

CHAPTER 17

ZONING CODE

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17.01 PURPOSE AND INTERPRETATION. (1) PURPOSE. The purpose of this chapter is: to promote the health, safety, morals and general welfare; to regulate and restrict the height, number of stories and size of buildings and other structures; the percentage of lot which may be occupied; the size of yards, courts and other open spaces; the density of population; the location and use of buildings, structures and land for trade, industry, residence and other purposes; and for the purpose of dividing the Village into districts of such number, shape and area as are deemed best suited to carry out such purposes; to provide a method for its administration and enforcement and to provide penalties for its violation.

(2) MINIMUM REQUIREMENTS. The provisions of this chapter shall be minimum requirements adopted to promote the health, safety, morals, comfort, prosperity and general welfare of the Village.

(3) INTERPRETATION. It is not intended by this chapter to repeal, abrogate, annul, impair or interfere with existing easements, covenants or agreements between parties or with any rules, regulations, or permits previously adopted or issued pursuant to laws; provided, where this chapter imposes greater restrictions upon the use of buildings or premises, or upon the height of a building, or requires larger open spaces than are required by other rules, regulations or permits or by easements, covenants or agreements, the provisions of this chapter shall govern.

17.02 DISTRICTS. (1) ENUMERATED. For the purposes of this chapter, the Village is divided into 7 districts, as follows:

- (a) Single-Family Residence District.
- (b) Multiple-Family Residence District.
- (c) Business District.
- (d) Industrial District.
- (e) Agricultural District.
- (f) Public District
- (g) Residential/Prospective Business District

(2) DISTRICT MAP. The boundaries of the districts enumerated herein are established on the map entitled "Zoning Map, Plain, Wisconsin," dated July 14, 1987, which map is on file with the Village Clerk in the Municipal Building office, and is made a part of this chapter. All notations and references are as much a part of this chapter as though specifically described herein.

(a) Streets and Alleys. The district boundaries are either streets or alleys, unless otherwise shown, and where the designation on the District Map indicates that the various districts are approximately bounded by lot lines, such lot lines shall be construed to be the boundary of the district.

(c) Others. In unsubdivided property, the location of the district boundary lines shown on the District Map shall be determined by the use of the scale shown on such map.

17.03 DEFINITIONS. For the purposes of this chapter, certain words and terms are defined as follows:

(1) GENERAL. Words used in the present tense include the future; the singular number includes the plural number and the plural number includes the singular number; the word "building" includes the word "structure"; the word "shall" is mandatory and not directory. Any words not herein defined shall be construed as defined in the State and Village building codes.

(2) AIRPORT, PUBLIC. Any airport which complies with the definition contained in §114.002(3), Wis. Stats., or any airport which serves or offers to serve common carriers engaged in air transport.

(3) ALLEY. A street or thoroughfare less than 21 feet wide and affording only secondary access to abutting property.

(4) APARTMENT HOUSE. See "Dwelling, Multiple".

(5) BASEMENT. A story any part of which is underground which, if occupied for living purposes, shall be counted as a story for purposes of height measurement.

(6) BOARDING HOUSE. A building other than a hotel where meals, or lodging and meals, are furnished for compensation for 3 or more persons not members of the family.

(7) BUILDING. Any structure used, designed or intended for the protection, shelter, enclosure, or support of persons, animals or property. When a building is divided into separate parts by unpierced walls extending from the ground up, each part shall be deemed a separate building.

(8) BUILDING, ACCESSORY. A building or portion of building subordinate to the main building and used for a purpose customarily incidental to the permitted use of the main building or the use of the premises.

When an accessory building is a part of the main building or is substantially attached thereto or within 4 feet of the main building, the side yard, setback and rear yard requirements of the main building shall be applied to the accessory building; except that where the accessory building is 50 feet or more from the front lot line, the side yard measurement as to such accessory building shall be only 3 feet. This exception takes precedence over all other provisions of this chapter, regardless of whether or not such accessory building is attached to the main building or is within 4 feet thereof.

(9) BUILDING, HEIGHT OF. The vertical distance from the average curb level in front of the lot or the finished grade at the building line, whichever is higher, to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or the average height of the highest gable of a gambrel, hip or pitch roof.

(10) DWELLING, ONE FAMILY. A detached building designed for and occupied exclusively by one family.

(11) DWELLING, TWO FAMILY. A detached or semi-detached building designed for and occupied exclusively by 2 families, living independently of each other.

(12) DWELLING, MULTIPLE. A building or portion thereof designed for and occupied by more than 2 families including tenement houses, row houses, apartment houses and apartment hotels.

(13) EXCEPTION. The use of property, including the use and location of buildings, the size of lots and the dimensions of required yards, otherwise not allowable under the terms of this chapter, which is permissible by reason of special provisions of this chapter, or for which a special permit may be issued by the Village board or the Board of Zoning Appeals, under conditions specified in this chapter.

(14) FAMILY. Any number of individuals related by blood or marriage, or not to exceed 5 persons not so related, living together as a single housekeeping unit, including any domestic servants.

(15) FRONTAGE. All the property abutting on one side of a street between 2 intersecting streets or all the property abutting on one side of a street between an intersecting street and the dead end of a street.

(16) GARAGE, PRIVATE. An accessory building or space for the storage only of not more than 2 motor-driven vehicles.

(17) GARAGE, PUBLIC. Any building or premises, other than a private or a storage garage, where motor-driven vehicles are equipped, repaired, serviced, hired, sold or stored.

(18) GARAGE, STORAGE. Any building or premises used for the storage only of motor-driven vehicles, pursuant to previous arrangements and not to transients, where no equipment, parts, fuel, grease or oil is sold and vehicles are not equipped, serviced, repaired, hired or sold. No commercial motor vehicle exceeding 2 tons capacity shall be stored in any storage garage.

(19) HOME OCCUPATION. A gainful occupation conducted by members of the family only, within their place of residence; provided no article is sold or offered for sale on the premises except such as is produced by such occupation, no stock in trade is kept or sold, no mechanical equipment is used other than such as is permissible for purely domestic purposes, no sign other than one unlighted name plate no more than one foot square is installed and no person other than a member of the immediate family living on the premises is employed.

(20) HOTEL. A building in which lodging, with or without meals, is offered to transient guests for compensation and in which there are more than 6 sleeping rooms with no cooking facilities in any individual room or apartment.

(21) LODGING HOUSE. A building other than a hotel where lodging only is provided for compensation for more than 6 persons not members of the family.

(22) LOT. A parcel of land having a width and depth sufficient to provide the space necessary for one main building and its accessory building, together with the open spaces required by this chapter and abutting on a public street of officially approved place.

(23) LOT, CORNER. A lot abutting on 2 or more streets at their intersection, provided that the interior angle of such intersection is less than 135°.

(24) LOT, DEPTH OF. The mean horizontal distance between the front and rear lot lines.

(25) LOT, INTERIOR. An lot other than a corner lot.

(26) LOT, THROUGH. An interior lot having frontage on 2 non-intersecting streets.

(27) LOT LINES. The lines bounding a lot as defined herein.

(28) NONCONFORMING USE. A building or premises lawfully used or occupied at the time of the passage of this chapter or amendments thereto, which use or occupancy does not conform to the regulations of this chapter or any amendments thereto.

(29) PROFESSIONAL OFFICE. The office of a doctor, practitioner, dentist, minister, architect, landscape architect, professional engineer, lawyer, author, musician or other recognized profession. When established in a residential district, a professional office shall be incidental to the residential occupation; not more than 50% of the floor area of only one story of a dwelling unit shall be occupied by such office; and, only one unlighted name plate, not exceeding one square foot in area and containing the name and profession of the occupant of the premises, shall be exhibited.

