

Ordinance No. _____

Town of Minocqua

SEX OFFENDER RESIDENCY RESTRICTIONS-LOITERING

AUTHORITY

The Town Board of the Town of Minocqua, Oneida County, Wisconsin has the specific authority as a Town with Village powers, to exercise municipal home rule and to serve the Town's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the Town, by creating a Sex Offender Residency Restrictions-Loitering Ordinance.

ADOPTION OF ORDINANCE

This Ordinance, adopted by a majority of the Minocqua Town Board on a roll call vote with a quorum present and voting, and proper notice having been given, provides for the regulation of residency of sex offenders in the Town.

- I. Purpose and intent.
- II. Definitions.
- III. Residency restrictions.
- IV. Loitering.
- V. Loitering exceptions.
- VI. Penalties and remedies.
- VII. Severability.
- VIII. Effective Date.

I. Purpose and intent.

- A. The Town of Minocqua finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. Given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of 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 and daycare centers. The Town finds and declares that, in addition to schools and daycare centers, children congregate or play in a number of public places, including public parks and other facilities for children.
- B. This chapter is a regulatory measure aimed at protecting the health and safety of children in the Town of Minocqua from the risk that convicted sex offenders may re-offend in locations close to their residences. It is the intent of this chapter not to impose a criminal penalty but rather to serve the town's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the

town 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; and by creating child safety zones where children regularly congregate in concentrated numbers wherein access by certain sexual offenders and sexual predators to such zones shall be restricted or excluded.

II. Definitions.

As used in this chapter and unless the context otherwise requires:

“Crime against children” means any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or the federal government, having like elements necessary for conviction and involving a person under the age of eighteen (18) years, respectively:

Wisconsin Statute Sections	
940.225(1)	First Degree Sexual Assault
940.225(2)	Second Degree Sexual Assault
940.225(3)	Third Degree Sexual Assault
940.22(2)	Sexual Exploitation by Therapist
940.30	False Imprisonment-victim was minor and not the offender’s child
940.31	Kidnapping-victim was minor and not the offender’s child
944.01	Rape (prior statute)
944.06	Incest
944.10	Sexual Intercourse with a Child (prior statute)
944.11	Indecent Behavior with a Child (prior statute)
944.12	Enticing Child for Immoral Purposes (prior statute)
948.02(1)	First Degree Sexual Assault of a Child
948.02(2)	Second Degree Sexual Assault of a Child
948.025	Engaging in Repeated Acts of Sexual Assault of the Same Child
948.05	Sexual Exploitation of a Child
948.055	Causing a Child to View or Listen to Sexual Activity

948.06	Incest with a Child
948.07	Child Enticement
948.075	Use of a Computer to Facilitate a Child Sex Crime
948.08	Soliciting a Child for Prostitution
948.095	Sexual Assault of a Student by School Instructional Staff
948.11(2)(a) or (am)	Exposing Child to Harmful Material-felony sections
948.12	Possession of Child Pornography
948.13	Convicted Child Sex Offender Working with Children
948.30	Abduction of Another's Child
971.17	Not Guilty by Reason of Mental Disease-of an included offense
975.06	Sex Crimes Law Commitment

“Facility for children” means a public or private school, a group home, as defined in Section 48.02(7), Wisconsin Statutes, a residential care center for children and youth, as defined in Section 48.02(15d), Wisconsin Statutes, a shelter care facility, as defined in Section 48.02(17), Wisconsin Statutes, a daycare center licensed under Section 48.65, Wisconsin Statutes, a daycare program established under Section 120.13(14), Wisconsin Statutes, a daycare provider certified under Section 48.651, Wisconsin Statutes, or a youth center, as defined in Section 961.01(22), Wisconsin Statutes.

“Offender” means 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 crime against children.

“Permanent residence” means the place where a person sleeps, abides, lodges or resides for fourteen (14) or more consecutive days or which qualifies as a residence under the holdings of the Wisconsin Supreme Court and which may include more than one location, and may be mobile or transitory.

“Sexually violent offense” shall have the meaning as set forth in Section 980.01(6), Wisconsin Statutes, as amended from time to time.

“Sexually violent person” shall have the meaning as set forth in Section 908.01(7), Wisconsin Statute, as amended from time to time.

“Temporary residence” means residence or premises meeting any of the following criteria:

1. A place where the person sleeps, abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not that person's permanent residence as defined in this section;
2. A place where the person routinely sleeps, abides, lodges or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not that person's permanent residence as defined in this section; or
3. A place where a person sleeps, or which qualifies as a temporary residence under the holdings of the Wisconsin Supreme Court, and which may include more than one location, and may be mobile or transitory.

