



Virtual Meeting
Mequon, WI 53092
Phone: 262-242-3500
Fax: 262-242-7655

www.ci.mequon.wi.us

Police and Fire Departments

PUBLIC SAFETY COMMITTEE

Tuesday, March 9, 2021

5:30 PM

Virtual Meeting

Agenda

ELECTRONIC MEETING NOTICE: Pursuant to the current recommendation of the CDC limiting the size of public gatherings and the various federal and state orders implementing that recommendation, and to help protect our community from the Coronavirus (COVID-19) pandemic, this meeting will be held virtually through the GoToMeeting platform with each member accessing the meeting remotely. Citizens may join the meeting online or by phone. Please go to <https://global.gotomeeting.com/join/383666125> to join the meeting online or call into the meeting by dialing 1-877-309-2073 and enter access code: 383-666-125.

WRITTEN PUBLIC COMMENTS may be made in writing in advance of the meeting. Written comments should be directed to the Police Department at least 2 hours prior to the meeting by email at dkowalchuk@ci.mequon.wi.us addressed to the intended committee. Written public comment may also be deposited in the drop box at City Hall on 11333 N. Cedarburg Road, Mequon at least 2 hours prior to the meeting. Comments received timely will be forwarded to all members of the body for their consideration.

VERBAL PUBLIC COMMENTS will be accepted only from members of the public who register in advance. Registration shall be made by sending an email to Executive Assistant Diane Kowalchuk at dkowalchuk@ci.mequon.wi.us or by leaving a message at 262-242-7987 no later than 2 hours prior to the meeting.

Reasonable accommodations will be made for those citizens who are unable to attend the meeting in the methods identified above upon at least two hours' notice. Notice can be given to the City Clerk's Office at 262-236-2914.

1) Call to Order

2) Approve Meeting Minutes

Action requested: review and approve

a. Public Safety Committee - Regular Meeting - Feb 9, 2021 5:30 PM

3) Ordinances

Action requested: review and recommend approval

- a. **ORDINANCE 2021-1586** An Ordinance Amending Chapter 82 of the Mequon Municipal Code to Reflect Current Roadway Names and Posted Speed Restrictions within the City

4) Discussion

- a. Sex Offender Residency Restrictions

5) Adjourn

Dated: March 9, 2021

/s/ Kathleen Schneider, Chair

Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting.

Persons with disabilities requiring accommodations for attendance at this meeting should contact the City Clerk's Office at 262-236-2914, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the Public Safety Office at 262-242-3500, Monday through Friday, 8:00 AM – 4:30 PM



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Police and Fire Departments

PUBLIC SAFETY COMMITTEE

Tuesday, February 9, 2021

5:30 PM

Virtual Meeting

Minutes

1) Call to Order

Present:

Chair Kathleen Schneider

Alderman Mark Gierl

Alderman Dale Mayr

Also Present: Fire Chief Bialk, Deputy Fire Chief Zellmann, Executive Assistant Kowalchuk

Absent: Police Chief Pryor

2) Approve Meeting Minutes

a. Public Safety Committee - Regular Meeting - Dec 8, 2020 5:15 PM

RESULT: **Approved by Voice Acclamation [Unanimous]**

MOVED BY: Alderman Mayr

SECONDED BY: Alderman Gierl

AYES: Schneider, Gierl, Mayr

3) Resolutions

Action requested: review and recommend approval

- a. **RESOLUTION 3808** A Resolution Approving the Purchase of a Fire Department First Responder Vehicle from Ewald Automotive Group, Hartford, Wisconsin, Installation of Associated Equipment from General Fire Equipment, Milwaukee, Wisconsin, and Application of Vehicle Graphics from Letters & Signs, Mequon, Wisconsin in the Total Amount of \$42,986

Chief Bialk provided a brief summary of the proposed vehicle purchase emphasizing the importance of the City having reliable, useable vehicles for its 24 hour-a-day First Responder program. He additionally advised that the vehicle to be replaced, which is currently at 73,000 miles, will continue to be used and will replace an older, higher mileage department vehicle.

RESULT: **Approved by Voice Acclamation [Unanimous]**

MOVED BY: Alderman Mayr

SECONDED BY: Alderman Gierl

Minutes Acceptance: Minutes of Feb 9, 2021 5:30 PM (Approve Meeting Minutes)

AYES: Schneider, Gierl, Mayr

4) Information Items

a. Fire Department 2020 Annual report

Chief Bialk reviewed some of the highlights from the Fire Department's 2020 annual report such as call volume, inter facility transports, the new fee schedule and on scene patient care.

He additionally spoke highly of department members' professionalism in meeting the many challenges as a result of the almost hourly, initial protocol change requirements at the start of COVID.

5) Adjourn

a. Motion to adjourn the meeting at 5:45 PM.

RESULT: Approved by Voice Acclamation [Unanimous]

MOVED BY: Alderman Mayr

SECONDED BY: Alderman Gierl

AYES: Schneider, Gierl, Mayr

Respectfully Submitted,

Diane Kowalchuk
Executive Assistant

Minutes Acceptance: Minutes of Feb 9, 2021 5:30 PM (Approve Meeting Minutes)



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www.ci.mequon.wi.us

Office of Public Safety Committee

TO: Public Safety Committee
FROM: Patrick Pryor, Chief of Police
DATE: February 23, 2021
SUBJECT: ORDINANCE 2021-1586 An Ordinance Amending Chapter 82 of the Mequon Municipal Code to Reflect Current Roadway Names and Posted Speed Restrictions within the City

Background

The Mequon Police Department has determined that current posted speed limits and associated roadway names are not accurately reflected in Section 82-2 of the Mequon Municipal Code, which is entitled: *Speed Restrictions on Particular Streets*.

Analysis

Officers were assigned to compare all posted speed limits throughout Mequon with the City's current ordinance. Thereafter, a draft of the ordinance was edited as appropriate, including the removal of abbreviations for directional wording. A redline version of the proposed modifications is attached for review.

Notably, no posted limits are being changed in the proposed amendments that are being submitted for adoption; rather, this is simply an update of the ordinance to accurately reflect what is currently posted throughout the community.

Fiscal Impact

None

Recommendation

A recommendation is forthcoming from the Public Safety Committee on March 9, 2021.

Attachments:

Sec._82_2.___Speed_restrictions_on_particular_streets (DOC)

COMMON COUNCIL
OF THE
CITY OF MEQUON

ORDINANCE 2021-1586

An Ordinance Amending Chapter 82 of the Mequon Municipal Code to Reflect Current
Roadway Names and Posted Speed Restrictions within the City

RECITALS

A. The Common Council previously adopted section 82-2 of the Mequon Municipal Code, which establishes speed limits on various roads within the City of Mequon.

B. The Police Department has identified various parts of Section 82-2 which are no longer consistent with the actual posted speeds and has recommended updating the Code to reflect posted speeds.

C. The Common Council wishes to update section 82-2 to match posted speeds, and to otherwise clarify the language within the section.

D. The regulation of traffic speeds within the City furthers the health, safety, and welfare of the community.

BASED UPON THE FOREGOING RECITALS, THE COMMON COUNCIL OF THE CITY OF MEQUON, OZAUKEE COUNTY, STATE OF WISCONSIN, DO ORDAIN AS FOLLOWS:

SECTION I

Section 82-2 of the Mequon Municipal Code is amended to read as follows (NOTE: Added text is underlined; Deleted text is ~~struck through~~):

Sec. 82-2. - Speed restrictions on particular streets.

Without in any way modifying the special speed restrictions for certain vehicles as set forth in Wis. Stats. § 346.58, no person shall drive a vehicle at a speed in excess of the following limits on certain streets in the City of Mequon as follows:

- (1) Fifty m.p.h. speed limit.
 - a. North Wasaukee Road for all vehicles between West Highland Road and West Pioneer Road.
- (2) Forty-five m.p.h. speed limit.
 - a. ~~West~~ Pioneer Road from ~~North~~ Wasaukee Road to the western boundary of the City of Cedarburg, and, from the eastern boundary of the City

of Cedarburg to Lake Shore Road.

b. North Cedarburg Road from the northern limit of the Village of Thiensville to a point approximately 1,500 feet south of the southern limit of the City of Cedarburg.

c. ~~North-~~ Wauwatosa Road from ~~West-~~ County Line Road to ~~West~~ Mequon Road.

d. ~~North-~~ Cedarburg Road ~~from~~ ~~West-~~ County Line Road to ~~West-~~ ~~North-~~ Sherwood Drive.

e. ~~West-~~ Highland Road from ~~North-~~ Wasaukee Road to ~~North~~ Cedarburg Road (~~Hwy 57~~).

f. ~~West-~~ Freistadt Road from ~~North-~~ Wasaukee Road to ~~North-~~ Granville Road (~~north~~).

g. ~~West-~~ Freistadt Road from approximately 300 feet east of ~~North-~~ Briarhill Road to 260 feet west of ~~North-~~ Ridgeway Avenue.

h. ~~West-~~ Donges Bay Road from ~~North-~~ Wasaukee Road to ~~North-~~ Wauwatosa Road. ~~N. Granville Road from W. County Line Road to a point 2,475 feet south of its intersection with W. Freistadt Road.~~

i. ~~North-~~ Granville Road from ~~West-~~ Freistadt Road to ~~West-~~ Highland Road.

j. ~~North-~~ Granville Road from ~~West-~~ Highland Road to ~~West-~~ Pioneer Road.

k. ~~North-~~ Farmdale Road from ~~West-~~ Mequon Road to ~~West-~~ Highland Road.

l. ~~North-~~ Swan Road from ~~West-~~ County Line Road to ~~West-~~ Mequon Road.

m. ~~North-~~ Davis Road from ~~West-~~ Bonniwell Road to ~~West-~~ Pioneer Road.

n. ~~North-~~ Port Washington Road from ~~West~~ Glen Oaks Lane to ~~West~~ Pioneer Road.

o. ~~West-~~ Bonniwell Road from ~~North~~ Wasaukee Road to ~~the intersection with North~~ Cedarburg Road.

p. North Granville Road from West County Line Road to a point 2,475 feet south of its intersection with West Freistadt Road.