(30) SETBACK. The minimum horizontal distance between the street line and the nearest point of a building or any projection thereof, excluding uncovered steps.

(31) STABLE. "Stable" shall have the same meaning as "garage", one draft animal or saddle horse shall be the equivalent of one self-propelled vehicle.

(32) STORY. That portion of a building included between the surface of a floor and the surface of the floor next about it, or, if there is no floor above it, the space between the floor and the ceiling next above it. A basement or cellar having $\frac{1}{2}$ or more of its height above grade shall be deemed a story for purposes of height regulations.

(33) STORY, HALF. The space under any roof except a flat roof which, if occupied for residential purposes shall be counted as a full story.

(34) STREET. All property dedicated or intended for public or private street purposes or subject to public easements therefor, and 21 ft. or more in width.

(35) STREET LINE. A dividing line between a lot, tract of parcel of land and a contiguous street.

(36) STRUCTURAL ALTERATIONS. Any change in the supporting members of a building or any substantial change in the roof structure or in the exterior walls.

(37) STRUCTURE. Anything constructed or erected, the use of which required a permanent location on the ground or attachment to something having a permanent location on the ground.

(38) TEMPORARY STRUCTURE. A movable structure not designed for human occupancy nor for the protection of goods or chattels and not forming an enclosure.

(39) VISION CLEARANCE. An unoccupied triangular space at the street corner of a corner lot which is bounded by the street lines and a setback line connecting points specified by measurement from the corner on each street line.

(40) YARD. An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.

(41) YARD, FRONT. A yard extending the full width of the lot between the front lot line and the nearest part of the main building, excluding uncovered steps.

(42) YARD, REAR. A yard extending the full width of the lot between the rear lot line and nearest part of the main building, excluding uncovered steps.

(43) YARD, SIDE. A yard extending from the front yard, or the front lot line if there is no front yard, to the rear yard, being the minimum horizontal distance between a building and the side lot line.

(44) BED AND BREAKFAST ESTABLISHMENTS. Any place of lodging that: provides four (4) or fewer rooms for rent; is the Owner's personal residence; is occupied by the Owner at the time of the rental; and, which serves meals only to the family members and their guests or its lodgers.

17.04 COMPLIANCE REQUIRED. The use of buildings hereafter erected, converted, enlarged or structurally altered, and the use of any land shall be in compliance with the regulations established herein for the district in which such land or building is located.

17.05 CHANGE OF LOT AREA OR POPLUATION. No lot area shall be so reduced that the yards and open spaces shall be smaller than is required by this chapter, nor shall the density of population be increased in any manner except in conformity with the area regulations hereby established for the district in which a building or premises is located.

17.06 YARD RESTRICTIONS. No part of a yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space required for another building.

17.07 LOTS REQUIRED. Every building hereafter erected, converted, enlarged or structurally altered shall be located on a lot and in no case shall there be more than one main building on one lot.

17.08 SIGNS. (1) PERMIT REQUIRED. No sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a building permit except those signs defined in Section 17.08(2). The sign shall also meet all the structural requirements of the Building Code. See Fee Schedule for cost of building permit.

(2) SIGNS EXCEPTED. All signs are prohibited in all single-family residential and agricultural districts except the following:

(a) Signs Over Show Windows or Doors of a nonconforming business establishment announcing without display or elaboration only the name and occupation of the proprietor and not to exceed two (2) feet in height and ten (10) feet in length.

(b) Real Estate Signs not to exceed eight (8) square feet in area which advertise the sale, rental, or lease of the premises upon which said signs are temporarily located.

(c) Name, Home Occupation, Professional Office, and Warning Signs not to exceed two (2) square feet located on the premises.

(d) Farm Signs giving the name of the farm, farm owner or commodities produced shall not exceed eight (8) square feet in total area.

(e) Bulletin Boards for public, charitable or religious institutions not to exceed eight (8) square feet in area located on the premises.

(f) Memorial Signs, tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of metal and affixed flat against a structure.

(g) Official Signs. Such as traffic control, parking restrictions, information and notices.

(h) Temporary Signs or banners when authorized by the Planning Commission.

(3) **SIGNS PERMITTED.** (a) Business and Industrial Districts subject to the following restrictions:

1. Wall Signs placed against the exterior walls of buildings shall not extend for more than six (6) inches outside of a building's wall surface; shall not exceed four hundred square feet in area for any one premises; and, shall not exceed twenty (20) feet in height above the mean centerline street grade.

2. Projecting Signs fastened to, suspended from or supported by structures shall not exceed one hundred square feet in area for any one premises; shall not extend more than six (6) feet into any required yards, shall not extend more than three (3) feet into any public right-of-way; shall not be less than ten (10) feet from all side lot lines; shall not exceed a height of twenty (20) feet above the mean centerline street grade; and shall not be less than ten (10) feet above the sidewalk nor fifteen (15) feet about a driveway or an alley.

3. Ground Signs shall not exceed twenty (20) feet in height, shall meet all yard requirements for the district in which it is located, shall not exceed one hundred square feet in total advertising area.

4. Roof Signs are PROHIBITED.

(b) Multi-Family Residence District subject to following restrictions:

1. Wall Signs placed against the exterior walls of buildings shall not extend more than six (6) inches outside of a building's wall surface, shall not exceed fifteen (15) square feet in area for any one premises, and shall not exceed ten (10) feet in height above the mean centerline street grade.

(2) Projecting Signs fastened to, suspended from or supported by structures shall not exceed fifteen (15) square feet in area for any one premises; shall not extend more than six (6) feet into any required yard; shall not extend more than three (3) feet into any public right-of-way; shall not be less than ten (10) feet from all side lot lines; shall not exceed a height of twenty (20) feet above the mean centerline street grade; and, shall not be less than ten (10) feet above the sidewalk, nor fifteen (15) feet above a driveway or an alley.

3. Ground Signs shall not exceed ten (10) feet in height, shall meet all yard requirements for the district in which it is located, shall not exceed fifteen (15) square feet in total advertising area.

4. Roof Signs are PROHIBITED.

(4) EXISTING SIGNS. Signs lawfully existing at the time of the adoption or amendment of this Ordinance may be continued although the use, size or location does not conform with the provisions of this Ordinance.

(5) SIGN REMOVAL. At the termination of an advertised use, all signs advertising that use shall be removed from public view within thirty (30) days. Responsibility for violations shall be with the property owner, according to the latest tax roll listing.

(6) SIGNS GENERAL. No flashing, moving, or apparent moving signs shall be permitted except for time and temperature and changeable copy displays. Lighted signs shall be shielded to prevent glare onto adjoining properties or onto the public street. No sign shall be placed on trees, utility poles or traffic sign posts.

17.15 SINGLE-FAMILY RESIDENCE DISTRICT. (1) CHARACTERISTICS OF DISTRICT. The single family residence district is a district which has low density developments of single family dwellings and accessory buildings.

(2) USES PERMITTED BY RIGHT. (a) Single-family dwellings and accessory buildings.

(b) Satellite T.V. Dish Structures.

(3) USES PERMITTED BY CONDITIONAL GRANT. Home occupations and hobbies.

