



11333 N. Cedarburg Road
Mequon, WI 53092
Phone: 262-236-2914
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www.ci.mequon.wi.us

Office of the City Clerk

BOARD OF APPEALS
Thursday, May 20, 2021
6:00 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 also join the meeting online or by phone.

Please go to <https://global.gotomeeting.com/join/303255173> to join the meeting online or call into the meeting by telephone by dialing 1-877-309-2073 and enter access code 303-255-173.

WRITTEN PUBLIC COMMENTS may be submitted in advance of the meeting. Written comments should be directed to the City Clerk's Office at least 2 hours prior to the meeting by email at cfochs@ci.mequon.wi.us or 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 and PUBLIC HEARING APPEARANCES will be accepted only from members of the public who register in advance. Registration shall be made by sending an email to City Clerk Caroline Fochs at cfochs@ci.mequon.wi.us or by leaving a message at 262-236-2912 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, Roll Call
- 2) Approve meeting minutes of May 6, 2021

3) Discussion

ORDINANCE 2021-1592 - An Ordinance Amending Section 50-100 of the Mequon Municipal Code Relating to Sex Offender Residency Restrictions and Child Safety Zones and Section 2-466 of the Municipal Code Relating to the Powers and Duties of the Board of Appeals; **Recommended by Public Safety Committee May 11, 2021.**

4) Adjourn

Dated: May 17, 2021

/s/ Kathleen Massey, Chairman

.....
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. Any questions regarding this agenda may be directed to the City Clerk's Office at 262-236-2914, Monday through Friday, 8:00 AM – 4:30 PM.

**draft**

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BOARD OF APPEALS
Thursday, May 6, 2021
6:00 PM
Virtual Meeting

Minutes

1) Call to Order, Roll Call

Chairman Massey called the meeting to order at 6:00 PM.

Present:

Chair Kathleen Massey
Vice Chair William Komisar
Board Member Thomas Flanagan
Board Member Ramona Larson
Board Member Joseph Russell
Board Member Robert Stern
Board Member Lori Kornblum -- **Excused**

Also present: City Attorney Brian Sajdak, City Clerk Caroline Fochs, City Inspector Supervisor Mike Hadley, David and Jean Johnson, press and interested public.

Chairman Massey explained the rules of virtual meeting per Mayor Wirth's Proclamation.

All parties appearing before the Board of Appeals were sworn.

2) Approve meeting minutes of April 1, 2021

RESULT: **Approved by Roll Call Vote [Unanimous]**

MOVED BY: Board Member Russell

SECONDED BY: Board Member Larson

AYES: Massey, Komisar, Larson, Russell

ABSTAIN: Stern

Attachment: 05-06-21_Draft BOA minutes (6255 : Board of Appeals meeting minutes of May 6, 2021)

3) Hear evidence concerning; debate, deliberate and decide the request of:

Appellants: David and Jean Johnson

Owners: David and Jean Johnson

Appeal: Opportunity will be afforded to all interested in being heard concerning the petition by David and Jean Johnson appealing the Architectural Board decision of April 12, 2021 to reject the submitted plans for the accessory structure at 3330 W. Freistadt Road.

Hearing no objection, Chairman Massey opened the public hearing.

There were no written public comments received in advance of this meeting. Chairman Massey stated the appeal.

Inspection Supervisor Hadley stated that the appellants are requesting to build a 36' x 56' accessory structure and that the Architectural Board denied the replacement of the old metal structure with a new metal structure. The denial was based on their opinion that metal buildings do not belong in residential zoning districts and a more suitable design could have been submitted with material more conducive to a residential use. Staff recommends approval of the originally submitted building plans since it is appropriate for a metal building to be erected at this location, adjacent to and surrounded on four sides by a commercial property (golf course), the plans were approved by the Landmark Commission and other buildings of this size have been approved in residential zoning districts.

The appellant Jean Johnson responded to the Architectural Board Chairman Scott Reed's written comments: 1) The Architectural Board guidelines states that "Materials must be compatible with those of the residence. Generally metal sheds are discouraged"; 2) The guidelines also state "The several elevations of the home must be consistent with one another and compatible with the existing homes in the neighborhood and the natural features of the lot and surroundings in order to avoid disharmony and the appearance of haphazard development"; and 3) The size of storage sheds must reflect residential usage, not that of a commercial application....". She stated that their home is fieldstone and a fieldstone shed would be inappropriate, the proposed colors would match the colors on the home and roof, the shutters and cupolas would also match the home, their home is not in a residential area of homes, the building is barely visible from the road, the proposed building is one-third smaller than the original building, there is no garage on the property. If the appeal is lost the appellants would be forced to build a larger, grand-fathered in building.

Motion to close the public hearing.

RESULT: Approved by Voice Acclamation [Unanimous]

MOVED BY: Board Member Komisar

SECONDED BY: Board Member Larson

AYES: Massey, Komisar, Larson, Russell, Stern

Board discussion ensued:

- The proposed building is surrounded on four sides by the golf course and is not a residential setting.
- The proposed building is replacing the existing building.
- The new metal building is replacing an old metal building.
- The Landmark Commission has already approved this type of structure.
- The size of the proposed structure is similar to others in the R-1 zoning district.

Motion to reverse the decision of the Architectural Board and order approval of the structure as presented.

RESULT: **Approved by Roll Call Vote [Unanimous]**

MOVED BY: Board Member Stern

SECONDED BY: Board Member Larson

AYES: Massey, Komisar, Larson, Russell, Stern

4) Adjourn

Motion to adjourn at 6:20 PM.