III. Residency restrictions.

- A. An Offender shall not reside within one thousand five hundred (1,500) feet of real property that supports or upon which there exists any of the following uses:
 1. Any Facility for children;
 2. A public park, parkway, parkland, park facility;
 3. A public swimming pool;
 4. A public library;
 5. A recreational trail;
 6. A public playground;
 7. A school for children;
 8. Athletic fields used by children;
 9. A daycare center;
 10. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school; or
 11. Aquatic facilities open to the public.
- B. The Town adopts the residency restrictions in Wisconsin Statute 980 as amended from time to time.
- C. Measurement of Distance. The distance shall be measured from the closest boundary line of the real property supporting the residence of an Offender to the closest boundary line of the real property that supports or upon which there exists

any of the uses enumerated in subsection IIIA of this Ordinance.

- D. Residency Restriction Exceptions. An Offender residing within one thousand five hundred (1,500) feet of real property that supports or upon which there exists any of the uses enumerated in subsection IIIA of this Ordinance does not commit a violation of this chapter if any of the following apply:
1. The Offender is required to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental facility.
 2. The Offender had established such residence prior to the effective date of this Ordinance.
 3. The use enumerated in subsection IIIA of this Ordinance began after the Offender established a residence.
 4. The Offender is a minor or ward under guardianship.
- E. In addition to and notwithstanding the foregoing, but subject to subsection D of this section, no person, who has been convicted of a sexually violent offense shall be permitted to reside in the Town of Minocqua unless such person was domiciled in the Town of Minocqua at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense.
- F. In addition to and notwithstanding the foregoing, but subject to subsection D of this section, no Offender shall be permitted to reside in the Town of Minocqua unless such Offender was domiciled in the Town of Minocqua at the time of the most recent offense of the crime against children.
- G. Exception for placements under Chapter 980 of Wisconsin Statutes. To the extent required by § 980.135 of the Wisconsin Statutes, and notwithstanding the foregoing provisions of this chapter, the Town of Minocqua hereby exempts and may not enforce any portion thereof that restricts or prohibits a sexually violent person from residing at a certain location or that restricts or prohibits a person from providing housing to a sexually violent person against an individual who is released under sec. 980.08, Wis. Stat., or against a person who provides housing to such individual, so long as the individual is subject to supervised release under Chapter 980 of the Wisconsin Statutes, the individual is residing where he or she is ordered to reside under § 980.08 of the Wisconsin Statutes, and the individual is in compliance with all court orders issued under Chapter 980 of the Wisconsin Statutes.

IV. Loitering.

- A. It is unlawful for any person defined as an Offender pursuant to this ordinance to

loiter or prowl in the locations enumerated in Section 3 of this ordinance, in a place, at a time, or a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity.

- B. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself/herself or manifestly endeavors to conceal himself/herself or any object. Unless flight by the actor or other circumstances make it impracticable, a peace 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/her to identify himself/herself and explain his/her presence and conduct at the locations enumerated in Section 3 of this ordinance. No person shall be convicted of an offense under this section if the peace 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 the peace officer at the time, would have dispelled the alarm.

V. Loitering exceptions.

The previous section shall not apply where the actor was accompanied by his/her parent, guardian or other adult person having his/her care, custody or control, or where that actor was exercising first amendment rights protected by the United States Constitution or Wisconsin Constitution, including freedom of speech, the free exercise of religion and the right of assembly.

VI. Penalties and remedies.

- A. Forfeitures. Any person found guilty of violating this Ordinance shall be subject to a forfeiture of not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00) for each violation. Each violation and each day a violation continues or occurs shall constitute a separate offense. Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the Town of Minocqua from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this chapter.
- B. Injunction-Violation of Residency Restrictions. If an Offender establishes a permanent or temporary residence in violation of this Ordinance, the chief of police may refer the matter to the town 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, safety of another or others. Upon such referral, the town attorney shall bring an action in the name of the town in circuit court to permanently enjoin such residency as a public nuisance.

VII. Severability

The terms and provisions of this Ordinance are severable. Should any term or provision of this ordinance be found invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

VIII. Effective Date

This Ordinance is effective on publication or posting. The Town Clerk shall properly post or publish this Ordinance as required under Section 60.80 Wis. Stats.

Adopted this 11th day of November , 2017.

TOWN BOARD of Minocqua:

/s/
Mark Hartzheim, Town Chairperson

/s/
John Thompson, Town Supervisor

/s/
Bill Stengl, Town Supervisor

/s/
Billy Fried, Town Supervisor

/s/
Susan Heil, Town Supervisor

/s/
ATTEST: Roben Haggart, Town Clerk