(4) YARD REQUIREMENTS. A minimum lot size of 7,500 square feet shall apply to all residential districts. There shall be a setback line of not less than thirty (30) feet, except that where 40% of the frontage on one side of a street between two intersecting streets has an average setback line of more or less than thirty (30) feet, such average setback line shall be the setback line. The side yard measurement of the main structure shall be a minimum of ten (10) feet and the total side yard on any lot shall equal at least twenty-five (25) feet. If a lot shall be less than seventy-five (75) feet, then the side lot line requirements may be reduced by five (5) feet on each side. For purposes of determining compliance with this provision on lots that are other than rectangular, the average width of the side yards shall be used in determining distances from the building to the lot lines. No part of any building shall be located nearer than forty (40) feet from the rear lot line, except on those lots that are less than 130 feet in depth. On such lots, no part of any building shall be located nearer than twenty (20) feet from the rear lot line. If a garage is erected on any corner lot so as to open on a side yard, such garage shall be located at least twenty (20) feet from the side lot line so as to permit parking of an automobile in the driveway serving the garage.

(5) SUBDIVIDING LOTS. No lot or lots shall be subdivided so as to create additional building sites. Adjoining lot owners may relocate side lot lines to permit orderly development of their lots. More than one lot may be used for a building site. Nothing contained herein shall prohibit three lots being used for two building sites, etc.

(6) GENERAL REQUIREMENTS. (a) The ground floor area of a single-family dwelling shall be at least 1,200 square feet for a one-story or a story-and-a-half dwelling, and at least 800 square feet for a single-family dwelling of two or more floors. The total floor area for a dwelling of two or more floors shall be not less than 1,400 square feet. If a building shall be erected on a lot of less than 7,000 square feet, then the square footage in each of the above instances may be reduced to 75% of said areas. For purposes of this provision of this subsection, porches and garages shall be excluded in computing area.

(b) All homes in a neighborhood shall be visually compatible, whether constructed all at one (1) time or in stages over a period of time.

(c) All areas not utilized for buildings, parking, driveways or pedestrian walkways shall be suitably landscaped with shrubs, ground cover, seeding or similar plantings and maintained in good condition.

(7) FUEL TANKS. All new installations of fuel tanks, and all replacements of existing tanks of all kinds, shall be buried underground. Tank burial inside the Wellhead Protection Area must comply with Section 13.14 of the Municipal Code. Tanks shall be placed at least three (3) feet above the water table. If it shall be impossible to bury a tank under these restrictions, then approval shall be obtained from the Village Board before the fuel tank shall be placed. 12/08/04

17.16 MULTIPLE-FAMILY RESIDENCE DISTRICT. (1) CHARACTERISTICS OF DISTRICT. The multiple-family residence district is characterized by high-density dwelling units, having proximity to major streets.

(2) USES PERMITTED BY RIGHT. (a) Multiple-family dwellings and accessory buildings.

(b) Satellite T.V. Dish Structures.

(c) Bed and Breakfast Establishments and accessory buildings, provided that such establishments:

(1) Meet all requirements and hold all licenses as provided by the Wisconsin Statutes and the Wisconsin Administrative Code;

(2) Comply with the requirements of the Wisconsin Administrative Code applicable to Multiple-Family Residences with respect to smoke alarms and fire extinguishers; and,

(3) Comply with all applicable provisions of this zoning ordinance.

(4) YARD REQUIREMENTS. (a) Yard requirements for a multi-family residence shall be the same as single-family residence for setbacks and side yard requirements and the lot size shall be a minimum of 2,500 square feet per unit built.

(b) A minimum of two (2) off-street parking spaces shall be provided for each unit.

(5) (a) Area requirements for any multi-family residence erected shall comply with all of the restrictions applicable to a single-family residence, except that the minimum size of each unit shall be 750 square feet. For purposes of this provision of these restrictions, porches and garages shall be excluded in computing area.

(b) All multi-family residences in a neighborhood shall be visually compatible, whether constructed all at one (1) time or in stages over a period of time.

(c) All areas not utilized for buildings, parking, driveways or pedestrian walkways shall be suitably landscaped with shrubs, ground cover, seeding or similar plantings and maintained in good condition.

(6) FUEL TANKS. All new installations of fuel tanks and all replacements of existing fuel tanks, of all kinds, must be buried. Such tanks shall be placed at least three (3) feet above the water table. If it shall be impossible to bury a tank under these restrictions, then approval shall be obtained from the building inspector before the fuel tank shall be placed.

17.17 BUSINESS DISTRICT. (1) CHARACTERISTICS OF DISTRICT. The business district is characterized by retail trade, financial, professional and entertainment activities serving the entire community.

(2) USES PERMITTED BY RIGHT. (a) Retail trade and service establishments dealing directly with consumers.

(b) Financial and professional occupations.

(c) Business offices.

(d) Property in this district presently used for single-family residences shall be allowed to continue its single family residential status.

(e) Satellite T.V. Dish Structures.

17.18 INDUSTRIAL DISTRICT. CHARACTERISTICS OF DISTRICT. The industrial district is characterized by uses such as manufacturing, fabrication, packing, packaging, assembly, repairs, terminals and depots, storage and similar uses which are not compatible with business or residential uses.

(2) USES PERMITTED BY RIGHT. Any use compatible with the characteristics of the district.

17.19 AGRICULTURAL DISTRICT. (1) INTENT. The Agricultural District provides exclusively for agricultural uses. The intent is to help conserve good farming areas and prevent uncontrolled, uneconomical spread of residential development which results in excessive cost to the community for premature provisions of essential public improvements and services such as sewer and water lines.

(2) USE REGULATIONS. (a) Permitted Uses. The following uses are permitted:

1. Farming and dairying, provided buildings in which farm animals are kept are at least 100 feet from the nearest residential or commercial district.

2. Forestry, grazing, hatcheries, nurseries, orchards, paddocks, poultry raising, stables and truck farming.

3. In-season roadside stands for the sale of farm products produced on the premises, and up to two (2) unlighted signs not larger than eight (8) square feet on each advertising such sale.

4. Fur farms, kennels, insect-breeding facilities, greenhouses and other agricultural uses that may cause noxious odor or noise or create health or sanitation hazards are permitted, but only with written permission of the Planning and Development Commission pursuant to the procedures prescribed for zoning amendments by Section 62.23(7)(d)(2), Wis. Stats.

5. Farm dwellings for those resident owners and workers actually engaged in the principal permitted uses.

6. Uses customarily incidental to any of the above uses, including residential uses incidental to any of the above uses.

17.20 PUBLIC DISTRICT. (1) CHARACTERISTICS OF DISTRICT. The public district is characterized by uses of the general public or for public benefit.

(2) USES PERMITTED BY RIGHT. The following uses are permitted:

(a) Public parks and golf courses.

(b) Churches.

(c) Schools.

(d) Playgrounds.

(e) Cemeteries.

(f) Municipal utilities and buildings.

(g) Clubs.

17.21 RESIDENTIAL/PROSPECTIVE BUSINESS DISTRICT. (1) CHARACTERISTICS OF DISTRICT. The residential/prospective business district is presently characterized by use for single-family residences. Future use can be changed to use as a business district by zoning change procedures, except that provisions of §17.22(7) of this Municipal Code shall not apply in this instance.

17.22 MULTI-ZONE AREAS. Certain parcels of land within the Village may carry more than one district restriction, as indicated by the Village Zoning map on file in the office of the Village Clerk/Treasurer.

17.23 ANNEXATIONS. Any area annexed to the Village shall automatically be designated part of the Single-Family Residence District, unless another designation is included in the annexation ordinance. The Planning and Development Commission and the Village Board shall proceed forthwith to consider the appropriate zoning for any annexed area.

17.24 VILLAGE PLANNING AND DEVELOPMENT COMMISSION. For the composition, appointments, terms of office, powers and duties of this Commission, see Section 1.28 of this Code.

17.25 CHANGES AND AMENDMENTS TO THE ZONING CODE. (1) AUTHORITY. Whenever the public necessity, convenience, general welfare or good zoning practice require, the Village Board shall by ordinance change the district boundaries or amend, change or supplement the regulations or classifications established by this chapter or amendments hereof.