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

MOVED BY: Board Member Komisar

SECONDED BY: Board Member Larson

AYES: Massey, Komisar, Larson, Russell, Stern

Respectfully Submitted,
Kathy Andrykowski
Deputy Clerk



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www.ci.mequon.wi.us

Office of City Attorney

TO: Board of Appeals
FROM: Brian Sajdak, City Attorney
DATE: May 5, 2021
SUBJECT: ORDINANCE 2021-1592 An Ordinance Amending Section 50-100 of the Mequon Municipal Code Relating to Sex Offender Residency Restrictions and Child Safety Zones and Amending Section 2-466 relating to the Powers and Duties of the Board of Appeals

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. 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. Following discussion on potential changes by the Public Safety Committee at its last two meetings, the proposed ordinance reflects the input from Committee members and reflects on two changes from the version that was presented to the Committee in April. First, to be consistent the treatment of all other boards and commission in the City by the Municipal Code, the ordinance was amended to place the general information (membership, voting requirements, etc.) related to the Sex Offender Residency Appeals Board in Chapter 2. Second, there were a few typographical changes that were made (e.g., changing “his/her designee” to the gender neutral “their designee”).

Following action by the Public Safety Committee at its May meeting, the proposed ordinance was amended to provide that the reviewing body would be the Board of Appeals. The version attached makes this change in both section 50-100 and also within Chapter 2.

Discussion

For the benefit of the Council, there are two key areas of concern based on the legislative changes and the Pleasant Prairie decision. This memo will address the concerns generally and the

determination/recommendation of the Committee. If you wish to review all of the various options that were discussed, you should review my memo in the March Public Safety Committee meeting packet, located here:

<http://mequoncitywi.iqm2.com/Citizens/FileOpen.aspx?Type=30&ID=33622&MeetingID=2762>

1. Chapter 980 Preemption

Of the issues identified above, the easiest to address is the Chapter 980 preemption issue. Under Chapter 980, certain “sexually violent persons” may be committed for treatment following a petition and hearing process. In 2016 the Legislature changed the law to provide that local residency restrictions do not apply to those sexually violent persons that have been released into the community under supervision of the Department of Health Services (similar to probation in the criminal context). 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, child care 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.* These restrictions apply only to offenders who are under active supervision of the Department of Health Services.

After discussion, the Committee decided to amend the ordinance to create restrictions for this class of offenders that match the state restrictions. The primary reason for this is that if the ordinance simply excluded these offenders from the code, 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 if necessary.

2. Pleasant Prairie and other Caselaw 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.

On the first of these issues, the Committee considered different alternatives to ensure that the City’s restrictions are not overly restrictive. Ultimately, given the divergence between the more open and rural parts of the City and the more densely populated portions, the Committee ultimately determined that the current 2,000-foot buffer ensured the most consistent treatment to the City as a whole. Absent any bright-line rule by the courts for what percentage of housing needs to be available to withstand judicial scrutiny, the Committee also considered the list of locations to which the buffer would apply. In reviewing the current list of locations, some were removed because of the lower probability of unsupervised children being present (e.g., golf courses, gyms like Orange Theory), some were removed because of a lack of notice and the difficulty to track locations (e.g., home school locations and non-permitted home-based businesses), and some were clarified to address interpretation issues (e.g., day cares being limited to state licensed facilities). The end result is a map that reflects what appears to be a reasonable balance between the competing interests of protecting children and the rights of offenders.

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. Thus, the proposed ordinance creates an appeals 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.

An additional discussion point is the original domicile clause. In short, this provision provides that someone who was not a resident of Mequon at the time of the offense is ineligible to reside anywhere in the City. This provision was included in the Franklin ordinance (which became the model for most other communities, including Mequon) because they were primarily attempting to block the state from putting a group home for offenders near the Milwaukee County Jail facility located there. However, when you read the concerns about banishment in the caselaw, it becomes increasingly difficult to believe that this restriction would survive judicial scrutiny on its face. That said, some of the research suggests that an offender is less likely to re-offend if they have a solid support system. Accordingly, there may be instances where it is better for an offender to reside in Mequon than other places because, for example, they have close family connections in the City. The appeals board allows for an individualized assessment of an offender and also represents something less than outright banishment from the community.

Lastly, the Court's frequently make note of communities that have (or have not) done a thorough analysis of the problem in their decisions. Quite frankly, the available research on sex offenders and recidivism rates is a bit all over the board. The common element does appear that the risk is far more individualized based upon a wide variety of factors including proximity, familiarity, support, and the like. For this reason, the exemption/appeals process outlined in the proposed ordinance requires an analysis of all of these factors. However, I need to emphasize that as the policy maker you should familiarize yourself with the available information. To that end, the April Public Safety Committee packet included most of the most recent studies and caselaw on the issue. I encourage you to review the numerous (and unfortunately slightly voluminous) attachments from that meeting, which can be found here:

http://mequoncitywi.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=2763&MediaPosition=&ID=6127&CssClass=>

Recommendation

A motion to recommend to the Common Council the adoption of An Ordinance Amending Section 50-100 of the Mequon Municipal Code Relating to Sex Offender Residency Restrictions and Child Safety Zones and Amending Section 2-466 relating to the Powers and Duties of the Board of Appeals

or

Such other action as the committee sees fit.

