

ORDINANCE No. 19-5

AN ORDINANCE REGARDING SEXUAL OFFENDER RESIDENCY RESTRICTIONS

The Village Board of the Village of Elk Mound, Dunn County, Wisconsin, do ordain as follows:

SECTION I. REPEAL OF PROVISIONS; ADOPTION OF PROVISIONS.

Section 11-2-18 of the Village of Elk Mound Code of Ordinances is repealed and recreated to read as follows:

Sec. 11-2-18 Sexual Offender Residency Restrictions.

(a) **Findings, Recitals and Intent.**

(1) **Recitals.**

- a. The Village Board of the Village of Elk Mound promulgates this ordinance enactment to protect and improve the health, safety and welfare of the citizens of the Village and particularly its children.
- b. Upon recent review of a published opinion and order in the case of *Hoffman, et al. v. Village of Pleasant Prairie*, Case No. 16-CF-697-JES from the United States District Court, Eastern District of Wisconsin, it is the intent of the Village Board to adopt a Village of Elk Mound sexual offender residency ordinance consistent with this recent court decision.

(2) **Findings and Intent.**

- a. Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public health, welfare and safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses; and most sexual offenders commit many offenses, have many more victims that are never reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.
- b. According to a 1997 report by the United States Department of Justice, sex offenders have high rates of recidivism which are much higher than recidivism rates for other types of violent crimes. Sex offenders are the least likely to be cured and the most likely to re-offend and prey on the most vulnerable members of the community.
- c. While Federal and State Fair Housing Statutes prohibit unlawful discrimination, they do not extend the same protections to a sex offender (as herein defined) with respect to a place of residency

(as herein defined) where a Safety Zone (as herein defined) has been established.

- d. It is the intent of this Section to serve the Village's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Village of Elk Mound by creating safety zones around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from loitering or establishing temporary or permanent residence.
- e. This Section is a regulatory measure aimed at protecting the health and safety of children in the Village of Elk Mound from risk that convicted sex offenders may reoffend in locations near their residences. Given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of reoffense, 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 facilities and other places children frequent.
- f. The Village of Elk Mound finds and declares that repeat sexual offenders who use physical violence and sexual offenders who prey on children are sexual offenders who present an extreme threat to the public safety and health of children. Sexual offenders are very likely to use physical violence and to repeat their offenses. Most sexual 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 sexual offender victimization to society at large and the community where they reside, while incalculable, clearly exorbitant. Such persons present a significantly high risk of re-offending once released. As such, the Village hereby establishes regulations which restrict certain offenders from residing or congregating in areas which are at or near where there is a high concentration of children in order to provide better protection for children in the Village by minimizing immediate access and proximity to children and thereby reducing the opportunity and temptation for recidivism.
- g. The Village Board of the Village of Elk Mound has also been advised of the decision of the United States Court of Appeals for the 8th Circuit, in *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), which provides in part at page 716 of that decision the following:

"The record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward, fear of, or a bare desire to harm a politically unpopular group. [Citations omitted.] Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the

risk of reoffense. Even experts in the field could not predict with confidence whether a particular sex offender will reoffend, whether an offender convicted of an offense against a teenager will be among those who "cross over" to offend against a younger child, or the degree to which regular proximity to a place where children are located enhances the risk of reoffense against children. One expert in the district court opined that it just "common sense" that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense. [Citation omitted.] The policy makers of Iowa are entitled to employ such "common sense", and we are not persuaded that the means selected to pursue the State's legitimate interest are without a rational basis . . ."

- (3) **Intent.** It is the intent of this Section not to impose a criminal penalty or punish sex offenders, but rather to serve the Village of Elk Mound'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 temporary or permanent residence. Due to the high rate of recidivism for sexual offenders, and because reducing both opportunity and temptation would help minimize the risk of re-offense, there is a compelling need to protect children where they congregate or play in public places.
- (b) **Definitions.** The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them as follows, except where the context clearly indicates a different meaning:
 - (1) **Child/Children.** A person under the age of eighteen (18) for purposes of this Section.
 - (2) **Designated Offender (Sex Offender).** Any person who is required to register under Sec. 301.45, Wis. Stats., or any person who is required to register under Sec. 301.45, Wis. Stats., and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Sec. 301.46(2) and (2m), Wis. Stats. Included in this definition is a person who has been convicted of, or has been found delinquent of, or has been found not guilty by reason of disease or mental defect of a "sexually violent offense" and/or a "crime against children". This definition does not include a person who is released under Sec. 980.45, Wis. Stats., so long as the person is subject to supervised release under Ch. 980, Wis. Stats., the person is residing where he or she is ordered to reside under Sec. 980.08, Wis. Stats., and the individual is in compliance with all court orders issued under Ch. 980, Wis. Stats.
 - (3) **Loitering.** Whether in a group, crowd, or as an individual, to stand idly about, loaf, prowl, congregate, wander, stand, linger aimlessly, proceed slowly or with many stops, to delay or dawdle.
 - (4) **Minor.** A person under the age of eighteen (18).
 - (5) **Residence, Permanent.** A place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.
 - (6) **Residence, Temporary.** A place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and

