker for further proceedings consistent with the Court's decision.

(h) *Loitering.*

- (1) *Offense.* It shall be unlawful for any Designated Offender to loiter or prowl within 200 feet of a Protected Location or other location where children regularly congregate; in a place, at a time, or a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of 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 actor takes flight upon appearance of a code enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the actor or other circumstances makes it impractical, a code enforcement officer shall, prior to any citation 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 code 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 the code enforcement officer at the time, would have dispelled the alarm.

- (2) *Exceptions.* The prohibitions set forth in subsection (1) shall not apply where:
- a. The actor was a juvenile or ward with his or her parent or other adult person having his or her care, custody or control; or the actor was exercising First Amendment rights protected by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.
 - b. The actor is on the property for a legitimate purpose, including but not limited to visits for employment, education, or health purposes, and the property owner has given prior written permission for the offender to be present on the property during such times and dates.
- (i) **Severability.** Should any section, paragraph, sentence, clause or phrase of this Section be declared unconstitutional or invalid, or be repealed, it shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be invalid or repealed.
- (j) **Penalties.** Any person who violates any provision of this Section shall, upon conviction thereof, be subject to a forfeiture not to exceed Five Hundred (\$500.00) Dollars, together with the costs of prosecution, and in default of payment thereof, shall be committed to the County Jail for a period not to exceed ninety (90) days. Each violation and each day such violation continues shall be considered a separate offense. 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. That this ordinance shall take effect upon adoption and publication as provided by law.

Adopted this 27th day of November, 2017.

VILLAGE OF UNION GROVE

By: Michael Aimone
Michael Aimone
Village President

Attest: Jill Firkus
Jill Firkus
Village Clerk

3345.002(8)11-8-17