

**ORDINANCE 204-20
OF THE VILLAGE OF PLAIN
SAUK COUNTY, WISCONSIN**

**Amending the Code of the Village of Plain to Create
Zoning and Other Regulations for Restricting Designated Offenders**

The Village Board of the Village of Plain, Sauk County, Wisconsin, do ordain as follows:

I. 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 restricting Designated Offenders as defined in this chapter require special zoning in order to protect and preserve the health, safety, and welfare of the Village.
- (2) The Wisconsin legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community. Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons. The purpose of this section is to protect the public, to reduce the likelihood that convicted Designated Offenders will engage in such conduct in the future.
- (3) The United States Supreme Court has recognized that the risk of recidivism posed by Designated Offenders is high, and when convicted Designated Offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2003) and *McKune v. Lile*, 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed. 2d 47 (2002), citing United States Department of Justice Bureau of Justice Statistics, *Sex Offenses and Offenders*, 27 (1997) U.S. Department of Justice Bureau of Justice Statistics *Recidivism of Prisoners Released in 1983* (1997).
 - a. The Village Board finds that the negative consequences of failing to regulate the movement of Designated Offenders is a hazard to children and the community. Thus, the Village Board has a duty and need to regulate where Designated Offenders reside and loiter within the Village once they are reintegrated into the community. This section is a regulatory measure aimed at protecting the health and safety of the children in the Village of Plain from the risk that convicted Designated Offenders may reoffend in locations close to their residences. It is the intent of this section not to impose a criminal penalty but rather to serve the Village's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Village by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing residence or loitering; and by regulating certain activities that may be used by sexual offenders to prey on children.
- (4) The Village finds and declares that Designated Offenders are a serious threat to public safety. When Designated Offenders reenter society, they are much more likely than any other type of

offender to be rearrested. Given the high rate of recidivism for Designated Offenders and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children 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 frequent. The Village finds and declares that in addition to schools and day-care centers, children congregate or play at public parks and other Child Safe Locations as defined hereunder.

- (5) The Village Board notes that 61.34, Wis. Stats., authorizes the Village Board to have power to act for the government and good order of the Village, for its commercial benefit and for the health, safety and welfare of the public, and may carry out its powers by license, regulation and other necessary or convenient means.
- (6) This section will not apply to sexually violent persons, as defined in 980.01(7), Wis. Stats., because these persons are controlled under the regulations of 980, Wis. Stats.

B. Definitions.

As used in this chapter, and unless the context otherwise requires, the following terms 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, park facility;
- b. Plain Recreation Area;
- c. A public library;
- d. A recreational trail;
- e. A public playground;
- f. A school for children;
- g. Athletic fields used by children;
- h. A day-care center;
- i. A tutoring facility;
- j. A Tennis Court;
- k. A church, synagogue or other religious vicinity other house of religious worship (collectively "church");

- l. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;
- m. Any facility for children (which means a public or private school or a group home, as defined in 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in 48.02(15d), Wis. Stats.; a shelter care facility, as defined in 48.02(17), Wis. Stats.; a foster home, as defined in 48.02(6), Wis. Stats.; a treatment foster home, as defined in 48.02(17q), Wis. Stats.; a day-care center licensed under 48.65, Wis. Stats.; a day-care program established under § 120.13(14), Wis. Stats.; a day-care provider certified under 48.651, Wis. Stats.; or a youth center, as defined in 961.01 (22), Wis. Stats.); and
- n. Arts, Craft, Theatre or other Centers for the Arts;
- o. Public or private golf course or range.
- p. 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 1250 feet of any Child Safety Location.

(4) DESIGNATED OFFENDER

Any person who is required to register under 301.45, Wis. Stats., for any sexual offense against a child or any person who is required to register under 301.45, Wis. Stats., and who has been designated special bulletin notification (SBN) sex offender pursuant to 301.46(2) and (2m), Wis. Stats. and any person who has been convicted of or has been delinquent of or has been found not guilty by reason of disease or mental defect of the 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, respectively:

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| 948.015(10) Wis. Stats. | Solicitation of an intimate or private representation of a child; |
| 948.081 Wis. Stats. | Patronizing a child; |
| 948.10 Wis. Stats. | Exposing genitals, pubic area, or intimate parts; |
| 948.11 (2) Wis. Stats. | Exposing a child to harmful material or harmful descriptions or narrations; and |
| 948.14 Wis. Stats. | Registered sex offender and photographing minors |
- Hereinafter "Designated Offender"/"Offender"

(5) MINOR

A person under the age of 17.

(6) PERMANENT RESIDENCE

A place where a person sleeps, abides, lodges, or resides for 14 or more consecutive days.

(7) TEMPORARY RESIDENCE

A place where a person sleeps, abides, lodges, or resides which may include more than one location, and may be mobile or transitory for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or place where the person

routinely sleeps, abides, lodges, or resides for a period of 14 or more consecutive or nonconsecutive days in any month and which is not the person's Permanent Residence.

(8) **SEXUALLY VIOLENT OFFENSE**

Shall have the meaning as set forth in 980.01 (6), Wis. Stats., as amended from time to time.