which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent address. A residence may be mobile or transitory.

- (7) **Safety Zones.** Any real property that supports or upon which there exists any facility used for children, including, but not limited to:
- a. A public park, parkway, park facility, recreation area, beach, conservancy area or similar area or facility held open for use by the public for active or passive leisure purposes. Also included are any privately owned neighborhood parks and open spaces where children congregate such as those owned by a homeowners association of a subdivision.
 - b. A swimming pool or splash pad where children swim, wade or splash in a pool or other aquatic facility held open for use by the public or where no lifeguard is on duty and children are known to congregate.
 - c. A library which is open for use by the public where such library includes a collection of material specifically intended for use by children.
 - d. A public recreational trail or path where children regularly walk, ride bicycles, or ride horses, and that is dedicated to the public for recreation purposes or intended for public use.
 - e. A playground which is any public outdoor area set aside for recreation and play and includes any area with playground equipment including, but not limited to, swings, slides, play structures, sandboxes, and seesaws.
 - f. A school property serving children. Included are any public school as defined by Sec. 115.01(1), Wis. Stats.; a private school as defined by Sec. 115.001(3); a charter school as defined by Sec. 115.001(1), Wis. Stats.; a speciality school, including, but not limited to, a Montessori school, gymnastics academy, dance academy, or music school.
 - g. Athletic fields and facilities used by children for organized and/or informal athletic activities. This includes public athletic fields and private athletic fields if open to the public.
 - h. A movie theater.
 - i. A licensed day care center that has been licensed under Sec. 48.65, Wis. Stats., to provide care and supervision of children, and includes before- and after-school daycare, which has the meaning as defined by Sec. 120.125(1), Wis. Stats.
 - j. A ski hill or sledding hill open to the public.
 - k. Any specialized school or place of instruction for children, including, but not limited to a gymnastics academy, dance academy, music school, or fitness club. Included are "private places" owned by a private entity or person and are open to the public to provide a service and where children regularly congregate, whether supervised or unsupervised.
 - l. A public or private golf course or range.
 - m. A place of worship, church, synagogue, mosque, temple or other house of religious worship ("church").
 - n. Any facility for children (which means a public or private school, a group home, as defined in Section 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in Section 48.02(15d), Wis. Stats.; a shelter care facility,

which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent address. A residence may be mobile or transitory.

- (7) **Safety Zones.** Any real property that supports or upon which there exists any facility used for children, including, but not limited to:
- a. A public park, parkway, park facility, recreation area, beach, conservancy area or similar area or facility held open for use by the public for active or passive leisure purposes. Also included are any privately owned neighborhood parks and open spaces where children congregate such as those owned by a homeowners association of a subdivision.
 - b. A swimming pool or splash pad where children swim, wade or splash in a pool or other aquatic facility held open for use by the public or where no lifeguard is on duty and children are known to congregate.
 - c. A library which is open for use by the public where such library includes a collection of material specifically intended for use by children.
 - d. A public recreational trail or path where children regularly walk, ride bicycles, or ride horses, and that is dedicated to the public for recreation purposes or intended for public use.
 - e. A playground which is any public outdoor area set aside for recreation and play and includes any area with playground equipment including, but not limited to, swings, slides, play structures, sandboxes, and seesaws.
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 - g. Athletic fields and facilities used by children for organized and/or informal athletic activities. This includes public athletic fields and private athletic fields if open to the public.
 - h. A movie theater.
 - i. A licensed day care center that has been licensed under Sec. 48.65, Wis. Stats., to provide care and supervision of children, and includes before- and after-school daycare, which has the meaning as defined by Sec. 120.125(1), Wis. Stats.
 - j. A ski hill or sledding hill open to the public.
 - k. Any specialized school or place of instruction for children, including, but not limited to a gymnastics academy, dance academy, music school, or fitness club. Included are "private places" owned by a private entity or person and are open to the public to provide a service and where children regularly congregate, whether supervised or unsupervised.
 - l. A public or private golf course or range.
 - m. A place of worship, church, synagogue, mosque, temple or other house of religious worship ("church").
 - n. Any facility for children (which means a public or private school, a group home, as defined in Section 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in Section 48.02(15d), Wis. Stats.; a shelter care facility,