(2) INITIATION. A change or amendment may be initiated by the Village Board, the Planning and Development Commission or by verified petition of one or more of the owners or lessees of property within the area proposed to be changed.

(3) PETITIONS. For any change to the district boundaries or classifications, petitions shall be submitted to the Village Clerk/Treasurer accompanied by the following information:

(a) Property owners' name and addresses of all properties lying within three hundred (300) feet of the area proposed for change.

(b) Plot plan drawn to the scale of not less than one hundred (100) feet to the inch showing the area to be changed, its location, and the location of existing district boundaries, the location and existing use of all properties within three hundred (300) feet of the area.

(c) Proposed use of the area petitioned to be rezoned and any other information required by the Planning and Development Commission.

(d) A fee payment for each application shall be payable to the Village Clerk/Treasurer in the amount of **(see fee schedule)**.

(4) RECOMMENDATIONS. The Village Planning and Development Commission shall review and study all amendments and changes and may recommend that the petition be granted as requested, modified or denied. The recommendation shall be made at a meeting subsequent to the meeting where the petition is first submitted. These recommendations shall be made in writing to the Village Board.

(5) HEARINGS. The Village Board shall hold a public hearing upon each recommendation giving at least fourteen (14) days notice by a Class 2 publication under Chap. 985, Wis. Stats., listing the time, place and changes or amendments proposed. The Village Board shall also give at least ten (10) days written notice to the clerk of any municipality within 1,000 feet of any land included in the change or amendment.

(6) VILLAGE BOARD'S ACTION. Following such hearing and after reviewing the Planning and Development Commission's recommendation, the Village Board shall vote on the passage of the proposed amendment to the regulations or change to the district boundaries. The Village Board may only overrule the Village Planning and Development Commission's recommendations by three-fourths (3/4) vote of the full board membership.

(7) PROTEST. In the event of a protest against such district change or amendment to the regulations of this chapter duly signed and acknowledged by the owners of 20% or more either of the areas of the included in such proposed change, or by the owners of 20% or more of the land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of 20% or more of the land directly opposite thereto extending one hundred (100) feet from the street frontages of such opposite land, such amendments or changes shall not become effective except by the favorable vote of three-fourths (3.4) of the full Village Board membership.

17.26 ZONING BOARD OF APPEALS. (1) COMPOSITION AND TERMS OF OFFICE. See section 1.29(1) of this Code.

(2) APPEALS TO THE ZONING BOARD OF APPEALS. Appeals may be taken by any person aggrieved by any zoning decision which would cause him undue hardship, or create conditions causing greater harmful effects than the initial condition. Such appeal shall be taken within thirty (30) days of the alleged grievance or judgment in question.

(3) POWERS OF THE BOARD OF APPEALS. In addition to the powers enumerated in Chapter 1.29 of this Code, the Board of Appeals shall have the following powers:

(a) ERRORS. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made.

(b) VARIANCES. To hear and grant appeals for variances as will not be contrary to the public interest, where, owing to practical difficulty or unnecessary hardship, so that the spirit and purposes of this Chapter shall be observed and the public safety, welfare, and justice secured. Use variances shall not be granted.

(c) INTERPRETATIONS. To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts after the Planning and Development Commission has made a review and recommendation.

(d) SUBSTITUTIONS. To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made and the Planning and Development Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.

(e) UNCLASSIFIED USES. To hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal uses permitted in the district and the Planning and Development Commission has made a review and recommendation.

(f) PERMITS. The Board may reverse, affirm wholly or partly, modify the requirements appealed from, and may issue or direct the issue of a permit.

(4) APPLICATION FOR APPEAL. The application for variation shall be filed with the Clerk/Treasurer. Applications may be made by the owner or lessee of the structure, land or water to be affected. The application shall contain the following information:

(a) Name and address of applicant of all properties lying within three hundred (300) feet to the area proposed for change.

(b) Statement that the applicant is the owner or the authorized agent of the owner of the property.

(c) Address and description of the property.

(d) Plat of Survey prepared by a registered land surveyor showing the following required information:

- (1) location;
- (2) boundaries;
- (3) dimensions;
- (4) elevations; and,
- (5) uses and sizes of subject site, existing and proposed structures, existing and proposed easements, street and other public ways, off-street parking, loading areas and driveways, existing highway access restrictions, existing and proposed street, side and rear

yards, and anything regarding abutting properties, such as location, elevation, and use of any abutting lands and their structures within forty (40) feet of the subject site.

(e) Additional information required by the Planning and Development Commission, Village Engineer, Board of Zoning Appeals or Village Zoning Officer.

(f) A fee payment for each variation application shall be payable to the Village Clerk/Treasurer in the amount of **(see fee schedule)**.

(5) PUBLIC HEARING OF APPLICATION. The Board of Appeals shall conduct at least one (1) public hearing on the proposed variation. Notice of such hearing shall be given not more than thirty (30) days and not less than ten (10) days before the hearing and shall give due notice to the parties in interest, the Zoning Officer and the Planning and development Commission. At the hearing the appellant or applicant may appear in person, by agent, or by attorney.

(6) ACTION OF THE BOARD OF APPEALS. For the Board to grant a variance it must find that:

(a) Denial of variation may result in hardship to the property owner due to physiological considerations. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.

(b) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought, and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

(c) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.

(d) The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

(e) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the flood protection elevation for the particular area, or permit standards lower than those required by state law.

(8) EXPIRATION. Variances or substitutions granted by the Board shall expire within one (1) year unless substantial work has commenced pursuant to such grant.

(9) REVIEW BY COURT OF RECORD. Any person or persons aggrieved by any decision of the Board of Zoning Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board of Zoning Appeals.

17.27 ADMINISTRATION AND ENFORCEMENT. It shall be the duty of the Zoning Officer of the Village to administer and enforce the provisions of this Chapter. The Zoning Officer

shall inspect the structures and land in the Village. When any violation of this Chapter shall be found by the Zoning Officer or when any purported violations shall be brought to his attention, it shall be mandatory upon the Zoning Officer to make an investigation. In the advent that said official determines that a violation of this Chapter does in fact exist, it shall be mandatory upon the Zoning Officer to serve written notice of said violation by registered mail or personal service upon the owner. In the advent that the owner shall fail to abate said violation within ten (10) days of the service of such notice, it shall then be mandatory upon the Zoning Officer to enforce Section 17.28 of this Code.

17.28 PENALTIES. Failure to comply with the provisions of this Chapter shall be regarded as violation. The owner of any building or structure, lot or land or part thereof, and/or the tenant or occupant of any building or structure, lot or land or part thereof, where anything in violation of this Code shall be placed or shall exist or be suffered, allowed or permitted to exist, and any architect, builder, developer, contractor, agent, person or corporation engaged in connection therewith and who assist in the commission of any such violation, shall each be guilty of a separate violation and upon conviction thereof shall each be liable to a forfeiture (**see fine schedule**), together with the cost of prosecution, and in default of payment of such forfeiture and costs of prosecution, shall be imprisoned up to ninety (90) days in the Sauk County Jail. Each day a violation is continued shall be considered a separate offense.

17.29 ADULT ESTABLISHMENT USES

A. Findings of Fact.

(1) The Village finds that adult establishments as defined in this chapter require special zoning in order to protect and preserve the health, safety, and welfare of the Village.

(2) Based on its review of the Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses; and based on its review of studies conducted in the City of Garden Grove, California; Newport News, Virginia; Adams County, Colorado; and Denver Colorado; and based on the findings incorporated in City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986); and Colman A. Young v. American Mini-Theaters, Inc., 427 U.S. 50 (1976), the Village finds that there is convincing evidence that the secondary effects of adult establishments include an increased risk of prostitution, high-risk sexual behavior, crime, and other deleterious effects upon existing business and surrounding residential areas, and decreased property values. The consumption of alcoholic beverages on the premises of an adult business exacerbates the deleterious secondary effects of such businesses on the community.