(3) Forty m.p.h. speed limit.

a. ~~State Trunk Highway 167 for all vehicles between construction limits (I-43) westerly to a point 100 feet west of the intersection with State Trunk Highway 181. West Mequon Road from North Swan Road to North Market Street.~~

b. ~~West-~~ Donges Bay Road from ~~North-~~ Wauwatosa Road to ~~North-~~ Cedarburg Road.

c. ~~West-~~ Highland Road from ~~North-~~ Yvonne Drive to ~~North-~~ Cedarburg Road (~~Hwy 57~~).

d. ~~West-~~ County Line Road from ~~North-~~ Wasaukee Road to ~~North-~~ Wauwatosa Road.

e. ~~W. Freistadt Road. W. Bonniwell from Green Bay Road to~~

~~Riverland Road.~~ North Wauwatosa Road from West Freistadt Road to West Pioneer Road.

f. North. Wasaukee Road between West County Line Road and West Highland Road.

g. North. Riverland Road from West. Bonniwell Road to West. Pioneer Road.

h. North. Lake Shore Drive from West Highland Road to West Bonniwell Road.

(4) Thirty-five m.p.h. speed limit.

a. North Cedarburg Road from a point approximately 1,500 feet south of the southern limit of the City of Cedarburg to the southern limit of the City of Cedarburg.

b. North. Wauwatosa Road from West. Mequon Road to West. Freistadt Road.

c. North. Port Washington Road from West. County Line Road to West Glen Oaks Lane.

d. West. Freistadt Road from North. Granville Road ~~-(north)~~ to approximately 300 feet east of North. Briarhill Road, and from 260 feet west of North. Ridgeway Avenue to North. Wauwatosa Road.

e. West. County Line Road from North. Wauwatosa Road to North. Cedarburg Road.

f. North. Green Bay Road from the north limits of the Village of Thiensville to West. Pioneer Road.

g. West. Bonniwell Road from approximately one-half mile west of North. Oriole Lane to North. Port Washington Road.

h. West. Bonniwell Road from North. Lake Shore Drive ~~-(south)~~ to North. Lakewood ~~Shore Drive~~ ~~-(north)~~.

i. North. Fieldwood Road from West. Freistadt Road to West. Highland Road.

j. West. Mequon Road from North Market Street ~~the Chicago & Northwestern Railroad right-of-way~~ to North Lake Shore Drive.

k. West. Donges Bay Road from North. River Road to North. Lake Shore Drive.

l. West. Zedler Lane from North. Katherine Drive to North. Lake Shore Drive.

m. North River Road from West. Donges Bay Road to its north end at the Milwaukee River.

n. ~~N. Range Line Road from W. County Line Road to W. Mequon Road~~ West Highland Road from North Yvonne Drive to North Lake Shore Drive.

o. North. Katherine Drive from North. Port Washington Road to West. Zedler Lane.

p. North. Lake Shore Drive from West. Zedler Lane to West. Mequon Road.

q. North. Lake Shore Drive from West. Bonniwell Road to West.

Pioneer Road.

r. ~~West~~ Freistadt Road from ~~North~~ Wauwatosa Road to the village limits of the Village of Thiensville.

s. ~~North~~ Granville Road from ~~its intersection with West~~ Freistadt Road to a point 2,475 feet south of its intersection with ~~West~~ Freistadt Road.

t. ~~West~~ Bonniwell ~~Road~~ from ~~Hwy 57~~ North Cedarburg Road to North Riverland Road, ~~its point of terminus which is proximate to the west bank of the Milwaukee River~~

u. ~~West~~ Freistadt Road from North Villa Grove Road to North Fieldwood Road.

(5) Thirty m.p.h. speed limit.

a. North Cedarburg Road from West Sherwood Drive to the south village limits of the Village of Thiensville.

b. ~~North~~ Baehr Road from ~~West~~ County Line Road to ~~West~~ Donges Bay Road.

c. North River Road from West Freistadt Road to West Highland Road.

d. ~~West~~ County Line Road from ~~North~~ Port Washington Road to ~~N- River Road~~ 216 feet east of North Crestwood Court.

e. North Range Line Road from West Mequon Road ~~south~~ to West County Line Road, with the exception of any areas marked as school zones.

f. ~~North~~ Lake Shore Drive from ~~West~~ Mequon Road to ~~West~~ Highland Road.

(6) Twenty-five m.p.h. speed limit.

a. ~~State Trunk Highway 167~~ West Mequon Road, when children are present, from a point 150 feet east of its intersection with North Range Line Road westerly to a point 350 feet west of said intersection, pursuant to Wis. Stats. § 349.11(7).

b. All other public roads and streets in the City of Mequon.

SECTION II

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION III

All ordinances and parts of ordinance in contravention to this ordinance are hereby repealed

SECTION IV

This ordinance shall be in full force and effect upon its passage and on the day after its publication.

Approved by: John Wirth, Mayor

Date Approved: March 9, 2021

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on March 9, 2021.

Caroline Fochs, City Clerk

Published: _____

Sec. 82-2. - Speed restrictions on particular streets.

Without in any way modifying the special speed restrictions for certain vehicles as set forth in Wis. Stats. § 346.58, no person shall drive a vehicle at a speed in excess of the following limits on certain streets in the City of Mequon as follows:

- (1) Fifty m.p.h. speed limit.
 - a. ~~North~~ Wasaukee Road for all vehicles between ~~West~~ Highland Road and ~~West~~ Pioneer Road.
- (2) Forty-five m.p.h. speed limit.
 - a. ~~W.-West~~ Pioneer Road from ~~N.-North~~ Wasaukee Road to ~~the~~ west boundary of the City of Cedarburg, and, from ~~the~~ east boundary of the City of Cedarburg to Lake Shore Road.
 - b. ~~North~~ Cedarburg Road from the northern limit of the Village of Thiensville to a point approximately 1,500 feet south of the southern limit of the City of Cedarburg.
 - c. ~~N.-North~~ Wauwatosa Road from ~~W.-West~~ County Line Road to ~~West~~ Mequon Road.
 - d. ~~N.-North~~ Cedarburg Road from ~~W.-West~~ County Line Road to ~~W.-West North~~ Sherwood Drive.
 - e. ~~W.-West~~ Highland Road from ~~N.-North~~ Wasaukee Road to North Cedarburg Road (Hwy 57).
 - f. ~~W.-West~~ Freistadt Road from ~~N.-North~~ Wasaukee Road to ~~N.-North~~ Granville Road (north).
 - g. ~~W.-West~~ Freistadt Road from approximately 300 feet east of ~~N.-North~~ Briarhill Road to 260 feet west of ~~N.-North~~ Ridgeway Avenue.
 - h. ~~W.-West~~ Donges Bay Road from ~~N.-North~~ Wasaukee Road to ~~N.-North~~ Wauwatosa Road. ~~N.-North Granville Road from W.-West County Line Road to a point 2,475 feet south of its intersection with W.-West Freistadt Road.~~
 - i. ~~N.-North~~ Granville Road from ~~W.-West~~ Freistadt Road to ~~W.-West~~ Highland Road.
 - j. ~~N.-North~~ Granville Road from ~~W.-West~~ Highland Road to ~~W.-West~~ Pioneer Road.
 - k. ~~N.-North~~ Farmdale Road from ~~W.-West~~ Mequon Road to ~~W.-West~~ Highland Road.
 - l. ~~N.-North~~ Swan Road from ~~W.-West~~ County Line Road to ~~W.-West~~ Mequon Road.
 - m. ~~N.-North~~ Davis Road from ~~W.-West~~ Bonniwell Road to ~~W.-West~~ Pioneer Road.
 - n. ~~N.-North~~ Port Washington Road from ~~West~~ Glen Oaks Lane to ~~West~~ Pioneer Road.
 - o. ~~W.-West~~ Bonniwell Road from ~~North~~ Wasaukee Road to the intersection with ~~North~~ Cedarburg Road.
 - p. ~~North~~ Granville Road from ~~West~~ County Line Road to a point 2,475 feet south of its intersection with ~~West~~ Freistadt Road.
- (3) Forty m.p.h. speed limit.
 - a. ~~State Trunk Highway 167 for all vehicles between construction limits (I-43) westerly to a point 100 feet west of the intersection with State Trunk Highway 181.~~ ~~West~~ Mequon Road from North Swan Road to North Market Street.
 - b. ~~W.-West~~ Donges Bay Road from ~~N.-North~~ Wauwatosa Road to ~~N.-North~~ Cedarburg Road.
 - c. ~~W.-West~~ Highland Road from ~~N.-North~~ Yvonne Drive to ~~N.-North~~ Cedarburg Road (~~Hwy 57~~).
 - d. ~~W.-West~~ County Line Road from ~~N.-North~~ Wasaukee Road to ~~N.-North~~ Wauwatosa Road.