Attachments:

Exhibit A - Marked-up Sex Offender Ordinance Exhibit for Council with Board of Appeals (DOCX)

Clean Sex Offender Ordinance for Council with Board of Appeals (DOCX)

Map Current (PDF)

Map 2000 Buffer Proposed (PDF)

COMMON COUNCIL
OF THE
CITY OF MEQUON

ORDINANCE 2021-1592

An Ordinance Amending Section 50-100 of the Mequon Municipal Code Relating to Sex Offender Residency Restrictions and Child Safety Zones and Amending Section 2-466 relating to the Powers and Duties of the Board of Appeals

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

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

C. According to a 1997 report titled *Sex Offenses and Offenders*, by the U.S. Department of Justice, the median age of the victims of imprisoned sexual assaulters was less than 13 years old and the median age of rape victims was 22 years; and 19% of those serving time for sexual assault and an estimated 24% of those serving time for rape had been on probation or parole at the time of the offense.

D. In 1994, it was estimated that 12% of imprisoned violent sex offenders had a prior conviction for rape or sexual assault while 61% had a prior felony for other crimes.

E. Furthermore, the Common Council has reviewed the findings of a number of State Legislatures across the United States, including, Pennsylvania, Alabama, Iowa, Florida, Maine and Louisiana, as they pertain to laws enacted which relate to, and in part impose restrictions upon sex offenders with respect to residency.

F. The Common Council has reviewed the decision of the U. S. Court of Appeals for the 8th Circuit, in *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005)(Citations omitted), providing in part:

“The record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward, fear of, or a bare desire to harm a politically unpopular group. Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the risk of re-offense. Even experts in the field could not predict with confidence whether a particular sex offender will re-offend, whether an offender convicted of an offense against a teenager will be among those who “cross over” to offend against a younger child, or the degree to which regular proximity to a place where children are located enhances the risk of re-offense against children. One expert in the district court opined that it is just

“common sense” that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense. The policymakers of Iowa are entitled to employ such “common sense,” and we are not persuaded that the means selected to pursue the State’s legitimate interest are without rational basis.”

G. Since 2007, there have been three Wisconsin state court cases addressing the legality of sex offender residency restriction ordinances: *City of Franklin v. Steven R. Hanke*, 07-CV-9978 (Milw. County Cir. Ct. 2007), *Village of Menomonee Falls v. Ferguson*, 2011 WI App 73 (Wis. Ct. App. 2011), and *City of South Milwaukee v. Kester*, 2013 WI App 50 (Wis. Ct. App. 2013).

H. In each of the three Wisconsin cases, the courts upheld the legality and enforceability of sex offender residency restriction ordinances.

I. The City of Mequon is a place of residence for families with children.

J. The Common Council has determined that the establishment of sex offender residency restrictions is reasonable and necessary to protect the health, safety and welfare of the residents and the Community.

BASED UPON THE FOREGOING RECITALS, the Common Council of the City of Mequon, Wisconsin do ordain as follows:

SECTION I

Section 50-100 of the Mequon Municipal Code is amended to read as shown on the attached Exhibit A (NOTE: added text is double underlined; deleted text is ~~struck through~~).

SECTION II

Section 2-466 is amended to read as follows (NOTE: added text is double underlined; deleted text is ~~struck through~~):

2-466. Powers and Duties. The board shall have powers and duties set forth in Wis. Stats., § 62.23(7)(e) and in sections 50-100(i) and 58-41.

SECTION III

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 IV

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

repealed.

SECTION V

This Ordinance shall become effective the day after its publication as provided by law.

Approved by: John Wirth, Mayor

Date Approved: May 20, 2021

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on May 20, 2021.

Caroline Fochs, City Clerk

Published: _____

EXHIBIT A

Sec. 50-100. Sex offender residency restrictions and child safety zones.(a) Findings, Intent and Purpose.

- (1) The Common Council has the power, pursuant to Wis. Stat. § 61.34, to enact legislation promoting the health, safety, and welfare of the public.
- (2) The Common Council has reviewed the holdings and findings of the following court cases: *McKune v. Lile*, 122 S. Ct. 2017 (2002); *Smith v. Doe*, 123 S. Ct. 1140 (2003); *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005); *Vill. of Menomonee Falls v. Ferguson*, 334 Wis. 2d 131 (Wis. Ct. App. 2011); *City of S. Milwaukee v. Kester*, 347 Wis. 2d 334 (Wis. Ct. App. 2013); *Hoffman v. Vill. of Pleasant Prairie*, 249 F. Supp. 3d 951 (E.D. Wis. 2017); *Evenstad v. City of West St. Paul*, 306 F. Supp. 3d 1086 (D. Minn. 2018); *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018); and *City of Werner v. City of Green Bay*, 743 Fed. Appx. 10 (7th Cir. 2018).
- (3) Based upon a 2003 study by the United States Department of Justice, Bureau of Justice Statistics, titled *Recidivism of Sex Offenders Released from Prison in 1994*, sex offenders released from prison were four times more likely to be rearrested for a sex crime as compared to non-sex offenders released from prison. Of those individuals included in the study, forty percent (40%) of new sex crimes committed by those sex offenders released from prison had occurred within the first twelve (12) months of release. Further, child molesters who were released from prison were at least six (6) times more likely to be rearrested for another sex crime against a child as compared to a non-sex offender released from prison. Based upon a 2019 study by the United States Department of Justice, Bureau of Justice Statistics, titled *Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14)*, released sex offenders were more than three times as likely as other released prisoners to be arrested for rape or sexual assault, and released sex offenders accounted for 5% of releases in 2005 and 16% of arrests for rape or sexual assault during the 9-year follow-up period.
- (4) The Common Council has conducted a review of other reports and studies related to creating and implementing specific desistance factors to reduce recidivism of sex offenders. The studies and reports that have been reviewed include the following: *Recidivism After Release from Prison*, State of Wisconsin Department of Corrections, Tatar, J. & Jones, M. (August 2016); *Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism*, Crime and Delinquency 61(3), 375-401, Steiner, B., Makarios, M. D., & Travis, L. F. (2015); *Examining Sexual Offenses through a Sociological Lens: A Socio-Cultural Exploration of Causal and Desistance Theories*, European Journal of Probation, 8(3), 170-184, Kyle, D. (2016); *Criminal Careers in the Short-Term: Intra-Individual Variability in Crime and Its Relation to Local Life Circumstances*, American Sociological Review, 60(5), 655-673, Horney, J., Osgood, W., & Marshall I.H., (1995); and *An Exploration of Protective Factors Supporting Desistance from Sexual Offending*, Sexual Abuse: A journal of Research and Treatment, 27(1), 16-33, Mann, R.E., de Vries Robbe, M., Maruna, S., & Thornton, D. (2015).
- (5) While acknowledging that literature on sex offender recidivism, sex offender desistance, and sex offender residency restrictions contain studies which report varying effectiveness of certain strategies, the Common Council intends to use these strategies and studies to best create a regulatory framework which protects the children of the City of Mequon, yet allows for a constructive and safe assimilation of designated sex offenders into the community.
- (6) The Common Council finds that the risk of recidivism decreases over time from the date of the last conviction, especially in circumstances where offenders have community connections, goals, and employment. The Common Council is also aware that absent a domicile clause, the City would have open doors for non-resident sex offender residency when other communities have closed doors, inviting a substantial increase in child sex offender placements, thereby increasing potential negative impacts on the health, safety, welfare, and additional cost to the City and its residents. Studies show increased recidivism rates for offenders who frequently move or do not have established community networks. These studies support maintaining a domicile clause thereby limiting designated offenders with no ties to the community and increasing the likelihood that a designated offender implements appropriate and

