

**ORDINANCE NO. 6-2017**

**AN ORDINANCE TO AMEND SECTIONS 54-20 AND 54-21 OF THE CODE OF ORDINANCES, VILLAGE OF MOUNT PLEASANT, WISCONSIN, RELATING TO SEX OFFENDER RESIDENCY REQUIREMENTS AND PROHIBITED CONDUCT OF DESIGNATED SEX OFFENDER**

**Whereas** the United States District Court for the Eastern District of Wisconsin issued an Order on April 17, 2017, in the case titled *Hoffman v. Village of Pleasant Prairie*, which contained holdings that directly impact the terms of Municipal Code sections 54-20 and 54-21 and make it necessary to amend the terms of sections 54-20 and 54-21 to comply with the District Court's holdings;

**Whereas**, on July 26, 2017, the Village's Finance/Legal/License Committee met to review this ordinance and the following written materials and the Village Board met on July 31, 2017 to receive public comments and reviewed and discussed the ordinance as well as the following written materials:

- a. "Recidivism of Adult Sexual Offenders." U.S. Department of Justice, July 2015, SOMAPI (Sex Offender Management Assessment and Planning Initiative); and
- b. "An Overview of Sex Offender Management." July 2002, U.S. Department of Justice, CSOM (Center for Sex Offender Management); and
- c. "There goes the Neighborhood? Estimates of the Impact of Crime Risk on Property Values from Megan's Laws." May 2006, National Bureau of Economic Research; and
- d. Order of the Honorable J.P. Stadtmueller of the United States District Court, Eastern District of Wisconsin, *Hoffman et al. v. Village of Pleasant Prairie*, Case No. 16-CV-697-JPS.

**Now, therefore**, the Village Board of the Village of Mount Pleasant, Racine County, Wisconsin, does ordain as follows:

**Section 1.** Sections 54-20 and 54-21 of the Village of Mount Pleasant Municipal Code is amended to read in its entirety as follows:

**"54-20 SEX OFFENDER RESIDENCY RESTRICTIONS**

**(a) Findings and Intent.**

- (1) **Findings.** Sex offenders, including sex offenders who use physical violence or the threat thereof and sex offenders who prey on children are sex predators who present a serious threat to the public safety. It is further believed that that such persons present an alarmingly high risk of re-offending once released. Sex offenders are extremely likely to use physical violence when they offend; and most sex offenders commit multiple offenses, have more victims that are never reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society great, and justifies efforts to protect the public from it. Because reducing both opportunity and temptation will minimize the risk of re-offense for those Sex Offenders who will re-commit sex offenses against children, there is a compelling need to separate Sex Offenders from places where children congregate or play in public places.

(2) **Intent.** This Ordinance is a regulatory measure aimed at protecting the health and safety of children in the Village from the risk that convicted sex offenders may reoffend in locations close to their residence. The Village establishes these regulations in order to provide protection to children in the Village by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism. It is the intent of the Village Board to protect the safety and welfare of its citizens by creating zones around places where children regularly gather, in which certain Sex Offenders are prohibited from establishing Residency. It is expressly not the intent of the Village Board to impose additional punishment on Sex Offenders.

(b) **Definitions.** The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except when the context clearly indicates a different meaning.

(1) "Child" or "children" means a person who has not attained the age of 18 years, for purposes of this Ordinance.

(2) "Sex Offender" means any person who is or was required to register under Section 301.45, Wisconsin Statutes, for any sexual offense against a child, or any person who is or was required to register under Section 301.45, Wisconsin Statutes, and who has been designated a Special Bulletin (SBN) sex offender pursuant to Sections 301.46(2) and (2m), Wisconsin Statutes.

(3) "Minor" means a person under the age of eighteen (18) years.

(4) "Residence" means a place where a person resides or dwells, or is used by a person as the primary location for basic life functions such as sleeping or eating; whether short- or long-term but for an aggregate of 14 or more days in any one-year period.

(5) "Child Safety Zone" means an area within 1,250 feet of any private or public school, recreational trail, playground, park having a children's playground, park having athletic facilities used by persons younger than 18 years of age, child care center licensed pursuant to Wis. Stat. § 48.65, or group home as defined in Wis. Stat. § 48.02(7), within the Village of Mount Pleasant.

(c) **Residence Restriction, Exceptions.** No Sex Offender shall establish or maintain a Residence within a Child Safety Zone, except under the following circumstance:

(1) It is specifically ordered that the Sex Offender reside within a Child Safety Zone by a circuit court having competent jurisdiction.