- e. ~~W. West Freistadt Road. W. West Bonniwell from Green Bay Road to Riverland Road.~~
North Wauwatosa Road from West Freistadt Road to West Pioneer Road.
 - f. ~~N. North~~ Wasaukee Road between ~~West~~ County Line Road and ~~West~~ Highland Road.
 - g. ~~N. North~~ Riverland Road from ~~W. West~~ Bonniwell Road to ~~W. West~~ Pioneer Road.
 - h. ~~N. North~~ Lake Shore Drive from ~~West~~ Highland Road to ~~West~~ Bonniwell Road.
 - i. ~~N. North~~ Wauwatosa Road from ~~W. West~~ Freistadt Road to ~~N. West~~ Pioneer Road.
- (4) Thirty-five m.p.h. speed limit.
- a. ~~North~~ Cedarburg Road from a point approximately 1,500 feet South of the southern limit of the City of Cedarburg to the southern limit of the City of Cedarburg.
 - b. ~~N. North~~ Wauwatosa Road from ~~W. West~~ Mequon Road to ~~W. West~~ Freistadt Road.
 - c. ~~N. North~~ Port Washington Road from ~~W. West~~ County Line Road to ~~West~~ Glen Oaks Lane.
 - d. ~~W. West~~ Freistadt Road from ~~N. North~~ Granville Road (north) to approximately 300 feet east of ~~N. North~~ Briarhill Road, and from 260 feet west of ~~N. North~~ Ridgeway Avenue to ~~N. North~~ Wauwatosa Road.
 - e. ~~W. West~~ County Line Road from ~~N. North~~ Wauwatosa Road to ~~N. North~~ Cedarburg Road.
 - f. ~~N. North~~ Green Bay Road from the north limits of the Village of Thiensville to ~~W. West~~ Pioneer Road.
 - g. ~~W. West~~ Bonniwell Road from approximately one-half mile west of ~~N. North~~ Oriole Lane to ~~N. North~~ Port Washington Road.
 - h. ~~W. West~~ Bonniwell Road from ~~N. North~~ Lake Shore Drive (south) to ~~N. North~~ Lake Shore Drive (north).
 - i. ~~N. North~~ Fieldwood Road from ~~W. West~~ Freistadt Road to ~~W. Highland~~ Road.
 - j. ~~W. West~~ Mequon Road from ~~the Chicago & Northwestern Railroad right-of-way North Market Street~~ to ~~North~~ Lake Shore Drive.
 - k. ~~W. West~~ Donges Bay Road from ~~N. North~~ River Road to ~~N. North~~ Lake Shore Drive.
 - l. ~~W. West~~ Zedler Lane from ~~N. North~~ Katherine Drive to ~~N. North~~ Lake Shore Drive.
 - m. ~~North~~ River Road from ~~W. West~~ Donges Bay Road to its north end at the Milwaukee River.
 - n. ~~N. North Range Line Road from W. West County Line Road to W. West Mequon Road.~~
~~West Highland Road from North Yvonne Drive to North Lake Shore Drive (south).~~
 - o. ~~N. North~~ Katherine Drive from ~~N. North~~ Port Washington Road to ~~W. West~~ Zedler Lane.
 - p. ~~N. North~~ Lake Shore Drive from ~~W. West~~ Zedler Lane to ~~W. West~~ Mequon Road.
 - q. ~~N. North~~ Lake Shore Drive from ~~W. West~~ Bonniwell Road to ~~W. West~~ Pioneer Road.
 - r. ~~W. West~~ Freistadt Road from ~~N. North~~ Wauwatosa Road to the village limits of the Village of Thiensville.
 - s. ~~N. North~~ Granville Road from its intersection with ~~W. West~~ Freistadt Road to a point 2,475 feet south of its intersection with ~~W. West~~ Freistadt Road.
 - t. ~~W. West~~ Bonniwell Road from North Cedarburg Road ~~Hwy 57~~ to North Riverland Road, ~~its point of terminus which is proximate to the west bank of the Milwaukee River~~
 - u. ~~West~~ Freistadt Road from ~~North~~ Villa Grove Road to ~~North~~ Fieldwood Road.
- (5) Thirty m.p.h. speed limit.

- a. North Cedarburg Road from **West** Sherwood Drive to the south village limits of the Village of Thiensville.
 - b. ~~N-North~~ Baehr Road from ~~W-West~~ County Line Road to ~~W-West~~ Donges Bay Road.
 - c. **North** River Road from **West** Freistadt Road to **West** Highland Road.
 - d. ~~W-West~~ County Line Road from ~~N-North~~ Port Washington Road to ~~N-North River Road~~. 216 feet east of North Crestwood Court.
 - e. **North** Range Line Road from **West** Mequon Road south to **West** County Line, with the exception of any areas marked as school zones.
 - f. ~~N-North~~ Lake Shore Drive from ~~W-West~~ Mequon Road to ~~W-West~~ Highland Road.
- (6) Twenty-five m.p.h. speed limit.
- a. ~~State Trunk Highway 167~~ **West Mequon Road** when children are present from a point 150 feet east of its intersection with **North** Range Line Road westerly to a point 350 feet west of said intersection, pursuant to Wis. Stats. § 349.11(7).
 - b. All other **public** roads and streets in the City of Mequon.

(Code 1957, § 12.02(2); Ord. No. 85-578, 6-11-1985; Ord. No. 85-582, 8-6-1985; Ord. No. 88-661, 7-12-1988; Ord. No. 88-669, 10-11-1988; Ord. No. 90-709, 5-8-1990; Ord. No. 90-717, 7-10-1990; Ord. No. 91-730, 1-8-1991; Ord. No. 92-760, 4-16-1992; Ord. No. 93-781, 3-9-1993; Ord. No. 93-785, 5-11-1993; Ord. No. 93-788, 7-13-1993; Ord. No. 94-802, 6-14-1994; Ord. No. 94-812, 8-2-1994; Ord. No. 94-814, 8-2-1994; Ord. No. 95-859; 96-874, 4-9-1996; Ord. No. 98-951, § I, 7-14-1998; Ord. No. 2005-1131, § I, 3-8-2005; Ord. No. 2012-1390, § I, 12-11-2012)

State Law reference— Authority to modify speed restrictions, Wis. Stats. § 349.11; speed restrictions, Wis. Stats. § 346.57 et seq.



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Office of City Attorney

TO: Public Safety Committee
FROM: Brian Sajdak, City Attorney
DATE: March 3, 2021
SUBJECT: Sex Offender Residency Restrictions

Background

In 2014, the Council adopted section 50-100 of the Municipal Code which regulates where certain sex offenders may reside within the City. At the time, there was significant concern that Mequon would become a potential “dumping ground” of sorts because the City was one of the last communities in southeast Wisconsin to adopt this type of regulation. Then, in 2017, a federal judge in the Eastern District of Wisconsin issued an order finding that Pleasant Prairie’s sex offender ordinance violated the Ex Post Facto clause and the Equal Protection clause of the U.S. Constitution.¹ Following that decision, multiple other communities in the State were threatened with litigation (or were sued). To avoid lawsuits (either those that had been threatened, or to avoid being the next target) numerous communities amended their ordinances because of similarities to the Pleasant Prairie ordinance.

Additionally, in response to the proliferation of these ordinances, the Legislature adopted 2015 Wis. Act 156 in 2016 which preempts local ordinances as it relates to the placement of sexually violent persons on release and supervision under Chapter 980. Thus, ordinances that were in place prior to this enactment should be updated to address the preemption issue.

Based upon these issues, the topic of sex offender residency restrictions is being brought to you for discussion of possible amendments to the City’s existing ordinance. Because of the possibility of divergence on what these changes should look like, this memo highlights certain recommendations and other points of discussion. Utilizing the input obtained, a formal draft ordinance amendment would be drafted and brought back to you at the April meeting for consideration.

Discussion

1. Chapter 980 Preemption

Of the issues identified above, the easiest to address is the Chapter 980 preemption issue. While this preemption may raise some concerns about safety of the public, Chapter 980 does include restrictions applicable to these offenders. Specifically, under Chapter 980, a sexually violent person may not reside within a 1,500 foot radius around “any school premises, childcare facility, public park, place of worship, or youth center.” Wis. Stat. § 980.08(4)(f)(2) Additionally, for a serious child sex offender (an offender whose victim is under 13), the offender may not be placed into a residence adjacent to a property where a child’s primary residence exists. Id.

There are two ways of addressing this preemption issue. The first would be to simply create an exclusion in the City’s ordinance for “a person who is released under Wis. Stat. § 980.08, so long

¹ See Hoffman v. Village of Pleasant Prairie, 249 F. Supp. 3d 951 (2017)

as the person is subject to supervised release, is residing where they are ordered to reside, and the person is in compliance with all court orders issued under Ch. 980.” The second would be to amend the ordinance to create restrictions for this class of offenders that match the state restrictions (or, alternatively, to amend the ordinance to adopt the state restrictions for all offenders).

My recommendation on this point would be the latter option. The primary reason for this is that if there is a wholesale exclusion of these offenders, then any enforcement of violations would be left to the department of corrections, the department of health services, the department of justice, or a district attorney. If the City’s code includes the same restrictions, then the City can have a more direct role in enforcement proceedings.

2. Pleasant Prairie Case Considerations

The constitutional issues raised by the Court in the Pleasant Prairie case centered on two primary issues. First, the Village’s ordinance created a situation where 90% of the Village was off-limits to offenders. The area where offenders were allowed was mostly non-residential, and most of the low-income housing was excluded. Second, the Village’s ordinance did not offer a method for a sex offender to obtain an exemption or an individualized inquiry into the risk of each sex offender to the community.

In the case of Mequon’s ordinance, it is unclear whether the current restrictions would run afoul of the first issue identified by the Court. Looking at the City’s map, there are significant areas where homes exist that are available to offenders. On the other hand, much of the relatively more affordable housing within the City would exclude offenders. Unfortunately, the courts have not provided any bright-line rule for what percentage of housing needs to be available to withstand judicial scrutiny.

One concern I do have is the ordinance’s use of 2,000 feet as the buffer. Pleasant Prairie’s ordinance, which was one of the most restrictive in the state, used a 3,000-foot buffer; it is now 1,500 feet. Where Mequon was near the top in distance used, but not the most restrictive, it is now the most restrictive based on a quick sampling of other ordinances. Most use the same distance used by the state (1,500 feet), although there are some who use shorter distances (e.g., Mount Pleasant – 1,250 feet, Waukesha – 750 feet). My recommendation would be to amend the ordinance to utilize the 1,500 feet used by the state. If that has been deemed sufficient to protect the public from the most dangerous offenders, I worry whether a court would uphold 2,000 feet — even though Mequon’s status as the 4th largest (by area) incorporated municipality in the state coupled with its relative rural character makes it unique, thus justifying the larger distance.