existing community support while allowing the community to remain intelligently attentive, aware, and provide adequate and appropriate intervention if needed.

- (7) 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 without parental or adult supervision at public parks, pools and other public and private places of enrichment activities, recreation, entertainment and amusement.
- (8) Accordingly, the Common Council has created this regulatory measure designed to protect the health and safety of the children in the City against the threat posed by certain designated sex offenders. Sex offenders who prey on children represent a substantial danger to victims, target a particularly vulnerable group within the community who are less able to articulate or report abuse, and create a significant impact on law enforcement time and community resources to investigate abuses and mitigate risks. This section is also intended to demonstrate the City's resolute goal of protecting children in areas of potential vulnerability and impart the community's necessary expectation that designated sex offenders released into the community must maintain the community's confidence by demonstrating safe, productive, and law-abiding behavior while residing within the City. It is the intent of the Common Council that this regulatory scheme is civil and non-punitive in order to serve the City's compelling interest to promote, protect, and improve the health, safety and welfare of all citizens of the City.

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 including natural areas owned by private parties such as the Ozaukee-Washington Land Trust and the Milwaukee Metropolitan Sewerage District which are open for public access;
 - b. A public swimming pool, beach, or other aquatic facility open to the public;
 - c. A public library;
 - d. A recreational trail, but not an on-street bike path or a sidewalk;
 - e. A public playground;
 - f. A public or private school for children in grades pre-K through 12, but not including homeschool locations;
 - g. Athletic fields used by children;
 - h. A movie theatre; or

i. ~~— A day care center;~~

ji. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy, swimming school or music school, excluding any such facility that is located within a residence for which a home occupation approval has not been granted by the City.

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 ~~p~~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 ~~p~~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 ~~p~~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 ~~p~~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 ~~p~~Person which was established prior to the ~~effective date of this chapter~~ establishment of such use.
- (3) The ~~p~~Person is a minor residing with a parent or legal guardian who serves as parent or legal guardian to no more than one ~~p~~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 ~~p~~Person shall be permitted to reside in the City of Mequon, unless such ~~p~~Person was domiciled in the City of Mequon at the time of the offense resulting in the ~~p~~Person's most recent conviction for committing the sexually violent offense and/or crime against children.

(f) *Child safety zones.* No ~~p~~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 including natural areas owned by private parties such as the Ozaukee-Washington Land Trust and the Milwaukee Metropolitan Sewerage District which are open for public access;
- (2) A public swimming pool, beach, or other aquatic facility open to the public;
- (3) A public library;
- (4) A recreational trail, but not an on-street bike path or a sidewalk;
- (5) A public playground;
- (6) A public or private school for children in grades pre-K through 12, but not including homeschool locations;
- (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, excluding any such facility that is located within a residence for which a home occupation approval has not been granted by the City; or

~~(11) A public or private golf course or range;~~

~~(12) Aquatic facilities open to the public; and~~

~~(13)~~ (10) 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 ~~p~~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 ~~p~~Person violates any provision of this chapter, in addition to the aforesaid injunctive relief, such ~~p~~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.

(i) *Appeal.* A Person may request an exemption from this section.