(2) The Sex Offender established the Residence within 1,250 feet of a private or public school, recreational trail, playground, park having a children's playground, park having

athletic facilities used by persons younger than 18 years of age, licensed day care as defined in Wis. Stats. § 48.02(7); reported and registered the Residence pursuant to Wis. Stats. § 301.45 before the effective date of this ordinance, that being January 23, 2014.

- (3) The person is excepted from sex-offender registration pursuant to Wis. Stats. §301.45(1m).
- (4) The private or public school, recreational trail, playground, park having a children's playground, park having athletic facilities used by persons younger than 18 years of age, child care center, or group home around which a Child Safety Zone exists first existed after the Sex Offender established Residence and reported and registered the Residence pursuant to Wis. Stats. § 301.45.
- (5) The Sex Offender's Residence is within a jail, juvenile facility or other correctional facility at which the Sex Offender is serving a court-ordered sentence.
- (6) The Sex Offender is a Minor or ward under guardianship and is residing with his or her parent or guardian. In such cases involving a Minor or ward placed in accordance with this exception, when the Minor or ward turns 18 years of age, the Minor or ward shall be allowed to continue to reside at the already established residence.

(d) **Measurement of Distances.** The boundaries of the Child Safety Zone shall be determined by measuring from the outer property boundary of private or public schools, recreational trails, playgrounds, parks having a children's playground, parks having athletic facilities used by persons younger than 18 years of age, child care centers, or group homes as defined in (b)(5), along the shortest line to the outer property boundary of a Sex Offender's Residence. If any portion of a property is within a Child Safety Zone, then the entire property shall be deemed within the Child Safety Zone.

(e) **Maps.** A map depicting the above-enumerated uses and the resulting residency restriction distances shall be adopted by Resolution of the Village Board, and which map may be amended from time to time, is on file in the Office of the Village Clerk for public inspection.

(f) **Notification.** A Sex Offender must notify the police department a minimum of twenty-eight (28) days prior to establishing a Residence within the Village of Mount Pleasant .

(g) **Property Owners Prohibited from Renting Real Property to Certain Sexual Offenders and Sexual Predators.** It shall be unlawful for any property owner to lease or rent any place, structure, mobile home, trailer or any part thereof, with the knowledge that it will be used as a Residence by any person prohibited from establishing a Residence therein pursuant to this Ordinance, if such place, structure, or mobile home, trailer or any part thereof, is located within a Child Safety Zone as defined in Section 54-20(b)(5).

(h) **Public Nuisance.** Any violation of this Chapter shall be deemed a public nuisance affecting peace and safety, and the Village may proceed under Chapter 62 of the Code of

Ordinances and/or Chapter 823 of the Wisconsin Statutes to abate the nuisance.

- (i) **Injunction for Violation of Residence Restrictions.** If an offender establishes a Residence in violation of subsection (c) above, the Chief of Police may refer the matter to the Village Attorney. The referral shall include a written determination by the Chief of Police that, upon all of the facts and circumstances and the purpose and intent of this Ordinance, such violation interferes substantially with the comfortable enjoyment of life, health, and safety of another or others. Upon such referral, the Village Attorney shall bring an action in the name of the Village in Circuit Court to permanently enjoin such residence as a public nuisance.
  
- (j) **Severability.** Should any section, paragraph, sentence, clause or phrase of this Section be declared unconstitutional or invalid, or be repealed, it shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be invalid or repealed.
  
- (k) **Appeal for an exemption.**
  - (1) A Sex Offender may seek an exemption from this Section 54-20 by appealing to the sex offender residency board (the "Appeals Board").
  
  - (2) The Appeals Board shall consist of three citizens and one alternate who are residents of the Village. For the initial appointments to the Appeals Board, the Village President shall appoint three members to staggered terms of one, two or three years, subject to confirmation by the Village Board and one alternate to a term of three years. After the initial appointment of members to a term of one, two and three years respectively, the Village President shall annually, between the last Monday of April and the first Monday of May, appoint one member for a term of three years and one alternate for a term of three years every third year, subject to confirmation by the Village Board. At the first meeting held of the Appeals Board after the first Monday of May of each year, the members of the Appeals Board shall vote by majority to select a chair for its meetings and appeal that come before it.
  
  - (3) The Appeals Board shall approve of an official appeal form, establish filing procedures, a hearing schedule and deadlines for filing an appeal. A Sex Offender seeking an exemption shall complete this official form and submit it to the Village Clerk, who shall forward it to the Appeals Board. Notice in the form of an agenda shall be posted and/or published as required by law and provided to the Appeals Board.
  