Concerning the second aspect of the Pleasant Prairie case, Mequon’s ordinance clearly is in conflict with the Court on this point. The lack of due process and/or an individualized assessment of an offender, according to the Court in that case, presents a constitutional issue. In the aftermath of the Pleasant Prairie case, this issue was a significant topic of discussion among municipal attorneys throughout the state. At the time, communities fell into two camps. Those who wished to continue to have relatively restrictive ordinances created an appeal board to offer offenders an individualized assessment. Those who decided to amend their ordinances to be less restrictive generally relied only on the less restrictive nature of the code and did not adopt an appeal process.

On this point, my recommendation is to create an appeal board to hear cases where offenders wish to seek exemptions from the ordinance. This due process component is a key component to avoiding potential liability for constitutional violations. Attached as Exhibit A is a very crude

example of the ordinance language to create such a body for your reference and potential discussion.

3. Other Topics of Discussion

The primary remaining topic of discussion is whether the list of places comprising child safety zones is appropriate. Following the Pleasant Prairie decision, many communities reduced their list of places to more closely match the state's list ("school premises, childcare facility, public park, place of worship, or youth center"). Looking to the City's list, there are some locations I would recommend removing and/or modifying:

<u>Location</u>	<u>Basis for Removal</u>
Home Schools	Difficult to track, requires regular staff time to update list and map, Lack of obvious indications of its existence making compliance harder, COVID-19 pandemic and virtual schooling creates an ambiguity in the code
Trails	Ambiguity may exist – do you count bike lanes on roads?
Golf Courses	Are Children really hanging out at golf courses unsupervised?
Day Cares	Consider amending to larger commercial facilities versus the home-based care provider based on difficulty in tracking the latter
Dance/Music Schools	Some are located in homes creating a difficulty based upon lack of external indications of the existence, can be difficult to track
Gyms	Athletic fields has been interpreted to include gyms, which are included on the map, Incorrect interpretation, as with golf courses are kids hanging out at Orange Theory fitness
Municipal Facilities	Is a use identified on the map but not in the code.

A second topic of discussion is the original domicile clause. This provision was included in the Franklin ordinance, which became the model for most other communities, because they were primarily attempting to block the state from putting a group home for offenders near the Milwaukee County Jail facility located there. When you read the concerns about banishment in the caselaw, it becomes increasingly difficult to believe that this restriction would survive judicial scrutiny. My recommendation is to remove this provision.

Attachments:

City Attorney1_ARTICLE_III. Sex Offenders (PDF)
 City Attorney2_sex_offender_residency_restrictions (PDF)
 City Attorney3_Hoffman v Village of Pleasant Prairie (PDF)

ARTICLE III. - SEX OFFENDERS

Sec. 50-100. - Sex offender residency restrictions and child safety zones.

- (a) *Purpose.* This chapter is a regulatory measure aimed at protecting the health and safety of children and youth in the City of Mequon from the risk that convicted sex offenders may reoffend in locations close to their residences and against child victims. 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 and youth 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 and youth frequent. The city also finds and declares that in addition to schools and day care centers, children and youth congregate or play at public parks, pools and other public and private places of enrichment activities, recreation, entertainment and amusement. Therefore, finding that sex offenders are a serious threat to public safety as indicated above, the city hereby declares the residency or presence of sex offenders in proximity to public and private places where children and youth may congregate or frequent under circumstances proscribed in this ordinance to be a public nuisance.
- (b) *Definitions.* As used in this section and unless the context otherwise requires:
- (1) *Sexually violent offense.* "Sexually violent offense" shall have the meaning as set forth in Wis. Stat. § 980.01(6), as amended from time to time.
 - (2) *Crime against children.* "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, and which offense was perpetrated against a victim under the age of majority, respectively:

§ 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
§ 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)
§ 975.06	Sex Crimes Law Commitment

- (3) *Person*. "Person" shall mean a person who has been convicted of or has been found delinquent of or has been found not guilty by reason of mental disease or defect of a sexually violent offense and/or a crime against children.
- (4) *Residence or reside*. "Residence" or "reside" shall mean the place where a person sleeps or otherwise qualifies as their residence under the law, and which may include more than one location, and may be mobile or transitory.
- (c) *Residency restrictions*. A Person shall not reside within 2,000 feet of the real property comprising any of the following:
- (1) Any facility for children, which means a public or private school, a group home as defined in Wis. Stat. § 48.02(7), a residential care center for children and youth as defined in Wis. Stat. § 48.02(15d), a shelter care facility as defined in Wis. Stat. § 48.02(17), a foster home as defined in Wis. Stat. § 48.02(6), a treatment foster home as defined in Wis. Stat. § 48.02(17q), a day care

center licensed under Wis. Stat. § 48.65, a day care program established under Wis. Stat. § 120.13(14), a day care provider certified under Wis. Stat. § 48.651, or a youth center as defined in Wis. Stat. § 961.01(22); and/or

(2) Any facility used for:

- a. A public park, parkway, parkland, park facility, or nature preserve;
- b. A public swimming pool;
- c. A public library;
- d. A recreational trail;
- e. A public playground;
- f. A school for children;
- g. Athletic fields used by children;
- h. A movie theatre;
- i. A day care center;
- j. Any specialized school for children, including, but not limited to a gymnastics academy, dance academy, swimming school or music school;
- k. A public or private golf course or range; and
- l. Aquatic facilities open to the public;

The distance shall be measured from the closest boundary line of the real property supporting the residence of a person to the closest real property boundary line of the applicable above enumerated uses. A map depicting the above enumerated uses and the resulting residency restriction distances, as amended from time to time, shall be kept on file in the office of the city clerk and the Mequon Police Department for public inspection.

(d) *Residency restriction exceptions.* A person residing within 2,000 feet of the real property comprising any of the uses enumerated in subsection (c) above, does not commit a violation of this section if any of the following apply:

- (1) The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility located within 2,000 feet of a use enumerated in subsection (c) above.
- (2) The person has established a residence prior to the effective date of this section which is within 2,000 feet of any of the uses enumerated in subsection (c) above, or such enumerated use is newly established after such effective date and it is located within such 2,000 feet of a residence of a person which was established prior to the effective date of this chapter.
- (3) The person is a minor residing with a parent or legal guardian who serves as parent or legal guardian to no more than one person or is a ward under guardianship.

(e) *Original domicile restriction.* In addition to and notwithstanding the foregoing, but subject to subsection (d) above, no person shall be permitted to reside in the City of Mequon, unless such person was domiciled in the City of Mequon at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime against children.

(f) *Child safety zones.* No person shall enter or be present upon any real property upon which there exists any facility used for or which supports a use of:

- (1) A public park, parkway, parkland, park facility, or nature preserve;
- (2) A public swimming pool;
- (3) A public library;
- (4) A recreational trail;

- (5) A public playground;
- (6) A school for children;
- (7) Athletic fields used by children;
- (8) A movie theatre;
- (9) A day care center;
- (10) Any specialized school for children, including, but not limited to a gymnastics academy, dance academy, swimming school or music school;
- (11) A public or private golf course or range;
- (12) Aquatic facilities open to the public; and
- (13) Any facility for children, which means a public or private school, a group home as defined in Wis. Stat. § 48.02(7), a residential care center for children and youth as defined in Wis. Stat. § 48.02(15d), a shelter care facility as defined in Wis. Stat. § 48.02(17), a foster home as defined in Wis. Stat. § 48.02(6), a treatment foster home as defined in Wis. Stat. § 48.02(17q), a day care center licensed under Wis. Stat. § 48.65, a day care program established under Wis. Stat. § 120.13(14), a day care provider certified under Wis. Stat. § 48.651, or a youth center as defined in Wis. Stat. § 961.01(22)

A map depicting the locations of the real property supporting the above enumerated uses, as amended from time to time, shall be kept on file in the office of the city clerk or the Mequon Police Department for public inspection.