as defined in Section 48.02(17), Wis. Stats.; a foster home, as defined in Section 48.02(6), Wis. Stats.; a treatment foster home, as defined in Section 48.02(17q), Wis. Stats.; a day care center licensed under Section 48.65, Wis. Stats.; a day care program established under Section 120.13(14), Wis. Stats.; a day care provider certified under Section 48.651, Wis. Stats.; or a youth center, as defined in Section 961.01(22), Wis. Stats.

- (8) **Sexually Violent Offense.** Shall have the meaning as set forth in Sec. 980.01(6), Wis. Stats., as amended from time to time.
- (9) **Crimes Against Children.** Shall mean any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or federal government, having like elements necessary for conviction, respectively:

940.225(1)	First Degree Sexual Assault
940.225(2)	Second Degree Sexual Assault
940.225(3)	Third Degree Sexual Assault
940.22(2)	Sexual Exploitation by Therapist
940.30	False Imprisonment - Victim Was Minor & Not The Offender's Child
940.31	Kidnapping – Victim Was Minor & Not the Offender's Child
944.02	Rape (prior statute, see now 940.225)
944.06	Incest
944.10	Sexual Intercourse With a Child (prior statute, see now 948.02)
944.11	Indecent Behavior With a Child (prior statute, see now 948.02)
944.12	Enticing Child for Immoral Purposes (prior statute, see now 948.07)
948.02(1)	First Degree Sexual Assault of a Child
948.02(2)	Second Degree Sexual Assault of a Child
948.025	Engaging in Repeated Acts of Sexual Assault of the Same Child
948.05	Sexual Exploitation of a Child
948.055	Causing a Child to View or Listen to Sexual Activity
948.06	Incest With A Child
948.07	Child Enticement
948.075	Use of a Computer to Facilitate a Child Sex Crime
948.08	Soliciting a Child For Prostitution
948.095	Sexual Assault of a Student by School Instructional Staff
948.11(2)(a) or (am)	Exposing a Child to Harmful Material (felony sections)
948.12	Possession of Child Pornography
948.13	Convicted Child Sex Offender Working With Children
948.30	Abduction of Another's Child
971.17	Not Guilty By Reason of Mental Disease or An Included Offense
975.06	Sex Crime Law Commitment

(c) **Sexual Offender and Sexual Predator Residency; Prohibitions; Penalties; Exceptions.**

- (1) **Prohibited Location of Residence.** It is unlawful for any designated offender to establish a permanent residence or temporary residence within Five Hundred (500) feet of any Safety Zone property/use enumerated in Subsection (b)(7), or any other place designated by the Village of Elk Mound as a place where children are known to congregate.
- (2) **Prohibited Activity.**

- a. **Loitering.** It is unlawful for any designated offender to loiter within Five Hundred (500) feet of any Safety Zone property/use enumerated in Subsection (b)(7) or any other place designated by the Village of Elk Mound as a place where children are known to congregate.
 - b. **Holiday Events/Parties.** It is unlawful for any designated offender to participate in a holiday event involving children under eighteen (18) years of age, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume, or wearing an Easter Bunny costume or any costume resembling a character known to be popular among children. 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 Subsection. "Participation" is to be defined as actively taking part in the event.
- (3) **Measurement of Distance.**
- a. For purposes of determining the minimum distance separation under this Section, the distance requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outside property line of a protected location designated by the Village of Elk Mound as a Safety Zone property/use per Subsection (b)(7) above where children are known to congregate.
 - b. The Village Clerk-Treasurer shall maintain an official map showing prohibited locations and Safety Zones as defined by this Section. The Village Clerk-Treasurer 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. The map is to be displayed in the Office of the Village Clerk-Treasurer.
- (4) **Violations; Penalties.** A person who violates this Section shall be punished by forfeiture per Section 1-1-6. Each day a person maintains a residence in violation of this Section constitutes a separate violation. The Village of Elk Mound may also seek equitable relief.
- (5) **Exceptions.** A designated offender residing within a prohibited area as described in Subsection (c)(1) does not commit a violation of this Section if any of the following applies:
- a. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Section 301.45, Wis. Stats., before the original effective date of this Section.
 - b. The person is a minor or ward under guardianship and is not required to register under Sections 301.45 or 301.46, Wis. Stats.
 - c. The protected location within Five Hundred (500) feet of the person's permanent residence was opened after the person established the permanent residence and reported and registered the residence pursuant to Sec. 301.45, Wis. Stats.
 - d. The residence is also the primary residence of the person's parents, grandparents, spouse, domestic partner, or children provided that such party established the residence at least one (1) year before the designated offender established the residence at the location.