  - (4) The Village elects not to be bound by Chapter 68 of Wisconsin Statutes with respect to administrative procedure in the appeal process. The Appeals Board shall

hold a hearing on each appeal to conduct an individual risk assessment in each case, during which the Appeals Board may review any pertinent information and may accept oral and written statements from any person. The Sex Offender that filed the appeal shall appear at any hearing held, unless otherwise approved by the Appeals Board. The Appeals Board shall consider the public interest as well as the applicant's presentation and concerns, giving the applicant a reasonable opportunity to be heard. The Appeals Board shall also consider any oral, emailed, and written statements from any person at the hearing or received in advance of the hearing. The Appeals Board shall consider the specific facts and circumstances of each applicant and determine whether the Sex Offender presents a threat to public safety if he or she resides at that proposed location. The Appeals Board shall consider factors which may include, but are not limited to, the following:

- a. Circumstances surrounding the offense.
- b. Relationship of offender and victim.
- c. Presence or use of force.
- d. Presence of enticement.
- e. Need to protect victim or similarly situated individuals.
- f. Current dangerousness of the offender.
- g. Proximity in time from original offense.
- h. Any criminal offenses, ordinance or rule violations committed since original offense including failures to register or comply with restrictions set by a bond, parole or probation.
- i. Time out of incarceration.
- j. Current supervision status by the Department of Corrections.
- k. Counseling and treatment history.
- l. Credibility of offender.
- m. Remorse.
- n. Proximity of proposed residence to a child safety zone.
- o. Support network of offender near proposed residence
- p. Alternative options for housing.

- (5) The Appeals Board shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or be conditional to a certain address or period of time. In the case of an approval or denial, the Appeals Board shall provide a written copy of the decision containing the reasons therein for its decision to the Village Prosecutor and to the Sex Offender. The decision of the Appeals Board may be appealed to the Racine County Circuit Court by any aggrieved party within 30 days of filing of the final decision in the Village Clerk's office, a copy of which shall be mailed to the Sex Offender who appealed. The review shall be a review by certiorari and the Circuit Court may affirm or reverse the final decision, or remand to the decision maker for further proceedings

consistent with the court's decision.

- (l) **Penalties.** Any Person who violates any provision of this Section shall, upon conviction thereof, be subject to a forfeiture not to exceed Five Hundred (\$500.00) Dollars, together with the costs of prosecution, and in default of payment thereof, shall be committed to the County Jail for a period not to exceed ninety (90) days. Each violation and each day such violation continues shall be considered a separate offense. Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the Village from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this Chapter.

#### **54-21 PROHIBITED CONDUCT OF SEX OFFENDER**

(a) **Findings and Intent.**

- (1) **Findings.** Repeat sex offenders, sex offenders who use physical violence or the threat thereof, and sex offenders who prey on children are sex predators who present a serious threat to the public safety. Sex offenders are extremely likely to use physical violence when they offend, and most sex offenders commit multiple offenses, have more victims that are never reported and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society great, and justifies efforts to protect the public from it.

Because reducing both opportunity and temptation will minimize the risk of re-offense for those Sex Offenders who will re-commit sex offenses against children, there is a compelling need to separate Sex Offenders from places where children congregate or play in public places.

- (2) **Intent.** It is the intent of the Village Board to protect the safety and welfare of its citizens by creating zones around places where children regularly gather, in which certain Sex Offenders are prohibited from establishing Residency. It is not the intent of the Village Board to impose additional punishment on Sex Offenders.

- (b) **Definitions.** The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except when the context clearly indicates a different meaning:

" Sex Offender" shall have the same meaning as specified in Section 54-20(b)(2) of this Code of Ordinances.

- (c) **Prohibited Activity.** It is unlawful for any Sex Offender to participate in a holiday event involving children under eighteen (18) years of age. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this section. Participation is defined as actively taking part in the event and shall include, but is not limited to, distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, or wearing an Easter Bunny

costume on or preceding Easter.

- (d) **Severability.** Should any section, paragraph, sentence, clause or phrase of this section be declared unconstitutional or invalid, or be repealed, it shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be invalid or repealed.
- (e) **Penalties.** Any person who violates any provision of this section shall, upon conviction thereof, be subject to a forfeiture not to exceed Five Hundred (\$500.00) Dollars, together with the costs of prosecution, and in default of payment thereof, shall be committed to the County Jail for a period not to exceed ninety (90) days. Each violation and each day such violation continues shall be considered a separate offense.”

Section 2. This Ordinance shall take effect upon adoption and publication as provided by law.

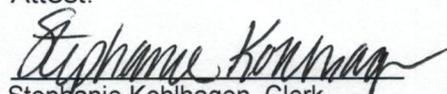
Adopted by the Village Board of the Village of Mount Pleasant, Racine County, Wisconsin, this 31 day of July, 2017.

VILLAGE OF MOUNT PLEASANT

By: 

Dave DeGroot, President

Attest:

  
Stephanie Kohlhausen, Clerk