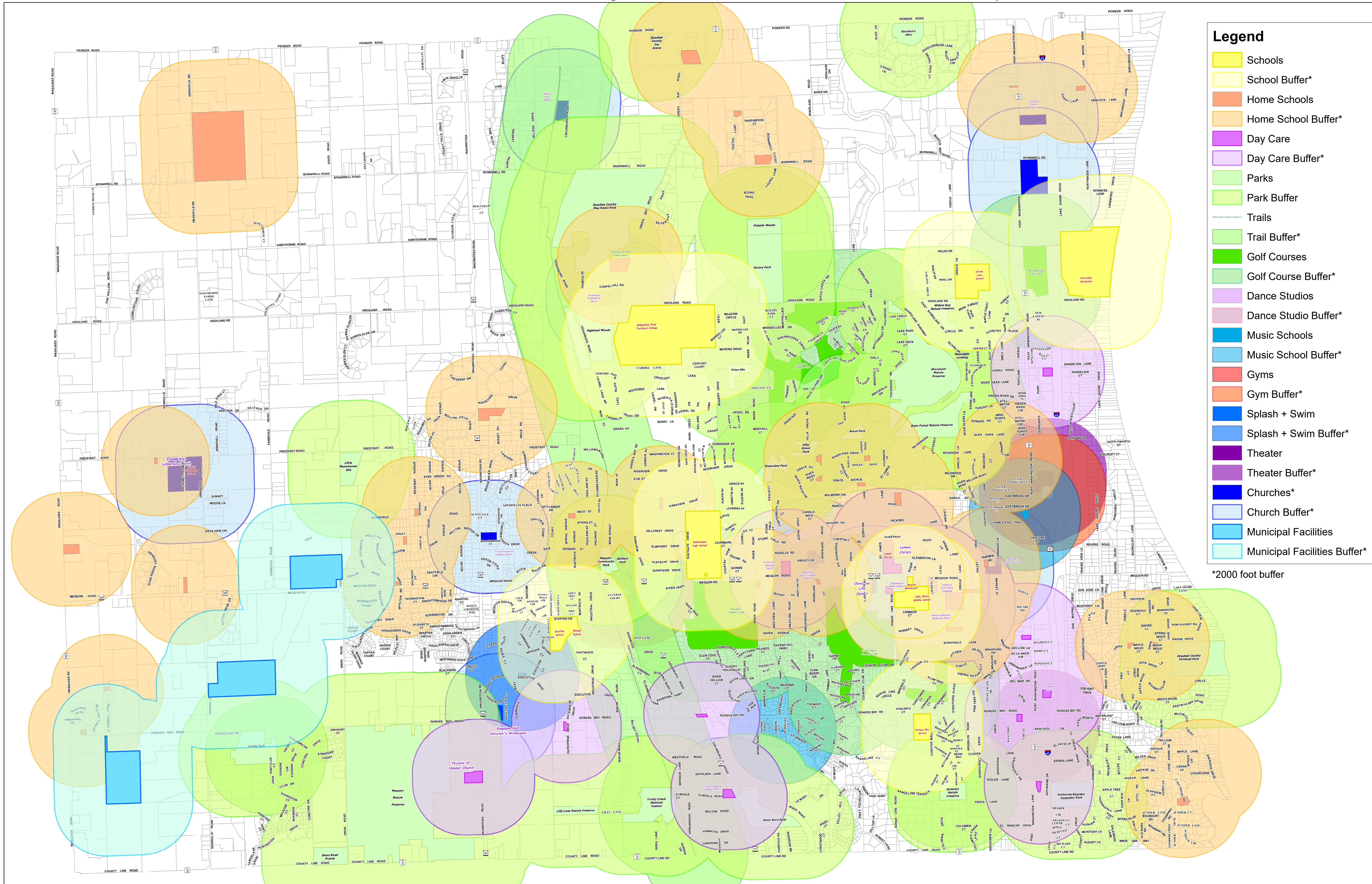
- (g) *Child safety zone exceptions.* A person does not commit a violation of subsection (f) above and the enumerated uses may allow such person on the property supporting such use if any of the following apply:
 - (1) The property supporting an enumerated use under subsection (f) also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:
 - a. Entrance and presence upon the property occurs only during hours of worship or other religious program/service open to the public;
 - b. The individual or body in charge of the church permits such attendance or 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
 - c. The person shall not participate in any religious education programs which include individuals under the age of 18.
 - (2) The property supporting an enumerated use under subsection (f) also supports a use lawfully attended by a person's natural or adopted child/children, which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:
 - a. Entrance and presence upon the property occurs only during hours of activity related to the use open to the public; and
 - b. 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.
 - (3) The property supporting an enumerated use under subsection (f) also supports a polling location in a local, state or federal election, subject to the following conditions:
 - a. The person is eligible to vote;

- b. The designated polling place for the person is an enumerated use; and
 - c. The person enters the polling place property, 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.
- (4) The property supporting an enumerated use under subsection (f) 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 for the purpose of attendance at the school at which the person is enrolled, as is reasonably required for the educational purposes of the school and the person.
- (h) *Violations.* If a person violates any provision of this section, by establishing a residence or occupying residential premises within 2,000 feet of those premises as described therein, without any exception(s) as also set forth above, the city 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 or occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others, shall bring an action in the name of the city in the Circuit Court for Ozaukee County to permanently enjoin such residency as a public nuisance. If a person violates any provision of this chapter, in addition to the aforesaid injunctive relief, such person shall be subject to the general penalty provisions set forth under section 1-7 of the Mequon Municipal Code. Each day a violation continues shall constitute a separate offense. In addition, the city may undertake all other legal and equitable remedies to prevent or remove a violation of this section.

(Ord. No. 2014-1439, § I(Att.), 12-9-2014)

Sex Offender Residency Restrictions - September 2018

4.a.b





KeyCite Yellow Flag - Negative Treatment

Distinguished by [Doe #4 v. Miami-Dade County, Florida](#), S.D.Fla.,
December 18, 2018

249 F.Supp.3d 951

United States District Court, E.D. Wisconsin.

Franklyn HOFFMAN, Kenneth
Derkson, Johnny Wooten, Eric
Sanders, Michael O'Connell, Stephen
Hart, William Johnson, James
Norgaard, and Alton Antrim, Plaintiffs,

v.

VILLAGE OF PLEASANT
PRAIRIE, Defendant.

Case No. 16–CV–697–JPS

Signed 04/17/2017

Synopsis

Background: Convicted sex offenders residing in village brought action against village, alleging that ordinance regulating residency of child sex offenders within village violated the Ex Post Facto Clause and the Equal Protection Clause, and seeking declaratory judgment in favor of one sex offender on the issue of whether he had to leave the village. Plaintiffs moved for summary judgment.

Holdings: The District Court, [J.P. Stadtmueller](#), J., held that:

- [1] claim seeking money damages was not moot;
- [2] ordinance violated Ex Post Facto Clause;
- [3] plaintiffs asserting Equal Protection claim had standing; and
- [4] ordinance violated equal protection.

Motion granted in part and denied in part.

West Headnotes (18)

[1] **Federal Courts** 🔑 Nature of dispute; concreteness

Federal Courts 🔑 Inception and duration of dispute; recurrence; "capable of repetition yet evading review"

District court may only exercise its jurisdiction over live controversies; this requirement applies not only at the start of the litigation, but throughout its entire pendency.

[2] **Federal Courts** 🔑 Rights and interests at stake

Federal Courts 🔑 Dismissal or other disposition

An action becomes moot, and must therefore be dismissed, when an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit.

[3] **Federal Courts** 🔑 Rights and interests at stake

Federal Courts 🔑 Available and effective relief

A case only becomes moot when it is impossible for a district court to grant any effectual relief whatever to the prevailing party; as long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.

[4] **Constitutional Law** 🔑 Mootness

Convicted sex offenders' claim seeking money damages, alleging that village ordinance regulating residency of child sex offenders in village violated the Ex Post Facto clause, was not moot, even though village had repealed and replaced original ordinance, which either eliminated or limited effect of allegedly unlawful provisions. [U.S. Const. art. 1, § 10, cl. 1](#).

[5] Constitutional Law 🔑 Sex Offenders**Mental Health** 🔑 Sex offenders

Restrictions imposed by village ordinance regulating residency of child sex offenders in village were not rationally connected to stated purpose of protecting the health and welfare of village's citizens, and thus ordinance violated Ex Post Facto Clause; ordinance limited residency to tiny zone, imposed restrictions based solely on prior offense, attempted to deter recidivism, prevented any sex offenders from moving into village, and banished all sex offenders in leaseholds without individualized inquiry into risk to community, restrictions were based on conjecture about dangers posed by sex offenders rather than on objective evidence, and ordinance could have had a negative effect on sex offender recidivism and community safety. *U.S. Const. art. 1, § 10, cl. 1.*

5 Cases that cite this headnote

[6] Constitutional Law 🔑 Punishment in general

The Ex Post Facto Clause prohibits retroactive punishment by the government. *U.S. Const. art. 1, § 10, cl. 1.*

2 Cases that cite this headnote

[7] Constitutional Law 🔑 Constitutional Prohibitions in General

The Supreme Court requires the clearest proof to override the government's stated intention in an Ex Post Facto case. *U.S. Const. art. 1, § 10, cl. 1.*

[8] Constitutional Law 🔑 Punishment in general

To assess the punitive nature of a restriction in an Ex Post Facto case, district courts analyze five factors: (1) whether the law inflicts what has been regarded in United States history and traditions as punishment, (2) whether the law imposes an affirmative disability or restraint, (3) whether the law promotes the traditional aims of punishment, (4) whether the law has a rational connection to a non-punitive purpose, and (5)

whether the law is excessive with respect to this purpose. *U.S. Const. art. 1, § 10, cl. 1.*

3 Cases that cite this headnote

[9] Constitutional Law 🔑 Punishment in general

Under the Ex Post Facto Clause, to avoid an excessive punitive effect, a statute imposing a particularly harsh disability or restraint must allow an individualized assessment, which helps to ensure that a statute's particularly harsh disability or restraint is rationally related to a non-punitive purpose. *U.S. Const. art. 1, § 10, cl. 1.*

3 Cases that cite this headnote

[10] Federal Civil Procedure 🔑 Hearing, evidence, and presentation of arguments

The district court will not craft appropriate arguments for a litigant and, particularly in the case of represented parties, will assume that the omission of apparently relevant argument was a strategic choice rather than mere oversight.

[11] Constitutional Law 🔑 Equal Protection

Convicted sex offenders had standing to bring Equal Protection claim against village, alleging that, prior to its amendment, ordinance regulating residency of sex offenders in village violated Equal Protection, even though original ordinance had been repealed and replaced; most of the offenders were subjected to banishment within six months of ordinance's passage, and some offenders suffered stress because they knew they would have to leave village if they ever left their current homes. *U.S. Const. Amend. 14.*

[12] Federal Civil Procedure 🔑 In general; injury or interest

The standing doctrine requires that a party must actually have a interest in a case to invoke federal jurisdiction.

[13] Constitutional Law 🔑 **Similarly situated persons; like circumstances**

The Fourteenth Amendment's Equal Protection Clause commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike. [U.S. Const. Amend. 14](#).

[14] Constitutional Law 🔑 **Statutes and other written regulations and rules**

Laws usually pass muster under the Equal Protection Clause if the classification drawn by the statute is rationally related to a legitimate state interest. [U.S. Const. Amend. 14](#).

[15] Constitutional Law 🔑 **Sex Offenders**
Mental Health 🔑 **Sex offenders**

To prove an equal protection claim involving restrictions imposed by village ordinance regulating residency of child sex offenders in village under rational basis review, convicted child sex offenders were required to show: (1) the village intentionally treated them differently from others similarly situated, (2) the village intentionally treated them differently because of their membership in the class to which they belonged, and (3) the difference in treatment was not rationally related to a legitimate state interest. [U.S. Const. Amend. 14](#).

[16] Constitutional Law 🔑 **Rational Basis Standard; Reasonableness**

In an Equal Protection case applying rational basis review, a law must be upheld if the district court can reasonably conceive of any justification for it. [U.S. Const. Amend. 14](#).