- (1) Procedure. A Person may request an exemption from this section by submitting a written request for exemption, including any pertinent rationale for an exemption, to the Mequon Police Department prior to establishing a residence that would be in violation of this section or within fifteen (15) days after notification that the Person is in violation of this section. The Chief of Police or their designee shall conduct a review of the request for an exemption using any pertinent information and the criteria set forth in subsection (3) below. The Chief of Police or their designee shall approve, approve an exemption subject to necessary conditions (hereafter "conditional exemption"), or deny the request. The Chief of Police or their designee shall issue the decision within thirty (30) days of receiving the request for exemption and shall provide a written copy of that decision to the Person, the City Clerk, and the City Attorney. Any request for an exemption which has not been approved, approved for a conditional exemption, or denied by the Chief or their designee within thirty (30) days of the request shall be deemed to be denied for the purposes of this section.
- (2) The decision by the Chief of Police or their designee may be appealed by the Person within thirty (30) days by submitting a written appeal to the Board of Appeals (hereafter "the Board") via the City Clerk's Office. The Board shall hold a hearing on each appeal, during which the Board may review any pertinent information and may accept oral and written statements from any person.
- (3) The Chief of Police or their designee and/or the Board shall base their decision upon any factors related to the City's interest in promoting, protecting, and improving the health, safety, and welfare of the community, including but not limited to:
 - a. The nature of the predicate offense causing the appellant to be a designated offender including the relationship of the offender to the victim, the presence or use of force, and the presence of enticement.
 - b. Police reports related to the predicate offense if available.
 - c. Proximity of the requested residence to the victim or a child safety zone.
 - d. The age of the offense, offender, and victim.
 - e. Recommendation of the probation or parole officer, if one exists.
 - f. Recommendation of the Police Department.
 - g. Recommendation of any treatment practitioner.
 - h. Proposals for safety measures and assurances by the Person.
 - i. Conditions to be placed on any exception or variance from the requirements of this section.
 - j. Support systems in place for the Person.
 - k. Who the Person will be or is living with at the prohibited location.
 - l. Statements of the surrounding community or victim.
 - m. Treatment, sobriety, or rehabilitative measures taken by the Person.
 - n. The Person's current employment or social activities.
 - o. The Person's criminal history.
 - p. The Person's level of credibility and remorse.
 - q. Alternative options for housing.
 - r. The need to protect the victim or similarly situated individuals.

- (4) The Board shall issue a decision by a majority vote. The Board may decide to deny an exemption, issue an exemption, or issue a conditional exemption. A written copy of the decision shall be provided to the Person. The Person must consent to the terms of the conditional exemption for the conditional exemption to be valid, and must demonstrate acceptance of the terms of the conditional exemption by signing and dating a copy of the Board's decision and conditions. The Person must provide a copy of the signed conditional exemption to the City Clerk's Office and the Mequon Police Department. The Person will have fourteen (14) days from the date the written conditional exemption is issued to accept and return a signed copy to the appropriate locations or the conditional exemption will be deemed as void and the appeal denied by the Board. The Person need not sign an exemption that has been denied by the Board or an exemption approved without any necessary conditions by the Board.
- (5) A conditional exemption may include, but is not limited to, the following terms:
- Curfew restrictions.
 - Cohabitant restrictions or requirements.
 - Sobriety restrictions.
 - Conduct restrictions.
 - Residency restrictions.
- (6) If an exemption or conditional exemption is granted by the Chief or their designee or the Board, that exemption will only apply to the specific Person who had applied for the exemption at the requested residence and shall not be transferable to any other Person or to any other location.
- (7) An exemption expires when the Person who was granted said exemption changes their domicile and/or changes their residence, whether within the City or outside the City.
- (8) An exemption or conditional exemption issued by the Chief or their designee or the Board may be revoked by the Chief or their designee if the Person is found to have violated the conditions or there is probable cause to believe the Person has committed (an) additional act(s), which had occurred either before or after the exemption or conditional exemption was issued, that would cause a Person to be classified as a designated offender. The Chief or their designee shall provide written notice to the Person that the exemption or conditional exemption has been revoked. This notice shall be deemed properly delivered if sent by either first class mail or hand delivered to the Person's last known address. If the Person cannot be located, the notice shall be deemed to be properly delivered if a copy is left at the Person's address which had been exempted in the presence of some competent member of the family at least fourteen (14) years of age or a competent adult currently residing there. The revocation of an exemption may be appealed to the Board pursuant to the above procedure.
- (9) For the purposes of this section, pursuant to Wisconsin Statute Section 68.16, the City of Mequon is specifically electing not to be governed by Chapter 68 of the Wisconsin Statutes.
- (10) If the Board denies the request for exemption or upholds a revocation of exemption or conditional exemption, the Person may appeal the decision within thirty (30) days to the Ozaukee County Circuit Court.
- (j) Exception for placements under Wis. Stat. Chapter 980. To the extent required by Wis. Stat. § 980.135, a Person who is subject to supervised release under Wis. Stat. § 980.08 shall not be governed by the foregoing provisions of this section restricting or prohibiting a Person from residing in certain locations, but shall instead be subject to all of the following:*
- A Person who is on supervised release under Wis. Stat. § 980.08 shall not reside within 1,500 feet of the real property comprising any school premises, child care facility, public park, place of worship, or youth center. A person is not in violation of this provision if any school premises, child care facility, public park, place of worship, or youth center is established within 1,500 feet from the Person's residence after they are placed in the residence under this section;
 - In addition, if the Person who is on supervised release under Wis. Stat. § 980.08 is also a serious child sex offender, as defined in Wis. Stat. § 980.01(4m), such Person is further prohibited from residing on a property adjacent to a property where a child's primary residence exists. For the purpose of this subsection, adjacent properties are properties that share a property line without regard to a public or private road if the living quarters on each property are not more than 1,500 feet apart. A Person is not

in violation of this provision if a child establishes primary residence in a property adjacent to the Person's residence after the Person is placed in the residence under this section; and

- (3) This subsection (j) shall apply only so long as the Person is subject to supervised release under Wis. Stat. Chapter 980, is residing where they are ordered to reside under Wis. Stat. § 980.08, and the Person is in compliance with all court orders issued under Wis. Stat. Chapter 980.