(3) The Village intends to control the impact of these secondary effects in order to protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of surrounding neighborhoods and areas.

(4) It is not the Village's intent to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of adult establishments while providing an outlet for First Amendment protected activities.

(5) In order to minimize and control the secondary effects of adult establishments upon the Village, it is the Village's intent to prevent the location of adult establishments within a certain distance of other specified locations which are incompatible with and would suffer from the secondary effects of adult establishments.

B. Uses.

The First Amendment and other provisions of the United States Constitution, as interpreted by the United States Supreme Court and other courts, require that adult establishments, as defined in this chapter, are entitled to certain protections, including the opportunity to locate in the Village. Therefore, an adult establishment shall be an allowed principal use in the Industrial zoning district, subject to the conditional use provisions set forth herein, and shall be a prohibited use in any other zoning district, including Planned Community Development Districts. The adult establishment may locate in the specified district only if all the requirements of this chapter and the zoning district's regulations are met.

C. Regulations applicable to all adult establishments.

(1) Hours of operation: No adult establishment shall be open for business at any time between the hours of 2:00 a.m. and 12:00 noon.

(2) Animals: No animals, except only for service animals, shall be permitted at any time at or in any adult establishment.

(3) Restricted access: No adult establishment patron shall be permitted at any time to enter into any of the non-public portions of any adult establishment, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of adult establishment employees. This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the permitted premises; provided, however, that any such persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.

(4) Exterior display: No adult establishment shall be maintained or operated in any manner that causes, creates, or allows public viewing of any adult material, or any entertainment depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," from any sidewalk, public or private right-of-way, or any property other than the lot on which the permitted premises is located. No portion of the exterior of an adult establishment shall utilize or contain any flashing lights, search lights, or spotlights, or any other similar lighting systems, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent specifically allowed by this chapter with regard to signs. This subsection shall apply to any advertisement, display, promotional material, decoration, or sign; to any performance or show; and to any window, door, or other opening.

(5) Sign limitations: Notwithstanding Article VI of this Chapter, all signs for adult establishments shall be flat wall signs. The business may have only one (1) non-flashing business sign which may only indicate the name of the business and identify it as an adult establishment and which shall not be larger than four (4) feet by four (4) feet. Temporary signs shall not be permitted in connection with any adult establishment.

(6) Noise: No loudspeakers or sound equipment audible beyond the adult establishment shall be used at any time.

(7) Manager's stations: Each adult establishment shall have one (1) or more manager's stations. The interior of each adult establishment shall be configured in such a manner that there is a direct and substantially unobstructed view from at least one (1) manager's station to every part of each area, except restrooms, of the establishment to which any adult establishment patron is permitted access for any purpose. The cashier's or manager's station shall be located so that someone working there can quickly move to physically halt any attempted or accidental entry by a minor. An employee shall occupy the station at all times when patrons are in and on the premises.

- (8) Adult booths prohibited: Adult booths shall be prohibited in all adult establishments.
- (9) No loitering policy: The adult establishment shall clearly post and enforce a no loitering policy.
- (10) Age limit restrictions: The adult establishment shall clearly post and enforce age-limit restrictions. A one-square-foot sign shall be placed on each public entrance which shall state "Admittance to adults only" and may include other pertinent business information.
- (11) Measuring disbursement distances: The distances in this section shall be measured by following a straight line, without regard to intervening structures, from the public entrance (existing or proposed) of an adult establishment to the nearest point of the protected use as described below.
- (12) Adequate parking: One (1) parking space per one hundred fifty (150) square feet of total gross floor area shall be provided in a lighted area on the permitted premises of an adult establishment.
- (13) Spacing requirement: No more than one (1) adult establishment may be located on any one (1) parcel.
- (14) Display windows prohibited: All points of access into structures containing adult establishments and all windows or other openings shall be located, constructed, covered, or screened in a manner which will prevent a view into the interior.
- (15) Location requirement: No permit shall be granted where the public entrance of the proposed adult establishment is within three hundred (300) feet of a residential use, residential district, house of worship, school, day care center, playground, public park, recreation area, library, or museum. In the case of an area zoned residential, the distance shall be measured from the nearest point on the residential district zoning boundary line. From an area not zoned residential but used for residential purposes, the measurement shall be taken from the public entrance of the adult establishment to the nearest entrance of the building in residential use. From schools, houses of worship, day care centers, libraries, and museums, the distance shall be measured from the public entrance of the adult establishment to the main public entrance of the protected use. From playgrounds, public parks, recreation areas, and schools, houses of worship and day care centers with playgrounds or recreation areas, the distance shall be measured from the public entrance of the adult establishment to the nearest property line of the playground, public park, or recreation area.
- (16) Residential quarters not allowed: No residential quarters shall be allowed on a premises with an adult establishment.
- (17) No Adult Establishment may be granted or hold an intoxicating liquor and/or fermented malt beverage license.
- (18) No Adult Establishment shall permit any physical contact between employees appearing in a nude or semi-nude condition and patrons, except for the taking of tips.
- (19) No Adult Establishment shall permit any person on the premises to solicit or perform acts of "sexual conduct" as that term is defined in Wis. Stat. s. 944.21(2)(e).
- (20) The operator of an Adult Establishment shall permit officers or agents of the Village of Plain who are performing functions in connection with the enforcement of this chapter to inspect portions of the Adult Establishment premises where patrons are permitted, for the purpose of ensuring compliance with this Chapter, at any time the Adult Establishment is occupied by patrons or open for business. The provisions of this Section do not apply to areas of an adult

motel which are currently being rented by a customer for use as a permanent or temporary habitation.

C. Required information and documents. As part of the Conditional Use permit required in this section, the applicant shall provide the following information:

(1) Demographics.

(a) Individuals.

1. Applicant's legal name, all of the applicant's aliases, and the applicant's age;
2. Applicant's business address.

(b) Corporations.

1. Applicant corporation's complete name and official business address;
2. Legal names, all aliases, the ages, and business addresses of all of the directors, officers, and managers of the corporation and of every person owning or controlling more than twenty-five (25) percent of the voting shares of the corporation;
3. Applicant corporation's date and place of incorporation and the objective for which it was formed;
4. Proof that the corporation is a corporation in good standing and authorized to conduct business in the State of Wisconsin;
5. Name of the registered corporate agent and the address of the registered office for service of process.

(c) Partnerships (general or limited), joint ventures, or any other type of organization where two (2) or more persons share in the profits and liabilities of the organization.

1. Applicant organization's complete name and official business address;
2. Legal name, all aliases, the ages, and business addresses of each partner (other than limited partners) or any other person entitled to share in the profits of the organization, whether or not any such person is also obligated to share in the liabilities of the organization.

(d) Land trusts.

1. Applicant land trust's complete name;
2. Legal name, all aliases, and the business address of the trustee of the land trust;
3. Legal name, all aliases, the ages, and business addresses of each beneficiary of the land trust and the specific interest of each such beneficiary in the land trust;
4. The interest, if any, that the land trust holds in the permitted premises.

(2) If a corporation or partnership is an interest holder that shall be disclosed pursuant to subsections (1)(b) and (c), then such interest holders shall disclose the information required in said subsections with respect to their interest holders.

(3) The general character and nature of the applicant's business.

(4) The length of time that the applicant has been in the business of the character specified in response to subsection (3) above.

(5) The location (including street address and legal description) and telephone number of the premises for which the adult establishment permit is sought.