[17] Constitutional Law 🔑 **Sex Offenders**
Mental Health 🔑 **Sex offenders**

Village ordinance which regulated residency of convicted child sex offenders violated the Equal

Protection Clause of the Fourteenth Amendment; ordinance made irrational domicile-based distinction between designated offenders, and there was no evidence supporting ordinance's restrictions. [U.S. Const. Amend. 14](#).

[2 Cases that cite this headnote](#)

[18] Constitutional Law 🔑 **Discrimination and Classification**

The bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest in an Equal Protection case. [U.S. Const. Amend. 14](#).

Attorneys and Law Firms

***953** [Mark G. Weinberg](#), Law Office of Mark G. Weinberg, Chicago, IL, [Adele D Nicholas](#), Law Office of Adele D. Nicholas, Chicago, IL, for Plaintiffs.

[Raymond V. Anderson](#), [Matteo Reginato](#), [Remzy D. Bitar](#), [Arenz Molter Macy Riffle & Larson SC](#), Waukesha, WI, for Defendant.

ORDER

[J.P. Stadtmueller](#), U.S. District Judge

1. INTRODUCTION

On February 8, 2017, Plaintiffs Franklyn Hoffman (“Hoffman”), Kenneth Derkson (“Derkson”),¹ Johnny Wooten (“Wooten”), Eric Sanders (“Sanders”), Michael O’Connell (“O’Connell”), Stephen Hart (“Hart”), William Johnson (“Johnson”), James Norgaard (“Norgaard”), and Alton Antrim (“Antrim”) filed a motion for summary judgment. (Docket # 41). Defendant Village of Pleasant Prairie (the “Village”) opposed the motion on March 2, 2017. Plaintiffs replied in support of their motion to March 15, 2017. For the reasons stated below, Plaintiffs' motion must be granted in part.²

2. STANDARD OF REVIEW

[Federal Rule of Civil Procedure 56](#) provides the mechanism for seeking summary judgment. [Rule 56](#) states that the “court

shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Fed. R. Civ. P. 56(a)*; see *Boss v. Castro*, 816 F.3d 910, 916 (7th Cir. 2016). A “genuine” dispute of material fact is created when “the evidence is such that a reasonable *954 jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The Court construes all facts and reasonable inferences in a light most favorable to the non-movant. *Bridge v. New Holland Logansport, Inc.*, 815 F.3d 356, 360 (7th Cir. 2016).

3. RELEVANT FACTS

The material facts are almost entirely undisputed.³ On April 18, 2016, the Village passed an ordinance regulating residency for child sex offenders within its borders (the “Ordinance”). Plaintiffs initiated the instant suit on June 9, 2016, challenging its constitutionality. The Ordinance prohibited child sex offenders, called “designated offenders” (hereinafter “Designated Offenders”), from residing in the Village within 3,000 feet of a “prohibited location.” “Prohibited locations” included “[a]ny school, licensed day-care center, park, trail, playground, place of worship, athletic field used by Minors, or any other place designated by the Village as a place where Minors are known to congregate.” (Docket # 43–1 at 2). The Ordinance also prevented Designated Offenders from moving into the Village unless they were already domiciled in the Village at the time of their most recent offense. Designated Offenders were excluded from any potential violation of the Ordinance if they resided continuously in a home prior to and after its effective date. This provision was limited by a ban on renewing rental agreements with Designated Offenders which would extend for more than six months beyond the Ordinance's effective date.

The Ordinance further restricted where Designated Offenders could live with respect to each other; offenders were banned from residing within 500 feet of each other. The Ordinance applied to all Designated Offenders without any inquiry into the danger any individual offender posed to the community. It did, however, contain a grandfather clause. The grandfather clause allowed Designated Offenders to stay in their residence if a “prohibited location” was established near them after they took residence. It also permitted them to live with their close family members, provided those family members had resided in the otherwise prohibited area for at least two years.

The Court recognizes that this explanation is somewhat confusing when stated in prose. To better understand the effect of the Ordinance on various Designated Offenders, the Court has prepared the following chart:

*955

Nature of Offender	Restriction Imposed
1) Domiciled in the Village at time of most recent offense 2) Lived in the Village when Ordinance was passed	None, as long as the offender's home complied with the distance-related restrictions
1) Not domiciled in the Village at time of most recent offense 2) Not domiciled in Village when Ordinance was passed	Permanently banned from the Village
1) Not domiciled in the Village at time of most recent offense 2) Lived in the Village when Ordinance was passed 3) Rented property that did not comply with distance restrictions	Must leave the Village by October 18, 2016, and may never return
1) Not domiciled in the Village at time of most recent offense 2) Lived in the Village when Ordinance was passed 3) Owned home or lived with family	May remain in that property, but may not move to another home in the Village. If the offender leaves their home for more than thirty days, they may never return.

See (Docket # 45 at 4–5).

In passing the Ordinance, the Village prepared a map showing its projected effect on Designated Offender residency. The map revealed that more than ninety percent of the Village would be off-limits to Designated Offenders under the Ordinance. The remaining ten percent was largely non-residential. Moreover, the interaction between the 3,000 foot prohibited zone and the rule against Designated Offenders living near one another further limited the possible dwelling places. Most of the Village's low-income housing, which is all that most of these plaintiffs could afford, was excluded.

When enacting the Ordinance, the Village did not obtain or consider any studies or data regarding the safety risk of allowing Designated Offenders to live near the various “prohibited locations” identified above, or near one another. In fact, the Village's administrator, Michael Pollocoff (“Pollocoff”), testified that turning child sex offenders into outcasts can create “more deleterious impacts.” (Docket # 45 at 6). The Village also had no evidence that Designated Offenders domiciled outside the Village at the time of their last offense posed a greater safety risk than those who were. Pollocoff stated that the Ordinance's purpose and goal was to reduce the number of child sex offenders living in the Village.

*956 All Plaintiffs but Norgaard,⁴ O'Connell,⁵ and Hoffman⁶ were not domiciled in the Village at the time of their offense, and rented their abodes, and so fell into the third category from the chart above.⁷ Each was told that, in light of the Ordinance's passage, they had to leave the Village by October 18, 2016. Plaintiffs were variously notified of their need to vacate by a letter from the Village's Chief of Police, by conversations with their probation officers, or by conversations with other Designated Offenders. Each Plaintiff has suffered stress as a result of the threat posed by the Ordinance, the difficulties in attempting to secure new housing, and fear of the consequences of homelessness.

The Ordinance was repealed, and a new one created in its place, on September 6, 2016 (the "Amended Ordinance"). The Amended Ordinance lowered the 3,000 foot prohibited zone to 1,500 feet. This would still cut Designated Offenders out of over sixty percent of the Village's land area and seventy-five percent of its residences. The restriction on Designated Offenders living near each other was removed entirely, as was the limit on renewing leases for Designated Offenders living in a prohibited zone. Finally, the Amended Ordinance stated that it did not apply to a Designated Offender whose latest conviction was ten or more years prior to them taking residence in the Village.

4. ANALYSIS

Plaintiffs' Second Amended Complaint advances three causes of action. Count One alleges that the Ordinance violates the Ex Post Facto Clause in Article I of the Constitution, because "it makes more burdensome the punishment imposed for offenses committed prior to enactment of the Ordinance and it applies retroactively[.]" (Docket # 30 at 22). Plaintiffs seek an injunction against its enforcement and money damages on Count One. *Id.* at 23. Count Two states that the Ordinance also violates the Equal Protection Clause of the Fourteenth Amendment because it differentiates between Designated Offenders who were or were not domiciled in the Village at the time of their most recent offense, without a rational basis for doing so. *Id.* at 23–24. Plaintiffs also seek injunctive and monetary relief on Count Two. *Id.* at 24. Finally, Count Three seeks a declaratory judgment in favor of O'Connell on the issue of whether he had to leave the *957 Village. *Id.* at 24–25; see *supra* note 5. Plaintiffs' instant motion requests judgment on Counts One and Two as to liability only.⁸ The Court addresses each claim in turn.

4.1 Ex Post Facto

[1] [2] [3] Initially, the Village contends that Plaintiffs' ex post facto claim is mooted by its repeal of the Ordinance. This Court may only exercise its jurisdiction over live controversies. *Campbell–Ewald Co. v. Gomez*, — U.S. —, 136 S.Ct. 663, 669, 193 L.Ed.2d 571 (2016). This requirement applies not only at the start of the litigation, but throughout its entire pendency. *Id.* An action becomes moot, and must therefore be dismissed, when "an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit." *Id.* (quotation omitted). A court must take care not to paint over a lawsuit's claims with a broad brush, however. A case only becomes moot "when it is impossible for a court to grant any effectual relief whatever to the prevailing party. As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.* (citations and quotations omitted).

[4] The Village contends that Plaintiffs' claims became moot on September 6, 2016, approximately three months after this action was filed. On that date, the original Ordinance they complained-of in the Second Amended Complaint was repealed and replaced with the Amended Ordinance, which either eliminated or limited the effect of the allegedly unlawful provisions. Plaintiffs concede that this renders moot their requests for injunctive relief. Enacting the Amended Ordinance does not, however, do anything to address Plaintiffs' requests for money damages. *Campbell–Ewald* (as well as the Village's own citations) stands for the proposition that Plaintiffs' damages claim, and thus the ex post facto claim as a whole, remains a live controversy. *Fed'n of Adver. Indus. Repts., Inc. v. City of Chicago*, 326 F.3d 924, 929 (7th Cir. 2003) ("[A] defendant's change in conduct cannot render a case moot so long as the plaintiff makes a claim for damages."). The Village's mootness argument is without merit.