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

(a) Findings, Intent and Purpose.

- (1) The Common Council has the power, pursuant to Wis. Stat. § 61.34, to enact legislation promoting the health, safety, and welfare of the public.
- (2) The Common Council has reviewed the holdings and findings of the following court cases: *McKune v. Lile*, 122 S. Ct. 2017 (2002); *Smith v. Doe*, 123 S. Ct. 1140 (2003); *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005); *Vill. of Menomonee Falls v. Ferguson*, 334 Wis. 2d 131 (Wis. Ct. App. 2011); *City of S. Milwaukee v. Kester*, 347 Wis. 2d 334 (Wis. Ct. App. 2013); *Hoffman v. Vill. of Pleasant Prairie*, 249 F. Supp. 3d 951 (E.D. Wis. 2017); *Evenstad v. City of West St. Paul*, 306 F. Supp. 3d 1086 (D. Minn. 2018); *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018); and *City of Werner v. City of Green Bay*, 743 Fed. Appx. 10 (7th Cir. 2018).
- (3) Based upon a 2003 study by the United States Department of Justice, Bureau of Justice Statistics, titled *Recidivism of Sex Offenders Released from Prison in 1994*, sex offenders released from prison were four times more likely to be rearrested for a sex crime as compared to non-sex offenders released from prison. Of those individuals included in the study, forty percent (40%) of new sex crimes committed by those sex offenders released from prison had occurred within the first twelve (12) months of release. Further, child molesters who were released from prison were at least six (6) times more likely to be rearrested for another sex crime against a child as compared to a non-sex offender released from prison. Based upon a 2019 study by the United States Department of Justice, Bureau of Justice Statistics, titled *Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14)*, released sex offenders were more than three times as likely as other released prisoners to be arrested for rape or sexual assault, and released sex offenders accounted for 5% of releases in 2005 and 16% of arrests for rape or sexual assault during the 9-year follow-up period.
- (4) The Common Council has conducted a review of other reports and studies related to creating and implementing specific desistance factors to reduce recidivism of sex offenders. The studies and reports that have been reviewed include the following: *Recidivism After Release from Prison*, State of Wisconsin Department of Corrections, Tatar, J. & Jones, M. (August 2016); *Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism*, Crime and Delinquency 61(3), 375-401, Steiner, B., Makarios, M. D., & Travis, L. F. (2015); *Examining Sexual Offenses through a Sociological Lens: A Socio-Cultural Exploration of Causal and Desistance Theories*, European Journal of Probation, 8(3), 170-184, Kyle, D. (2016); *Criminal Careers in the Short-Term: Intra-Individual Variability in Crime and Its Relation to Local Life Circumstances*, American Sociological Review, 60(5), 655-673, Horney, J., Osgood, W., & Marshall I.H., (1995); and *An Exploration of Protective Factors Supporting Desistance from Sexual Offending*, Sexual Abuse: A journal of Research and Treatment, 27(1), 16-33, Mann, R.E., de Vries Robbe, M., Maruna, S., & Thornton, D. (2015).
- (5) While acknowledging that literature on sex offender recidivism, sex offender desistance, and sex offender residency restrictions contain studies which report varying effectiveness of certain strategies, the Common Council intends to use these strategies and studies to best create a regulatory framework which protects the children of the City of Mequon, yet allows for a constructive and safe assimilation of designated sex offenders into the community.
- (6) The Common Council finds that the risk of recidivism decreases over time from the date of the last conviction, especially in circumstances where offenders have community connections, goals, and employment. The Common Council is also aware that absent a domicile clause, the City would have open doors for non-resident sex offender residency when other communities have closed doors, inviting a substantial increase in child sex offender placements, thereby increasing potential negative impacts on the health, safety, welfare, and additional cost to the City and its residents. Studies show increased recidivism rates for offenders who frequently move or do not have established community networks. These studies support maintaining a domicile clause thereby limiting designated offenders with no ties to the community and increasing the likelihood that a designated offender implements appropriate and

existing community support while allowing the community to remain intelligently attentive, aware, and provide adequate and appropriate intervention if needed.

- (7) 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 without parental or adult supervision at public parks, pools and other public and private places of enrichment activities, recreation, entertainment and amusement.
- (8) Accordingly, the Common Council has created this regulatory measure designed to protect the health and safety of the children in the City against the threat posed by certain designated sex offenders. Sex offenders who prey on children represent a substantial danger to victims, target a particularly vulnerable group within the community who are less able to articulate or report abuse, and create a significant impact on law enforcement time and community resources to investigate abuses and mitigate risks. This section is also intended to demonstrate the City's resolute goal of protecting children in areas of potential vulnerability and impart the community's necessary expectation that designated sex offenders released into the community must maintain the community's confidence by demonstrating safe, productive, and law-abiding behavior while residing within the City. It is the intent of the Common Council that this regulatory scheme is civil and non-punitive in order to serve the City's compelling interest to promote, protect, and improve the health, safety and welfare of all citizens of the City.
- (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 including natural areas owned by private parties such as the Ozaukee-Washington Land Trust and the Milwaukee Metropolitan Sewerage District which are open for public access;
 - b. A public swimming pool, beach, or other aquatic facility open to the public;
 - c. A public library;
 - d. A recreational trail, but not an on-street bike path or a sidewalk;
 - e. A public playground;
 - f. A public or private school for children in grades pre-K through 12, but not including homeschool locations;
 - g. Athletic fields used by children;
 - h. A movie theatre; or
 - i. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy, swimming school or music school, excluding any such facility that is located within a residence for which a home occupation approval has not been granted by the City.
- 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 establishment of such use.
 - (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 including natural areas owned by private parties such as the Ozaukee-Washington Land Trust and the Milwaukee Metropolitan Sewerage District which are open for public access;
 - (2) A public swimming pool, beach, or other aquatic facility open to the public;
 - (3) A public library;
 - (4) A recreational trail, but not an on-street bike path or a sidewalk;
 - (5) A public playground;
 - (6) A public or private school for children in grades pre-K through 12, but not including homeschool locations;
 - (7) Athletic fields used by children;
 - (8) A movie theatre;
 - (9) Any specialized school for children, including, but not limited to a gymnastics academy, dance academy, swimming school or music school, excluding any such facility that is located within a residence for which a home occupation approval has not been granted by the City; or
 - (10) 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.
- (i) *Appeal.* A Person may request an exemption from this section.
 - (1) *Procedure.* A Person may request an exemption from this section by submitting a written request for exemption, including any pertinent rationale for an exemption, to the Mequon Police Department prior to establishing a residence that would be in violation of this section or within fifteen (15) days after notification that the Person is in violation of this section. The Chief of Police or their designee shall conduct a review of the request for an exemption using any pertinent information and the criteria set forth in subsection (3) below. The Chief of Police or their designee shall approve, approve an exemption subject to necessary conditions (hereafter "conditional exemption"), or deny the request. The Chief of Police or their designee shall issue the decision within thirty (30) days of receiving the request for exemption and shall provide a written copy of that decision to the Person, the City Clerk, and the City