C. Residency Restrictions.

- (1) Child Safety Zone restriction. Subject to the definitions in B. above, and the exceptions set forth in D. below, it is unlawful for a Designated Offender to establish a Permanent Residence or a Temporary Residence within a Child Safety Zone or any other place designated by the Village as a place where children are known to congregate.
- (2) Measurement of distance. For purposes of determining the minimum distance separation, the restriction shall be measured by following a straight line from the closest outer property line of the Permanent Residence or Temporary Residence to the nearest Child Safety Location of a school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the Village where children are known to congregate. The Village Clerk shall maintain an official map showing prohibited locations as defined by this section. The Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones. These shall be designated on the map as Child Safety Zones.

D. Residency Restriction Exceptions.

A Designated Offender residing within any Child Safety Zone does not commit a violation of this section if any of the following apply:

- (1) The person established the Permanent Residence or Temporary Residence and reported and registered the residence pursuant to 301.45, Wis. Stats. before the original effective date of this Chapter.
- (2) The person is a minor and is not required to register under 301.45 or 301.46, Wis. Stats.
- (3) The school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the Village as a place where children are known to congregate within 1,250 feet of the person's Permanent or Temporary Residence was opened after the person established the Permanent Residence or Temporary Residence and registered the residence pursuant to Wis. Stats. 301.45.
- (4) The Designated Offender's residence is within a jail, prison, juvenile facility or correctional facility at which the Designated Offender is serving a court-ordered sentence.
- (5) Any Designated Offender maintaining a residence within the Village of Plain that is exempted from the restrictions of this ordinance pursuant to Section D shall lose the exemption if the Designated Offender's residence, ownership or leasehold of the property ceases at any point in time, at which time the Designated Offender shall be subject to the restrictions of Section C.

E. Original Domicile Restriction.

In addition to and notwithstanding the foregoing, but subject to D above, no person and no individual who is a 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. This restriction does not apply if twenty (20) or more years have passed since the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release and the Designated Offender has not been convicted of any additional offense resulting in person meeting the Designated Offender definition herein.

F. Renting Real Property.

- (1) No person shall let or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that it will be used as a permanent or Temporary Residence by a person prohibited from establishing such permanent or Temporary Residence pursuant to this section if such place, structure or part thereof, or trailer or other locale is located within a prohibited Child Safety Zone as described herein.
- (2) Notice to property owner. A Designated Offender shall notify any property owner from whom the Designated Offender intends to lease, or rent any place, structure, mobile home, trailer, or any part thereof, that the Designated Offender is a Designated Offender as defined in paragraph B(4) of this Section, prior to entering into any lease or rental agreement.
- (3) Notice to Police Department. A Designated Offender and any property owner who leases or rents any place, structure, mobile home, trailer, or any part thereof, with the knowledge that it will be used as a Permanent or Temporary Residence by a Designated Offender, must each notify the Plain Police Department in writing a minimum of fourteen (14) days prior to entering into a lease or rental agreement establishing a Permanent or Temporary Residence within the Village. 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 section does not apply to any event in which the Designated Offender is the parent or guardian of the child(ren) involved, and the Designated Offender's child(ren) are the only child(ren) present.

H. Loitering.

- (1) It shall be unlawful for any Designated Offender as defined in 2 above, to loiter or prowl within 1,250 feet of any school or school property, recreational trail, playground or park, any specialized school for children, including, but not limited to, gymnastics academy, martial arts academy, dance academy, music school, public beach or public library 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 section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the 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 as stated above, and the enumerated uses may allow such person on the property supporting such use, if any of the following apply:
 - (a) The property supporting an enumerated use 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 individuals under the age of 18.
 - (b) The property supporting an enumerated use also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child'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 supporting an enumerated use 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
 - iv. The property supporting an enumerated use 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 supporting the school at which the person 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, the terms of this section shall control. In no event shall a failure to update the map in compliance with this section preclude the persecution or conviction of any Designated Offender under this section.

J. Violations and Penalties.

If a person violates Chapter 17.30, by establishing a residence or occupying residential premises within 1,250 feet of those premises as described therein, without any exception(s) as also set forth above, the Village 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 section such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health or safety of another or others, shall bring an action in the name of the Village in the Circuit Court for Sauk County to permanently enjoin such residency as a public nuisance. If a person violates Chapter 17.30, in addition to the aforesaid injunctive relief, 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.

K. Designated Offender Residency Appeal Board.

The above requirements of this section may be waived upon approval of the Designated Offender Residency Appeal Board, which consists of the Village President, Police Committee Chair and the Chief of Police, through an appeal made by the affected party. Such appeal shall be made in writing to the Village Clerk's office, who shall forward the request to the Designated Offender Residency 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 301.45 or 301.46, Wis. Stats. The Board shall convene and shall hear from the applicant, as well as the Plain Police Department or others who would be affected by this decision. The Board shall consider the amount of time which has passed since the original offense was committed; whether there has been evidence of any re-offense; 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 finally, any factors that would suggest a likelihood of re-offense.

L. Validity.

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

M. Conflicting Provisions Repealed.

All ordinances in conflict with any provision of this Ordinance are hereby repealed.

II. Effective Date:

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

Passed and adopted: January 8, 2020

BY ORDER OF THE VILLAGE BOARD

Raymond Ring, President

ATTEST:

Sheila Carver
Clerk/Treasurer