[5] [6] The Village next asserts that the Ordinance did not actually violate the Ex Post Facto Clause because it did not impose a punishment on Plaintiffs. The Clause prohibits retroactive punishment by the government, and as applied here, it restricts how far a governmental entity can go in limiting the rights of sex offenders. *Smith v. Doe*, 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003). The *Smith* court began its ex post facto analysis with two questions. First, did the government, in enacting the restriction, intend to "establish civil proceedings," or impose punishment? *Id.* (internal quotation marks omitted). If the government intended to punish, the law violates the Ex Post Facto Clause

and the inquiry ends there. *Id.* The Ordinance's stated purpose is "not to impose a criminal penalty" but to instead protect the health and welfare of the Village's *958 citizens. (Docket # 43–1 at 1). The Court must defer to that statement of intent. *Smith*, 538 U.S. at 92–93, 123 S.Ct. 1140 ("[C]onsiderable deference must be accorded to the intent as the legislature has stated it.").

[7] [8] Nevertheless, even if a law purports to be civil in nature, the Court "must further determine whether the statutory scheme is "so punitive either in purpose or effect as to negate [the Village's] intention to deem it civil." *Id.* at 92, 123 S.Ct. 1140 (quotations omitted). The Supreme Court requires "the clearest proof" to override the government's stated intention. *Id.* To assess the punitive nature of a restriction, courts analyze five factors:

- (1) Does the law inflict what has been regarded in our history and traditions as punishment?
- (2) Does it impose an affirmative disability or restraint?
- (3) Does it promote the traditional aims of punishment?
- (4) Does it have a rational connection to a non-punitive purpose?
- (5) Is it excessive with respect to this purpose?

Does # 1–5 v. Snyder, 834 F.3d 696, 701 (6th Cir. 2016) (citing *Smith*, 538 U.S. at 97, 123 S.Ct. 1140).

The Village's argument on this point is brief, conclusory, and fails to meaningfully address any of these factors. It instead gestures at a few cases which it contends have ruled in its favor on this issue, and asks the Court to evaluate and follow those decisions. The Village is mistaken on the law and the Court's duties. The most relevant decisions from across the nation reveal that the Ordinance is nigh unprecedented in its punitive effect. The Court will not distinguish those opinions where the Village has made no effort to do so itself.

As to the first factor, the Ordinance banished Plaintiffs from the Village. Banishment is a traditional form of punishment, and historically "involved the complete expulsion of an offender from a socio-political community." *Shaw v. Patton*, 823 F.3d 556, 566 (10th Cir. 2016). Unlike many other laws restricting sex offender residency, the Ordinance did not simply limit where such people could live. The Ordinance prevented any sex offenders from moving into the Village and, more importantly, required all sex offenders in leaseholds to leave within six months after its passage. This is, in the

Court's view, nothing short of affirmative banishment. *Id.* at 567–68 (residency provision did not resemble historical banishment because it only limited sex offender residency, but did not expel them entirely); *Doe v. Miller*, 405 F.3d 700, 719 (8th Cir. 2005) (same). Not all Plaintiffs are in the same position on this issue, however. Norgaard, O'Connell, and Hoffman were not (properly) subject to the banishment provision of the Ordinance. However, as discussed below, this difference does not change the outcome on this claim.

Even had it tried, the Village could not reasonably contest the second factor. The Ordinance imposed severe restraints on Designated Offenders, limiting their residence to ten percent of the Village's land area, an area which is itself largely non-residential. See *Doe v. Miami-Dade County, Fla.*, 846 F.3d 1180, 1185 (11th Cir. 2017) (this inquiry focuses on the " 'how the effects of the [Ordinance] are felt by those subject to it,' " and these offenders alleged homelessness as a result of the county's residency ordinance) (quoting *Smith*, 538 U.S. at 99–100, 123 S.Ct. 1140). The third factor is likewise present, though it is of limited importance because punishment goals often overlap legitimate civil regulatory goals. *Snyder*, 834 F.3d at 704. Still, the Ordinance advances the traditional *959 punishment aims of incapacitation, in keeping Designated Offenders segregated to tiny zones of the community; retribution, by imposing its restrictions based solely on Plaintiffs' prior offense conduct; and deterrence, in attempting to keep Designated Offenders away from children to deter recidivism. *Id.*

[9] The fourth and fifth factors are usually considered together, for the less rational a restriction's connection to its stated purpose, the more excessive it will be in addressing that purpose. See *Smith*, 538 U.S. at 104–05, 123 S.Ct. 1140; *Snyder*, 834 F.3d at 704–05; *Miller*, 405 F.3d at 721–723. This is the most important consideration in the ex post facto analysis. *Smith*, 538 U.S. at 102, 123 S.Ct. 1140. Further, "to avoid a[n] [excessive] punitive effect, a statute imposing a particularly harsh disability or restraint must allow an individualized assessment. An individualized assessment helps to ensure that a statute's particularly harsh disability or restraint is rationally related to a non-punitive purpose." *Shaw*, 823 F.3d at 575; *Weems v. Little Rock Police Dept.*, 453 F.3d 1010, 1017 (8th Cir. 2006) ("Unlike the Iowa law [at issue in *Miller*], the Arkansas statutory plan calls for a particularized risk assessment of sex offenders, which increases the likelihood that the residency restriction is not excessive in relation to the rational purpose of minimizing the risk of sex crimes against minors.").

Decisions from other circuits provide a useful contrast to the Ordinance. In *Miller*, expert testimony was received on the effect of a 2,000-foot residency restriction on sex offender recidivism. *Miller*, 405 F.3d at 722–23. While this testimony was not definitive as to the propriety of that distance as compared to any others, the Eighth Circuit held that it supplied a sufficient rational basis connected to the legislature's non-punitive purpose. *Id.* In *Miami-Dade*, the subject ordinance established a 2,500-foot exclusion zone for schools, with exceptions when “(1) [t]he sexual offender or sexual predator established a residence prior to the effective date of th[e] [O]rdinance; (2) [t]he sexual offender or sexual predator was a minor when he or she committed the sexual offense and was not convicted as an adult; and (3) [t]he school was opened after the sexual offender or sexual predator established the residence.” *Miami-Dade*, 846 F.3d at 1183 (internal quotation marks omitted). The *Miami-Dade* plaintiffs alleged that this ordinance violated the Ex Post Facto Clause because it did not include an individualized risk assessment, it applied to an offender for life, and was passed without any evidence connecting the restriction to an improvement on safety or recidivism concerns. *Id.* at 1185–86. The Eleventh Circuit found that these assertions stated an ex post facto cause of action. *Id.* Finally, *Duarte* highlights the importance of an efficacious grandfather clause, which in that case allowed offenders to stay in their current homes after the subject ordinance was passed. *Duarte v. City of Lewisville*, 136 F.Supp.3d 752, 781–82 (E.D. Tex. 2015). The *Duarte* ordinance also contained “multiple affirmative defenses that, if argued and proven, exempt the child sex offender from the residency restrictions.” *Id.* at 782.⁹

***960** The Ordinance goes further than any these examples. The Ordinance bans Designated Offenders from the Village without any individualized inquiry into their risk to the community. In a similar vein, it did not offer any method for a Designated Offender to obtain an exemption, even in limited circumstances. Like the *Miami-Dade* ordinance, the Ordinance's banishment applies to Designated Offenders for life. Unlike *Duarte*, the Ordinance's grandfather clause was of limited help to Plaintiffs, because for most of them, it only permitted them to remain until October 2016. Most importantly, the Village has admitted that the Ordinance was based on its own conjecture about the dangers posed by sex offenders. No data or studies on the matter were considered in passing the Ordinance.

The lack of evidence eliminates the possibility that the Village's action was rational. In *Snyder*, the Sixth Circuit faced a comprehensive sex offender registration and residency statute. *Snyder*, 834 F.3d at 697–98. The court found that the statute was not rationally related to the purpose of reduced sex offender recidivism and public safety. *Id.* at 704–05. Though the Supreme Court in *Smith* stated that recidivism rates among sex offenders are “frightening and high,” the *Snyder* court found that support for the proposition was lacking in empirical studies. *Id.* at 704. It specifically noted that “nothing ... in the record suggests that the residential restrictions have any beneficial effect on recidivism rates.” *Id.* at 705. *Snyder* found no evidence that “the difficulties the statute imposes on registrants are counterbalanced by any positive effects. Indeed, Michigan has never analyzed recidivism rates despite having the data to do so.” *Id.*

The Village fell into the same trap as the Michigan legislature. The Village could have sought objective evidence to support the Ordinance's severe restrictions but chose not to.¹⁰ Plaintiffs were required to come forward with “the clearest proof” that the Ordinance was intended as punishment. *Smith*, 538 U.S. at 92, 123 S.Ct. 1140. If the Village had even a sliver of factual material to support the stated goals of the Ordinance, the outcome of this claim would likely be different. As it stands, however, the Court has no choice but to find that the restrictions imposed by the Ordinance are not rationally connected to its purposes.

***961 [10]** The Court concludes that, in balancing the *Smith* factors, Plaintiffs have produced sufficient proof that the Ordinance's stated non-punitive purpose is overborne by its punitive effects. The Ordinance therefore violated the Ex Post Facto Clause and Plaintiffs are entitled to summary judgment on that claim. This result is clearly true for the plaintiffs who were subject to banishment under the Ordinance, namely Derkson, Wooten, Sanders, Hart, Johnson, and Antrim. The Ordinance would not have necessarily banished Hoffman, O'Connell, and Norgaard, for various reasons. *See supra* notes 3–5. As to those three, the lack of banishment makes this case much closer to the others cited above, where the law in question withstood Ex Post Facto Clause review. The Court has not differentiated between these sets of plaintiffs, however, because the Village has not argued that it should. The Court will not craft appropriate arguments for a litigant and, particularly in the case of represented parties, will assume that the omission of apparently relevant argument was a strategic choice rather than mere oversight. *John v.*

Barron, 897 F.2d 1387, 1393 (7th Cir. 1990) (“This court is not obligated to research and construct legal arguments open to parties, especially when they are represented by counsel as in this case.”); *Gold v. Wolpert*, 876 F.2d 1327, 1333 (7th Cir. 1989).