(6) The specific name of the business that is to be operated under the conditional use permit for the adult establishment.

(7) The identity of each fee simple owner of the premises.

(8) A diagram showing the internal and external configuration of the premises, including all doors, windows, entrances, exits, the fixed structural internal features of the premises, plus the interior rooms, walls, partitions, stages, performance areas, and restrooms.

[A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, provided, however, that each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions to an accuracy of plus or minus six (6) inches and sufficient to show clearly the various interior dimensions of all areas of the permitted premises and to demonstrate compliance with the provisions of this chapter. The approval or use of the diagram required pursuant to this subsection shall not be deemed to be, and may not be interpreted or construed to constitute, any other Village approval otherwise required pursuant to applicable Village ordinances and regulations.]

(9) The specific type(s) of adult establishment(s) that the applicant proposes to operate on the premises.

(10) A copy of each adult establishment's licenses or permits required by this Code or state law currently held by the applicant, or any of the individuals identified in the application pursuant to subsection (1) or (2) above.

(11) The name of the individual(s) who shall be the day-to-day, on-site manager(s) of the proposed adult establishment.

(12) The fee for a conditional use permit application, as set forth in section 17.29(C).

(13) Any other information the zoning administrator or Development & Planning Commission may reasonably require to apply the requirements of this chapter.

(14) The Village reserves the right to require a survey from a surveyor licensed by the State of Wisconsin to determine the spacing requirements under this chapter.

D. Incomplete applications returned.

Any application for a conditional use permit for an adult establishment that does not include all of the information and documents required pursuant to this chapter, as well as the required fees, shall be deemed to be incomplete and shall not be acted on by the Development & Planning Commission. The Village shall give the applicant a written notification and explanation of such action pursuant to this section.

E. Applicant cooperation required.

An applicant for an adult establishment permit shall cooperate fully in the inspections and investigations conducted by the Village. The applicant's failure or refusal to:

- (1) Give any information reasonably relevant to the investigation of the application;
- (2) Allow the premises to be inspected;
- (3) Appear at any reasonable time and place, or

(4) Otherwise cooperate with the investigation and inspection required by this chapter;

shall constitute an admission by the applicant that the applicant is ineligible for a conditional use permit for an adult establishment and shall be grounds for denial of the permit by the Development & Planning Commission.

F. Time for issuance or denial. The conditional use permit process shall be identical to that set forth in section 17.29(D), however, the consideration by the Development & Planning Commission of the conditional use permit application shall be as set forth in this section.

G. Standards for issuance or denial of permit.

(1) Issuance: The Development & Planning Commission shall issue a conditional use permit for an adult establishment to an applicant if the Development & Planning Commission finds and determines all of the following:

(a) All information and documents required by this chapter for issuance of an adult establishment permit have been properly provided.

(b) No person identified in the application may:

1. Have been denied a conditional use permit for an adult establishment within twelve (12) months immediately preceding the date of the application;

2. Be a person whose conditional use permit for an adult establishment has been revoked within twelve (12) months immediately preceding the date of the application; or

3. Be a person whose conditional use permit for an adult establishment is under suspension at the time of application.

(c) The adult establishment and the premises comply with all requirements under this chapter and the applicant has obtained whatever licenses are required under any other provision of this Code or the state, if any.

(d) The applicant has signed the permit he or she has received indicating his or her acceptance of the conditions of the permit.

(2) Denial: If the Development & Planning Commission determines that the applicant has not met any one (1) or more of the conditions set forth in this section, then the Development & Planning Commission shall deny issuance of the conditional use permit for the adult establishment and shall give the applicant a written notification and explanation of such denial. The criteria for a conditional use permit listed in section 17.29(A) shall not be applicable.

H. Enforcement.

(1) A violation of any conditions of a conditional use permit for an adult establishment is a violation of this chapter.

(2) Notwithstanding any other remedy, a violation of any conditions of a conditional use permit for an adult establishment shall be grounds for revocation of the permit. See procedure for revocation shall be as set forth in section 17.29(G).

I. Continued conforming status; Amendments.

(1) An adult establishment lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant of the conditional use permit for the adult establishment, if a protected use is located within one hundred (150) feet of the adult establishment.

(2) The requirements for the amendment of a conditional use permit shall be as set forth in section 17.29(H). Consideration of the amendment shall be as set forth herein.

J. That Chapter 17 of the Code of the Village of Plain, Sauk County, Wisconsin, Zoning, Section 17.29, Terms Defined, is hereby amended to add the following definitions:

ADULT BATH HOUSE – an establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the state and which establishment provides to its patrons an opportunity for engaging in "specified sexual activities."

ADULT BODY PAINTING STUDIO -- an establishment or business wherein patrons are afforded an opportunity to paint images on a "specified anatomical area". For purposes of this chapter, the adult body painting studio shall not be deemed to include a tattoo parlor.

ADULT BOOKSTORE -- an establishment or business having as a substantial or significant portion of its stock and trade in books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

ADULT BOOTH -- any area of an adult establishment set off from the remainder of such establishment by one (1) or more walls or other dividers or partitions and used to show, play, or otherwise demonstrate any adult materials or to view any live performance that is distinguished or characterized by an emphasis on the exposure, depiction, or description of "specified anatomical areas" or the conduct or simulation of "specified sexual activities."

ADULT CABARET -- any nightclub, bar, restaurant, or similar commercial establishment which features: (1) live performances which are characterized or distinguished by the exposure of "specified anatomical areas" or the removal of articles of clothing; or (2) films, motion pictures, video cassettes, digital video disks, video reproductions, slides or other visual presentations which are distinguished or characterized by depicting or describing "specified sexual activities" or "specified anatomical areas."

ADULT ESTABLISHMENT -- shall mean and include but is not limited to an adult bookstore, adult motion picture theater (indoor or outdoor), adult mini-motion picture theater, adult video store, adult bath house, adult motel, adult theatre, adult novelty shop, adult massage parlor, adult modeling studio, adult body painting studio, and adult cabaret.

ADULT MASSAGE PARLOR -- an establishment or business with or without sleeping accommodations which provides services including any method of rubbing, pressing, stroking, kneading, tapping, pounding, vibrating or stimulating a "specified anatomical area" with the hands or with any instruments, heat and light treatments of the body, and all forms and methods of physiotherapy not operated by a medical practitioner or professional physical therapist licensed by the state.

ADULT MINI-MOTION PICTURE THEATER -- an enclosed building with a capacity for less than fifty (50) persons used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

ADULT MODELING STUDIO -- any establishment or business where a person who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Adult modeling studios shall not include a proprietary school licensed by the State of Wisconsin or a college, technical college, or university; or in a structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- (2) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
- (3) Where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.

ADULT MOTEL -- a hotel, motel, or similar commercial establishment which:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult-type of photographic reproductions; or
- (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

ADULT MOTION PICTURE THEATER -- an enclosed building with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

ADULT MOTION PICTURE THEATER (OUTDOOR) -- a parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguishably characterized by an emphasis on matter depicting, describing or relating to "specified sexual activity" or "specified anatomical areas."

ADULT NOVELTY SHOP -- an establishment or business having as a substantial or significant portion of its stock and trade in novelty or other items which are distinguished or characterized by their emphasis on or designed for "specified sexual activity" or stimulating such activity.

ADULT THEATER -- a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".