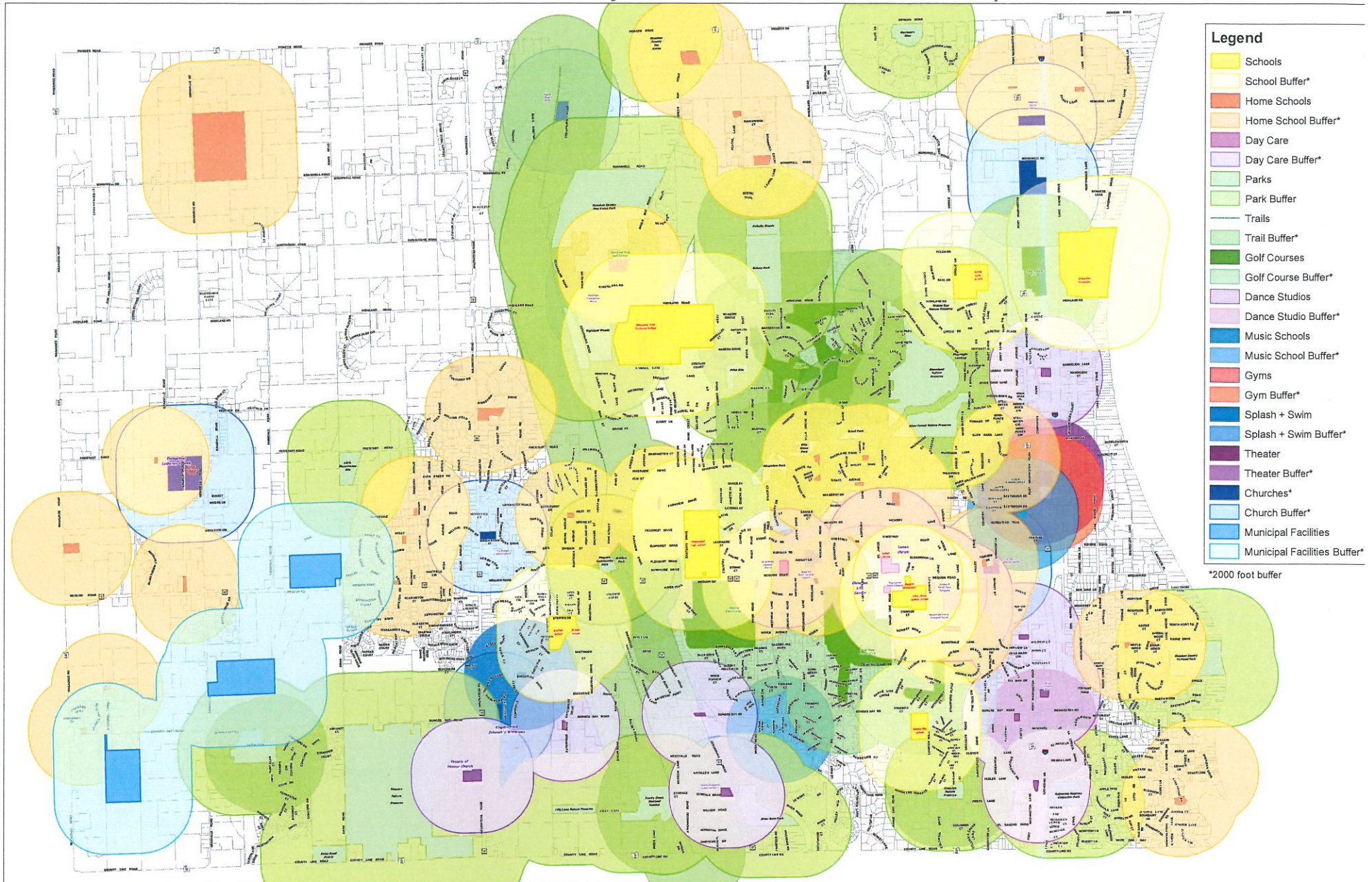
Attorney. Any request for an exemption which has not been approved, approved for a conditional exemption, or denied by the Chief or their designee within thirty (30) days of the request shall be deemed to be denied for the purposes of this section.