4.2 Equal Protection

[11] [12] The Village first argues that Plaintiffs lack standing to pursue an equal protection claim. The standing doctrine requires that a party must actually have a interest in a case to invoke federal jurisdiction. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Though there are many nuances to standing, its application here is relatively simple. As raised by the Village, the standing doctrine requires that Plaintiffs must have suffered a concrete injury and favorable decision in the case must offer redress for their injury. *Id.* at 560–61, 112 S.Ct. 2130. The Village argues that Plaintiffs were grandfathered into the Amended Ordinance, and with the repeal of the original Ordinance, they now lack standing to maintain an equal protection claim.

The Village's argument misses the mark in two respects. First, as with the mootness issue, the Village focuses on the ameliorative effect of the Amended Ordinance. This is not the relevant inquiry. Plaintiffs have standing to remedy a past wrong, namely the constitutionally violative original Ordinance, regardless of whether they are suffering an injury today. Second, even when one's focus is properly directed to the original Ordinance, Plaintiffs were not grandfathered in as the Village suggests. As discussed above, most of the plaintiffs were subject to banishment within six months of the Ordinance's passage. Plaintiffs further argue that O'Connell and Hoffman suffered stress because they knew they would have to leave the Village if they ever left their current homes. As before, the Village does not differentiate between each set of plaintiffs. The Court finds, then, that all Plaintiffs but Norgaard have standing because they suffered injury by way of the Ordinance. Norgaard is different because Plaintiffs do not attempt to argue that he suffered a violation of his equal protection rights. (Docket # 48 at 4–5). The Court must, therefore, deny summary judgment to him on this claim.

[13] [14] The Village next attacks the substance of Plaintiffs' equal protection claim. The Fourteenth Amendment's Equal Protection Clause “commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be *962 treated alike.” *City*

of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) (quotation omitted). Usually, laws pass muster under the Equal Protection Clause “if the classification drawn by the statute is rationally related to a legitimate state interest.” *Id.* at 440, 105 S.Ct. 3249. However, when a statute burdens a person's fundamental constitutional rights, courts apply a higher level of scrutiny. *See Atty. Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 904, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986).

[15] [16] The parties dispute whether Plaintiffs are members of a protected class, such that the Court would need to give increased scrutiny to the Ordinance. The Court need not wade into that fray, as the Ordinance fails to pass even the lesser threshold of rationality. To prove an equal protection claim under rational basis review, Plaintiffs must show: “(1) the [Village] intentionally treated [them] differently from others similarly situated, (2) the [Village] intentionally treated [them] differently because of [their] membership in the class to which [they] belonged, and (3) the difference in treatment was not rationally related to a legitimate state interest.” *Smith v. City of Chicago*, 457 F.3d 643, 650–51 (7th Cir. 2006). “Under this lenient standard,” the Seventh Circuit instructs, a law “must be upheld if [the Court] can reasonably conceive of any justification for it.” *Shaw v. Smith*, 206 F. Fed.Appx. 546, 548 (7th Cir. 2006).

[17] Plaintiffs contend that the Ordinance violates their equal protection rights because it treats certain Designated Offenders differently from others without reason. Those in the first chart category, who were domiciled in the Village at the time of their last offense, were allowed to remain in the Village. Those in the other three chart categories, who were not so domiciled, were variously blocked from moving into the Village, compelled to leave in a short time frame, or forced to remain in their current home forever if they wished to stay in the Village. The Village has admitted that it has no evidence that the difference between these groups—domicile at the time of their last offense—has any bearing on their safety risk to the community.

The Village makes no attempt to address this claim. Instead, it appears to believe that Plaintiffs advance an equal protection claim based on their status as sex offenders versus non-sex offenders. The Village states its position as follows: “The Village of Pleasant Prairie certainly has a rational basis for protecting children against the risks of recidivism of convicted sex offenders.” (Docket # 46 at 12). This is not the relevant question, and because of its misunderstanding

of Plaintiffs' claim, the Village offers almost no relevant argument in opposition to the actual claim presented.

[18] Even so, the Court must uphold a law if it “can reasonably conceive of any justification for it.” *Shaw*, 206 F. Fed.Appx. at 548. Thus, the Court would likely be compelled to find the Ordinance constitutional if the Village had offered any evidence providing such a justification, even as late as its briefing on the instant motion. It did not, and this failure leaves the Court no choice but to conclude that the Ordinance violated Plaintiffs' equal protection rights in making an irrational domicile-based distinction between Designated Offenders. This comports with the purpose of the Equal Protection Clause. The “bare ... desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973). In light of Pollocoff's comments, and the lack of evidence supporting the Ordinance's restrictions, it appears this is precisely what motivated the Village's action.

*963 5. CONCLUSION

In light of the foregoing, the Court grant Plaintiffs' request for summary judgment as to the liability elements of Counts One and Two of their Second Amended Complaint, for all of the plaintiffs save Norgaard. Norgaard is entitled to summary judgment on Count One but not Count Two. Plaintiffs' damages on those counts will be determined by the jury. The Court treats Plaintiffs' claims for injunctive relief as abandoned. This matter remains set for a pretrial conference on May 9, 2017, and a jury trial beginning on May 15, 2017.

Accordingly,

IT IS ORDERED that Plaintiffs' motion for summary judgment (Docket # 41) be and the same is hereby **GRANTED in part** and **DENIED in part** in accordance with the terms of this Order; and

IT IS FURTHER ORDERED that Plaintiffs' motion to file an oversized brief (Docket # 44) be and the same is hereby **GRANTED**.

All Citations

249 F.Supp.3d 951

Footnotes

- 1 Plaintiffs spell the name “Dirkson” in their Second Amended Complaint, (Docket # 30 at 1, 9–11), and “Derkson” in their summary judgment materials, (Docket # 42 at 13–15). The Court will use “Derkson,” the name he signed to his affidavit, (Docket # 43–8 at 3), and amend the case caption accordingly.
- 2 Plaintiffs also requested leave to file an oversized brief. (Docket # 44). Though much of the excess of the brief was ultimately unnecessary, the Court will nevertheless grant the request.
- 3 The facts discussed below are drawn from the parties' respective factual briefs and responses thereto unless otherwise noted. (Docket # 45 and # 49). The Court further notes that the Village raises a number of “disputes” in its response to Plaintiffs' statement of facts. See, e.g., (Docket # 45 at 8). The “disputes” are inappropriate because they cite no evidence, and are generally pure legal argument, which is reserved for the parties' legal memoranda, not factual briefing. The Court has ignored those attempted “disputes.”
- 4 Norgaard is the manager of the King's Motel, where a number of other designated offenders also live. He did not fear the Ordinance because he was domiciled in the Village at the time he committed his last offense, and the other offenders in the Motel would be moving away, eliminating any conflict with the 500-foot restriction. Norgaard thus fell into the first chart category.
- 5 O'Connell lived at a home owned entirely by his girlfriend and did not pay rent. He was thus exempt, per the fourth chart category, from having to move out of the Village, so long as he did not leave the home. He was nonetheless told that he had to leave the Village. The misunderstanding was corrected during the course of this litigation, specifically by a letter sent to O'Connell on August 4, 2016.
- 6 Hoffman lived with his mother rent-free, and so fell into the fourth chart category. When his mother decided to sell her home and move to senior housing, Hoffman knew the Ordinance would prevent him from staying in the Village.
- 7 This fact is undisputed as to Hoffman, Sanders, Antrim, and Wooten. It is not explicitly stated as to Derkson or Johnson, but the other facts related to those plaintiffs suggest that they are covered by the third chart category. In any event, it is undisputed that Derkson and Johnson were told that they were subject to the Ordinance and would have to leave the Village.

- 8 Plaintiffs' opening brief discusses their entitlement to compensatory damages for the stress and fear they suffered while the Ordinance remained in force. Confusingly, the brief does not explain why Plaintiffs did so; did Plaintiffs want the Court to award damages at the summary judgment stage? The Village believed so, and responded that Plaintiffs' evidence does not adequately support their claim for damages at this stage. Plaintiffs' reply clarifies that they do not seek an award of damages now, but wish to have their damages evaluated by the jury at trial. With that clarification, the propriety of Plaintiffs' damages becomes a non-issue. Plaintiffs could have prevented confusion for all involved by appropriately titling their motion as one for partial summary judgment.
- 9 The Village cites two Wisconsin appellate court opinions upholding sex offender residency restrictions. Neither case has much persuasive value. *Menomonee Falls v. Ferguson* decided whether an offender was protected by an ordinance's grandfather clause, and said nothing of the constitutionality of the ordinance. See generally 334 Wis.2d 131, 799 N.W.2d 473 (App. 2011). *City of South Milwaukee v. Kester* actually addressed the ex post facto issue. 347 Wis.2d 334, 830 N.W.2d 710 (App. 2013). *Kester* found that the ordinance passed muster under the Ex Post Facto Clause because it did not banish the plaintiff sex offender and, even without an individual risk assessment, the city was entitled to make a reasonable categorical judgment that all sex offenders are dangerous to the community. *Id.* at 719–21. *Kester* is unpersuasive for two reasons. First, the Ordinance is different from *Kester*'s ordinance because it includes an expulsion provision. Second, in line with the above-cited federal precedent, this Court disagrees with *Kester* to the extent that a broad, evidence-free assumption about sex offenders (*Kester* mentions no data or studies on the dangerousness of such persons in the community) is sufficient to make a regulation non-punitive.
- 10 In fact, the Village apparently had evidence that the Ordinance could be counterproductive. Pollocoff stated that the Ordinance could have a negative effect on sex offender recidivism and community safety by making them outcasts. *Snyder* discussed the same issue:
- In fact, one statistical analysis in the record concluded that laws such as SORA actually *increase* the risk of recidivism, probably because they exacerbate risk factors for recidivism by making it hard for registrants to get and keep a job, find housing, and reintegrate into their communities. See [J.J. Prescott & Jonah E. Rockoff, *Do Sex offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & Econ. 161 (2011)].
- Snyder*, 834 F.3d at 704–05 (emphasis in original).

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Attachment: City Attorney3_Hoffman v Village of Pleasant Prairie (6025 : Sex Offender Residency Restrictions)