ADULT VIDEO STORE -- an establishment or business having as a substantial or significant portion of its stock and trade for sale or rental of motion pictures or other visual media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

SPECIFIED ANATOMICAL AREAS -- means:

- (1) Less than completely and opaquely covered:
 - a. Human genitals, pubic region;
 - b. Buttock;
 - c. Female breast below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES -- means:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, or sodomy;
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

K. This ordinance shall take effect upon passage and posting as is provided by law.

PL: April 14, 2010

17.30 Designated Offenders Restricted

I. FINDINGS AND INTENT

- A. Whereas the Village Board has the power, through s. 61.34, Wis. Stats, to enact ordinances promoting the health, safety, and welfare of the public.
- B. Whereas the Village Board has reviewed the holdings and findings of the following court cases: *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); *Smith v. Doe*, 123 S. Ct. 1140 (2003); *McKune v. Lile*, 122 S. Ct. 2017 (2002); *Hoffman v. Vill. of Pleasant Prairie*, 249 F. Supp. 3d 951 (E.D. Wis. 2017); *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018); *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005).
- C. Whereas the Village Board 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: Tatar, J. & Jones, M. (August 2016). *Recidivism after Release from Prison*, State of Wisconsin Department of Corrections; Steiner, B., Makarios, M.D., & Travis, L.F. (2015). *Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism*. *Crime and Delinquency*, 61(3), 375-401; Kyle, D. (2016). *Examining Sexual Offenses through a Sociological Lens: A Socio-Cultural Exploration of Casual and Desistance Theories*, *European Journal of Probation*, 8(3), 170-184; Horney, J., Osgood, W., & Marshall, I.H. (1995). *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; Mann, R.E., de Vries Robbe, M., Maruna, S., & Thornton, D. (2015). *An Exploration of Protective Factors Supporting Desistance from Sexual Offending*. *Sex Abuse. A Journal of Research and Treatment*, 27 (1), 16-33.
- D. Whereas the Village Board acknowledges that case law and literature on sex offender recidivism, sex offender desistance, and sex offender residency restrictions contains findings and studies which report varying effectiveness of certain strategies. The Village Board intends to use these strategies and studies to best create a regulatory framework which protects the citizens of the village of Plain, yet allows for a constructive and safe assimilation of designated sex offenders into the community.
- E. The Village Board 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 Village Board is also aware that absent a domicile clause, the Village would have open doors for nonresident sex offender residency when other communities have closed doors, inviting a substantial increase in sex offender placements, thereby increasing potential negative impacts on the health, safety, welfare, and additional cost to the Village 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.
- F. The Village finds that reducing opportunity and temptation is important to minimizing the risk of recidivism, and that there is a compelling need to protect children where they congregate or play in public places. It is in the public interest to create areas around locations where children regularly congregate or play wherein sex offenders are prohibited from establishing residence or loitering, and to regulate certain activities that may be used by sex offenders to prey on children.

- G. Accordingly, the Village Board has created this regulatory measure designed to protect the health and safety of residents, particularly children, in the Village 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 ordinance is also intended to demonstrate the Village's resolute goal of protecting children in areas of potential vulnerability and impart the community's confidence by demonstrating safe, productive, and law-abiding behavior while residing within the Village. It is the intent of the Village Board that this regulatory scheme is civil and nonpunitive in order to serve the Village's compelling interest to promote, protect, and improve the health, safety and welfare of all citizens of the Village.

II. Ordinance Created. That Chapter 17 of the Code of the Village of Plain, Sauk County, Wisconsin, Zoning, Section 17.30, Designated Offenders Restricted, is hereby created as follows:

17.30 Designated Offenders Restricted

A. Findings of Fact.

- (1) The Village finds that Designated Offenders, as defined in this Section, who use physical violence or who prey on children are persons who present a serious threat to public safety. Many Designated Offenders commit numerous offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of Designated Offender victimization to society, while incalculable, clearly exorbitant.
- (2) The Village finds the risk of recidivism increases if the Designated Offender recently offended and if the Designated Offender does not have a strong social network, including community and familial ties. The Village is also aware that absent an ordinance restricting residency, including a domicile clause, the Village would have an open doors for non-resident Designated Offender residency when other communities have closed doors, inviting a substantial increase in Designated Offender placements, with the related adverse impacts on the health, safety and welfare of the Village and its residents.
- (3) The Village finds that reducing opportunity and temptation is important to minimizing the risk of recidivism, and that there is a compelling need to protect children where they congregate or play in public places. It is in the public interest to create areas around locations where children regularly congregate or play wherein Designated Offenders are prohibited from establishing residence or loitering, and to regulate certain activities that may be used by Designated Offenders to prey on children. The Village finds that children congregate or play at Child Safety Locations as defined in this Section.
- (4) It is the intent of this Section to enact a regulatory scheme that is civil and non-punitive in order to serve the Village's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Village.

B. Definitions.

As used in this Section 17.30, and unless the context otherwise requires, the following terms, whether used in the singular or the plural, shall have the meanings indicated:

- (1) CHILD

A person who is less than 18 years of age.

(2) CHILD SAFETY LOCATION

The site upon which any of the following are located:

- a. A public park, parkway, parkland, or park facility, including the Plain Recreation Area;
- b. A public library;
- c. A public or private school for Children;
- d. A public playground;
- e. Athletic fields used by Children;
- f. A tutoring facility;
- g. A tennis court;
- h. A church, synagogue or other religious vicinity other house of religious worship;
- i. Any specialized school for Children, including, but not limited to, a gymnastics academy, dance academy or music school;
- j. Any other facility for Children (which means a group home, as defined in s. 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in s. 48.02(15d), Wis. Stats.; a shelter care facility, as defined in s. 48.02(17), Wis. Stats.; a foster home, as defined in s. 48.02(6), Wis. Stats.; a treatment foster home, as defined in s. 48.02(17q), Wis. Stats.; a day-care center licensed under s. 48.65, Wis. Stats.; a day-care program established under s. 120.13(14), Wis. Stats.; a day-care provider certified under s. 48.651, Wis. Stats.; or a youth center, as defined in s. 961.01 (22), Wis. Stats.);
- k. Theater or other centers for the arts; or
- l. Public swimming pool or other aquatic facilities open to the public.

(3) CHILD SAFETY ZONE

Any place within the Village that is physically located within 1,000 feet of any Child Safety Location.

(4) DESIGNATED OFFENDER

- a. Any person who is required to register under s. 301.45, Wis. Stats., for any sexual offense against a Child.
- b. Any person who is required to register under s. 301.45, Wis. Stats., and who is the subject of a Special Bulletin Notification issued pursuant to s. 301.46(2m), Wis. Stats.
- c. Any person committed to the state Department of Health Services for specialized treatment pursuant to s. 975.06, Wis. Stats.
- d. Any person placed on lifetime supervision by the state Department of Corrections pursuant to s. 939.615 or 971.17(1j), Wis. Stats.

(5) DWELLING UNIT

A structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by a person, and which includes, but is not limited to, a single- or multi-family home, an apartment, a condominium unit, a manufactured or mobile home, and a trailer.

(6) RESIDENCE

A place, including a Dwelling Unit, where a Designated Offender sleeps, abides, lodges, or resides which may include more than one location, and may be mobile or transitory, but is used for an aggregate of 14 or more days in any one-year period.

C. Residency Restrictions.

- (1) Child Safety Zone restriction. It is unlawful for a Designated Offender to establish a Residence within a Child Safety Zone.
- (2) Measurement of distance. For purposes of determining a Child Safety Zone, the distance shall be measured by following a straight line from the closest outer property line of the Residence to the nearest outer property line of any Child Safety Location.

D. Original Domicile Restriction.

No Designated Offender may establish a residence in the Village of Plain, unless such person was domiciled in the Village of Plain at the time of the offense resulting in the person's designation as a Designated Offender.