- (2) The decision by the Chief of Police or their designee may be appealed by the Person within thirty (30) days by submitting a written appeal to the Board of Appeals (hereafter "the Board") via the City Clerk's Office. The Board shall hold a hearing on each appeal, during which the Board may review any pertinent information and may accept oral and written statements from any person.
- (3) The Chief of Police or their designee and/or the Board shall base their decision upon any factors related to the City's interest in promoting, protecting, and improving the health, safety, and welfare of the community, including but not limited to:
 - a. The nature of the predicate offense causing the appellant to be a designated offender including the relationship of the offender to the victim, the presence or use of force, and the presence of enticement.
 - b. Police reports related to the predicate offense if available.
 - c. Proximity of the requested residence to the victim or a child safety zone.
 - d. The age of the offense, offender, and victim.
 - e. Recommendation of the probation or parole officer, if one exists.
 - f. Recommendation of the Police Department.
 - g. Recommendation of any treatment practitioner.
 - h. Proposals for safety measures and assurances by the Person.
 - i. Conditions to be placed on any exception or variance from the requirements of this section.
 - j. Support systems in place for the Person.
 - k. Who the Person will be or is living with at the prohibited location.
 - l. Statements of the surrounding community or victim.
 - m. Treatment, sobriety, or rehabilitative measures taken by the Person.
 - n. The Person's current employment or social activities.
 - o. The Person's criminal history.
 - p. The Person's level of credibility and remorse.
 - q. Alternative options for housing.
 - r. The need to protect the victim or similarly situated individuals.
- (4) The Board shall issue a decision by a majority vote. The Board may decide to deny an exemption, issue an exemption, or issue a conditional exemption. A written copy of the decision shall be provided to the Person. The Person must consent to the terms of the conditional exemption for the conditional exemption to be valid, and must demonstrate acceptance of the terms of the conditional exemption by signing and dating a copy of the Board's decision and conditions. The Person must provide a copy of the signed conditional exemption to the City Clerk's Office and the Mequon Police Department. The Person will have fourteen (14) days from the date the written conditional exemption is issued to accept and return a signed copy to the appropriate locations or the conditional exemption will be deemed as void and the appeal denied by the Board. The Person need not sign an exemption that has been denied by the Board or an exemption approved without any necessary conditions by the Board.
- (5) A conditional exemption may include, but is not limited to, the following terms:
 - a. Curfew restrictions.
 - b. Cohabitant restrictions or requirements.
 - c. Sobriety restrictions.
 - d. Conduct restrictions.
 - e. Residency restrictions.
- (6) If an exemption or conditional exemption is granted by the Chief or their designee or the Board, that exemption will only apply to the specific Person who had applied for the exemption at the requested residence and shall not be transferable to any other Person or to any other location.
- (7) An exemption expires when the Person who was granted said exemption changes their domicile and/or changes their residence, whether within the City or outside the City.
- (8) An exemption or conditional exemption issued by the Chief or their designee or the Board may be revoked by the Chief or their designee if the Person is found to have violated the conditions or there is

probable cause to believe the Person has committed (an) additional act(s), which had occurred either before or after the exemption or conditional exemption was issued, that would cause a Person to be classified as a designated offender. The Chief or their designee shall provide written notice to the Person that the exemption or conditional exemption has been revoked. This notice shall be deemed properly delivered if sent by either first class mail or hand delivered to the Person's last known address. If the Person cannot be located, the notice shall be deemed to be properly delivered if a copy is left at the Person's address which had been exempted in the presence of some competent member of the family at least fourteen (14) years of age or a competent adult currently residing there. The revocation of an exemption may be appealed to the Board pursuant to the above procedure.

- (9) For the purposes of this section, pursuant to Wisconsin Statute Section 68.16, the City of Mequon is specifically electing not to be governed by Chapter 68 of the Wisconsin Statutes.
 - (10) If the Board denies the request for exemption or upholds a revocation of exemption or conditional exemption, the Person may appeal the decision within thirty (30) days to the Ozaukee County Circuit Court.
- (j) *Exception for placements under Wis. Stat. Chapter 980.* To the extent required by Wis. Stat. § 980.135, a Person who is subject to supervised release under Wis. Stat. § 980.08 shall not be governed by the foregoing provisions of this section restricting or prohibiting a Person from residing in certain locations, but shall instead be subject to all of the following:
- (1) A Person who is on supervised release under Wis. Stat. § 980.08 shall not reside within 1,500 feet of the real property comprising any school premises, child care facility, public park, place of worship, or youth center. A person is not in violation of this provision if any school premises, child care facility, public park, place of worship, or youth center is established within 1,500 feet from the Person's residence after they are placed in the residence under this section;
 - (2) In addition, if the Person who is on supervised release under Wis. Stat. § 980.08 is also a serious child sex offender, as defined in Wis. Stat. § 980.01(4m), such Person is further prohibited from residing on a property adjacent to a property where a child's primary residence exists. For the purpose of this subsection, adjacent properties are properties that share a property line without regard to a public or private road if the living quarters on each property are not more than 1,500 feet apart. A Person is not in violation of this provision if a child establishes primary residence in a property adjacent to the Person's residence after the Person is placed in the residence under this section; and
 - (3) This subsection (j) shall apply only so long as the Person is subject to supervised release under Wis. Stat. Chapter 980, is residing where they are ordered to reside under Wis. Stat. § 980.08, and the Person is in compliance with all court orders issued under Wis. Stat. Chapter 980.

Sex Offender Residency Restrictions - September 2018



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Sex Offender Residency Restrictions - April 2021