- e. In such cases involving a juvenile placed in accordance with this exception, when the juvenile turns eighteen (18) years of age, the juvenile would be allowed to continue to reside at the already established residence.
- f. The person is a designated offender that has been adjudicated a sexually violent person pursuant to Chapter 980, Wis. Stats., if the designated offender is subject to supervised release under Chapter 980, Wis. Stats., the designated offender is residing where he or she is ordered to reside under Sec. 980.08, Wis. Stats., and the offender is in compliance with all court orders issued under Ch. 980, Wis. Stats.

(d) **Property Owners Prohibited From Renting Real Property To Certain Sexual Predators and Sexual Offenders; Penalties.**

- (1) **Prohibition.** It is unlawful to let or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to this Section, if such place, structure, or part thereof, trailer, or other conveyance is located within Five Hundred (500) feet of a protected location zone described in Subsection (c)(1). A person letting or renting a place or structure shall be deemed to have such knowledge if, at least ten (10) days prior to letting or renting the place or structure, the sex offender's name appears on the Wisconsin Department of Correction's sex offender registry and the person letting or renting the place knew the sex offender would be residing at the subject place or structure.
- (2) **Violations; Penalties.** A property owner's failure to comply with the provisions of this Subsection shall constitute a violation of this Section, and shall subject the property owner to the Code enforcement provisions in Subsection (c)(4) as provided in this Section. Each day a violation continues shall constitute a separate offense.

(e) **Safety Zones.**

- (1) **Presence Regulated.** A sex offender shall not enter upon or be present upon a property within a Safety Zone under this Section.
- (2) **Safety Zone Exceptions.** A sex offender who enters upon or who is present upon or within a safety zone does not commit a violation of this Subsection if any of the following apply:
 - a. The property also supports a church, synagogue, mosque, temple or other house of religious worship, subject to all of the following conditions:
 - 1. The sex offender's entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - 2. The sex offender shall not participate in any religious education programs that include individuals under the age of eighteen (18).
 - b. The property also supports a use lawfully attended by a sex offender's natural or adopted children, which a child's use reasonably requires the attendance of the sex offender as the child's parent upon the property, subject to the following condition:
 - 1. The sex offender's entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public.

2. Written advance notice is made from the person to an individual in charge of the use upon the property and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the sex offender.
 - c. The property also supports a polling location in a local, state or federal election, subject to all of the following conditions:
 1. The sex offender is eligible to vote;
 2. The property is the designated polling place for the sex offender; and
 3. The sex offender enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is to any member of the electorate, and vacates the property immediately after voting.
 - d. The property also supports a school lawfully attended by a sex offender as a student under which circumstances the sex offender may enter upon the property supporting the school at which the sex offender is enrolled, for such purposes and at such times as are reasonably required for the educational purposes of the school.
 - e. The property also supports a court, government office or room for public governmental meetings, subject to all of the following conditions:
 1. The sex offender is on the property only to transact business at the government office or place of business, other than a public library, or attend an official meeting of a governmental body; and
 2. The sex offender leaves the property immediately upon completion of the business or meeting.
- (3) **Violations; Penalties.** A person who violates this Subsection shall be punished by a forfeiture per Section 1-1-6. Each day a violation continues shall constitute a separate offense.
- (f) **Injunctions and Other Penalties for Violations.** Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the Village of Elk Mound from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this Chapter. If an offender establishes a residence in violation of Subsections (c) or (d) above, or enters or is present upon or within a Safety Zone in violation of Subsection (e) above, the Village Attorney may bring an action in the name of the Village of Elk Mound in circuit court to permanently enjoin any such violation as a public nuisance.
- (g) **Appeals.**
- (1) **Appeals Body.** A designated offender may seek an exemption, waiver or modification from this Section by appealing to the Plan Commission. The above requirements may be waived or modified upon approval of the Village of Elk Mound Plan Commission through appeal by the affected party. Such appeal request shall be made to the Village Clerk-Treasurer, who shall forward the request to the Plan Commission.
 - (2) **Hearing Notice.** The Plan Commission shall hold a public hearing on the appeal. Notice in the form of an agenda shall be published/posted as required by state law and be provided to the members of the Plan Commission, the applicant, and the property owner if not the applicant. Such agenda notice shall be provided a minimum of seven (7) days prior to the hearing date.
 - (3) **Hearing; Considerations.** The Plan Commission shall hold a hearing on each appeal to conduct a risk assessment in each case, during which the Plan Commission may