E. Residency Restriction Exceptions.

- (1) General Exceptions. A Designated Offender does not commit a violation of subs. C or D if any of the following apply:
 - a. The person established the Residence and reported and registered the Residence pursuant to s. 301.45, Wis. Stats., before the original effective date of this Section 17.30.
 - b. The person was under the age of 18 years at the time of the offense or is a ward under guardianship.
 - c. The Residence is also the primary residence of the Designated Offender's spouse, adult child, parent, grandparent, legal guardian, or sibling, if the Designated Offender's spouse, adult child, parent, grandparent, legal guardian, or sibling has resided within the Village for at least one year prior to the Designated Offender establishing the Residence.
 - d. The Child Safety Location was opened or built after the person established the Residence and reported and registered the Residence pursuant to s. 301.45, Wis. Stats.
 - e. The Residence is within a jail, prison, juvenile facility or correctional facility at which the Designated Offender is serving a court-ordered sentence.
 - f. The most recent offense that would cause the person to be considered a Designated Offender under this Section 17.30 occurred more than 20 years ago and it has been at least 20 years since the person was incarcerated for the most recent offense that would cause the person to be considered a Designated Offender under this Section 17.30.
- (2) Loss of General Exception. If a Designated Offender changes his or her Residence within the Village of Plain, the Designated Offender must comply with the restrictions of subs. C and D unless the new Residence also qualifies for an exception under this subs. E.
- (3) Designated Offenders Subject to Chapter 980. A Designated Offender that has been adjudicated a sexually violent person pursuant to ch. 980, Wis. Stats., shall not be in violation of subs. C or D if the Designated Offender is subject to supervised release under ch. 980, Wis. Stats., the Designated Offender is residing where he or she is

ordered to reside under s. 980.08, Wis. Stats., and the Designated Offender is in compliance with all court orders issued under ch. 980, Wis. Stats.

F. Renting Real Property.

- (1) Restriction on Renting. No person shall let or rent any Dwelling Unit, with the knowledge that it will be used as a Residence by a Designate Offender if such Dwelling Unit is located within a Child Safety Zone.
- (2) Notice to property owner. A Designated Offender shall notify any property owner from whom the Designated Offender intends to lease or rent any Dwelling Unit that the Designated Offender is a Designated Offender prior to entering into any lease or rental agreement.
- (3) Notice to Police Department. A Designated Offender and any property owner who intends to lease or rent any Dwelling Unit to the Designated Offender, with the knowledge that it will be used as a Residence by a Designated Offender, must each notify the Plain Police Department in writing a minimum of fourteen (14) days prior to entering into the lease or rental agreement. Any property owner governed by this paragraph shall also provide notice to the Plain Police Department upon termination of the Designated Offender's tenancy for any reason whatsoever.

G. Holiday Events and Public Gatherings.

- (1) It is unlawful for a Designated Offender to actively take part in any public holiday event involving Children where the distributing of candy or other items to Children takes place, including but not limited to holiday parades or similar gatherings, Halloween trick-or-treating, wearing a seasonable costume in a public place, or wearing any other costume reasonably expected to attract children in a public place, or other similar activities that may, under the circumstances then present, tend to entice a Child to have contact with a Designated Offender.
- (2) Exception. This subs. G does not apply to any event in which the Designated Offender is the parent or guardian of the Children involved, and the Designated Offender's Children are the only Children present.

H. Loitering.

- (1) It shall be unlawful for any Designated Offender to loiter or prowl within a Child Safety Zone in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of Children in the vicinity.
- (2) Unless flight by an actor or other circumstances makes it impractical, a law enforcement officer shall, prior to any arrest for an offense under this subs. H, afford the actor an opportunity to dispel any alarm which would otherwise be warranted by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this subs. H if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by law enforcement at the time, would have dispelled the alarm.
- (3) An offender does not commit a violation of loitering in a Child Safety Zone if any of the following apply:
 - a. The property in a Child Safety Zone also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:

- i. Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - ii. 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
 - iii. The person shall not participate in any religious education programs, which include Children.
- b. The property in a Child Safety Zone also supports a use lawfully attended by a person's natural or adopted Children, which Children's use reasonably requires the attendance of the person as the Children's parent upon the property, subject to the following conditions:
- i. Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
 - ii. Written advance notice of not less than seven (7) days is made from the person to an individual in charge of the use of the property, and written approval from an authorized 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.
- c. The property in a Child Safety Zone also supports a polling location in a local, state or federal election, subject to the following conditions:
- i. The person is eligible to vote; and
 - ii. The designated polling place for the person is an enumerated use; and
 - iii. The person enters the polling place property and 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; and
- d. The property in a Child Safety Zone also supports an elementary or secondary school lawfully attended by the Designated Offender as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the Designated Offender is enrolled, as is reasonably required for the educational purposes of the school.

I. Child Safety Zone Map.

The Village Clerk's Office shall maintain an official map showing the Child Safety Zones within the Village. The Village Clerk's Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the Village Clerk. In the event of a conflict between the official map and this Section 17.30, the requirements of this Section 17.30 shall control. In no event shall a failure to update the map preclude the prosecution or conviction of any Designated Offender under this Section 17.30.

J. Violations and Penalties.

If a person violates this Section 17.30, such person shall be subject to the general penalty provisions set forth under A-C of this Code of the Village of Plain. Each day a violation continues shall constitute a separate offense. In addition, the Village may undertake all other legal and equitable remedies to prevent or remove a violation of this Section 17.30, including bringing an action in the Circuit Court for Sauk County to permanently enjoin the residency of a Designated Offender, in violation of this Section 17.30, as a public nuisance.

K. Designated Offender Residency Appeal Board.

Restrictions imposed by this Section 17.30 may be waived upon approval of the Designated Offender Residency Appeal Board, which consists of the Village President, and two citizen representatives appointed by the Village President and approved by the Village Board, through an appeal made by the affected party. Such appeal shall be made in writing to the Village Clerk's office to include a completed Appeal Form, who shall forward the request to the Appeal Board, which shall receive reports from the Plain Police Department as to the criminal background of the applicant and the nature and circumstances of the underlying offense requiring the registration under ss. 301.45 or 301.46, Wis. Stats. The Appeal Board shall convene and hear from the applicant, as well as the Plain Police Department, other protection agencies or agents such as Parole Officer. In making a determination, the Appeal Board may consider, among other factors deemed relevant, the amount of time which has passed since the original offense was committed; whether there has been evidence of any re-offense; whether the original offense or any re-offense was against children; whether the applicant is employed and the duration of that employment; whether the applicant has shown remorse; whether there has been evidence of rehabilitation; and any factors that would suggest a likelihood of re-offense.

L. Validity.

Should any subsection, clause or provision of this Section 17.30 be declared by the courts to be invalid, the same shall not affect the validity of this Section 17.30 as a whole or any part thereof, other than the part so declared to be invalid.

PL: March 11, 2020

17.31 FAIR AND OPEN HOUSING. (1) STATE STATUTES ADOPTED. The Village Board of the Village of Plain hereby adopts Section 106.50, Wisconsin Statutes, as amended, and all subsequent amendments thereto.

(2) AUTHORITY AND ENFORCEMENT PROCEDURES IMPLEMENTED. The officials and employees of the Village of Plain shall assist in the orderly prevention and removal of all discrimination in housing within the Village by implementing the authority and enforcement procedures set forth in Section 106.50, Wisconsin Statutes, as amended.

(3) COMPLAINTS. The Village Clerk shall maintain forms for complaints to be filed under Section 106.50, Wisconsin Statutes, as amended, and shall assist any person alleging a violation thereof in the Village of Plain to file a complaint thereunder with the Wisconsin Department of Workforce Development, Equal Rights Division, for enforcement of Section 106.50, Wisconsin Statutes, as amended.

PL: May 13, 2020