review any pertinent information and may accept oral or written statements from any person. The Plan Commission shall request and receive reports from law enforcement authorities serving the Village on such appeal. The Plan Commission shall consider the public interest as well as the applicant's presentation and concerns, giving the applicant a reasonable opportunity to be heard. The Plan Commission shall also consider any written, emailed or oral statements from any person at the hearing or received in advance of the hearing in the case of written or emailed comments. The Plan Commission shall consider the specific circumstances and facts of each applicant and determine whether the applicant poses a threat public safety if he or she resides at that proposed location. The Plan Commission shall consider factors which may include, but are not limited to, the following:

- a. Circumstances surrounding the offense.
 - b. Relationship of the offender and victim.
 - c. Presence or use of force with the offense.
 - d. Presence of enticement.
 - e. Need to protect the victim or similarly situation individuals.
 - f. Current dangerousness of the offender.
 - g. Proximity in time from the original offense.
 - h. Duration of incarceration and subsequent time out.
 - i. Current supervision status by the Wisconsin Department of Corrections.
 - j. Counseling and treatment history.
 - k. Any criminal offense or regulatory violations committed since the original offense.
 - l. Credibility of the offender/applicant.
 - m. Remorse.
 - n. Proximity of proposed residence to a Safety Zone.
 - o. Support network of offender near proposed residence.
 - p. Alternative options for housing.
- (4) **Determination.** The Plan Commission shall decide by majority vote whether to grant or deny an exemption or modification. An exemption decision may be unconditional or be conditional to a specific address or period of time. After deliberation and determination, the Plan Commission shall forward its written decision to the applicant, Village Clerk-Treasurer, and to the law enforcement authorities serving the Village of Elk Mound for their information and action. The decision of the Plan Commission may be appealed to the circuit court by any aggrieved party within thirty (30) days of the final receipt of the final decision. The review shall be a review by certiorari and the circuit court may affirm or reverse the final decision, or remand the decision to the decision maker for further proceedings consistent with the court's decision.

SECTION II. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. EFFECTIVE DATE.

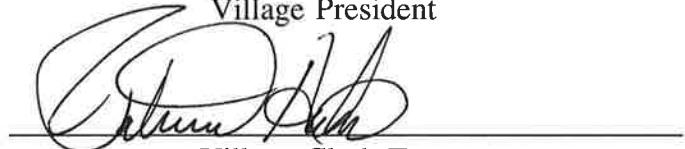
This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 3rd day of April, 2019.

VILLAGE OF ELK MOUND, WISCONSIN



Village President



Village Clerk-Treasurer

INTRODUCED:

4/3/19

ADOPTED:

4/3/19

POSTED/PUBLISHED:

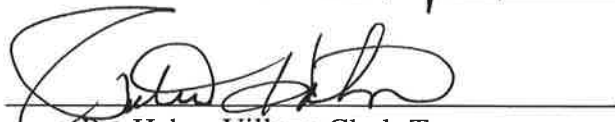
4/9/19

State of Wisconsin:

County of Dunn:

I hereby certify that the foregoing Ordinance is a true, correct and complete copy of an Ordinance duly and regularly adopted by the Village Board of the Village of Elk Mound on the 3rd day of April, 2019, and that said Ordinance has not been repealed or amended and is now in full force and effect.

Dated this 3rd day of April, 2019.



Pat Hahn, Village Clerk-Treasurer