

ORDINANCE NO. 171

**AN ORDINANCE CREATING SECTION 171 OF THE MUNICIPAL CODE
REGARDING RESIDENCY RESTRICTION FOR SEX OFFENDERS
AND DIRECTING ACTION FOR INJUNCTIVE RELIEF
FOR VIOLATION THEREOF**

WHEREAS, Wisconsin Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community.

WHEREAS, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically, at Section 980.08, Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

WHEREAS, The Village of Hustisford places a high priority on maintaining public safety through highly skilled and trained law enforcement, as well as dependency upon laws that deter and punish criminal behavior; and

WHEREAS, sex offenders have very high recidivism rates, and according to a 2003 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to re-offend and prey on the most innocent members of our society, and more than two-thirds of the victims of rape and sexual assault are under the age of 18 and sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon; and

WHEREAS, the Village Board has reviewed the findings of a number of the Legislatures of these United States, including, but not limited to, Pennsylvania, Alabama, Iowa, Florida, Maine, Louisiana and the Common Council of Franklin, Wisconsin, as they pertain to laws adopted which relate to, and in part, impose restrictions upon sex offenders with respect to residency; and

WHEREAS, the Village Board having also reviewed the decision of the United States Court of Appeals for the 8th Circuit, in *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005), providing in part, "-" "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. [Citation 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 re-offense. Even experts in the field could not predict with confidence whether a particular sex offender will re-offend, 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 re-offense against children. One expert in the district court opined that it is 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 policymakers 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 rational basis"; and

WHEREAS, the Village Board, intending to codify in the Municipal Code of the Village of Hustisford in furtherance of the protection of the safety of its citizens, supports the proposition that municipalities be responsible for, as well as to, their own citizens; and

WHEREAS, through 2005 Wisconsin Acts 431 and 434, the Wisconsin Legislature has both created and repealed Statutory Provisions relating to the placement of sexually violent persons as set forth by the Wisconsin Revisor of Statutes in a letter dated September 25, 2006, thereby leaving the location of sex offender residency unregulated; and

WHEREAS, the Village Board having considered those submissions and presentations made to the State of Wisconsin Legislative Council Special Committee on Placement of Sex Offenders at the State Capitol of Madison, Wisconsin, at its meeting on November 30, 2006; and

WHEREAS, the Village Board having considered the required needs of sex offenders in seeking a successful rehabilitation and integration back into society, against the safety and protection need of the residents of the village; and the Village Board determines that creating a density and distance requirement for offenders who may live near each other furthers this goal by avoiding the offenders from having contact and associating with each other, affirming each other's beliefs and activities, and possibly conspiring with each other to commit additional criminal acts; and the Board further determining that the density and distance requirements enhance public safety and rehabilitation by integrating offenders into diverse neighborhoods that will better promote safe, non-criminal behavior; and

WHEREAS, the Village Board having considered the proposed amendment to the Municipal Code of the Village of Hustisford to create residency restrictions for certain sex offenders and additional provisions to further protect children, and upon all of the records, files, studies, reports and proceedings pertaining to the subject matter, and all of the prior actions and experience of the Village of Hustisford in protecting the community from sexually violent persons, the Board finds the proposed ordinance will serve to protect the health, safety and welfare of the Community.

The Village Board of the Village of Hustisford do ordain as follows:

SECTION I. Section 171 - Relating to Residency Restrictions For Sex Offenders of the Hustisford Municipal Code of the Village of Hustisford is hereby created to read as follows:

Chapter 171

RESIDENCY RESTRICTION FOR SEX OFFENDERS

§171-1	Title
§171-2	Purpose and findings
§171-3	Definitions
§171-4	Property owners prohibited from renting real property to certain sexual offenders and sexual predators; penalties
§171-5	Original domicile restrictions
§171-6	Designated Walk Zone Restriction
§171-7	Density regulations
§171-8	Violations

§ 171-1. Title.

This chapter shall be known as the "Village of Hustisford Residency Restrictions For Sex Offenders."

§ 171-2. Purpose and findings.

A. This Chapter is a regulatory measure aimed at protecting the health and safety of children in Hustisford from the risk that certain convicted sex offenders may re-offend in locations close to their residences. The Village finds and declares that certain sex offenders are a serious threat to public safety. When convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested 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 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 and daycare centers. The Village finds and declares that, in addition to schools and daycare centers, children congregate or play at public parks, swimming pools, libraries, recreational trails, athletic fields, and playgrounds.

§ 171-3. Definitions.

The following definitions shall be used in this Chapter unless the context otherwise requires:

A. A "crime 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 the federal government, having like elements necessary for conviction and involving a person under the age of 18 years, respectively:

Wis. Stats 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;
948.085	Sexual Assault of a Child Placed in Substitute Care;
948.09	Sexual Intercourse with a Child age 16 or older;
948.095	Sexual Assault of a Student by School Instructional Staff;
948.10	Exposing Genitals or Pubic areas to a child;
948.11	Exposing Child to Harmful Material or Harmful Descriptions of Narrations;
948.12	Possession of Child Pornography;
948.13	Convicted Child Sex Offender Working with Children;
948.14	Registered Sex Offender and Photographing Minors;
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

B. "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.

C. "Permanent Residence" means the place where an offender abides, lodges or resides for fourteen (14) or more consecutive days.

D. "Temporary Residence" means: the place where the person abides, lodges or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent residence; or the 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 persons permanent residence.

E. "Original Domicile" means the offender's true, fixed and permanent home, to which the offender intends to return and remain even though currently residing elsewhere.

F. "Residency restrictions" means an offender shall not establish a permanent residence or temporary residence in any location on a parcel of land which, in whole or in part, is within one thousand feet (1000') of the real property comprising any of the following:

1. Any facility for children (which means a public or private school, a group home, as defined in Section 46.02(7), Stats., a residential care center for children and youth, as defined in Section 48.02 (15d), Stats., a shelter care facility, as defined in Section 48.02(17), Stats., a foster home, as defined in Section 48.02 (6), Stats., a treatment foster home, as defined in Section 48.02 (17q), Stats., a daycare center licensed under Section 48.65, Stats., a daycare program established under Section 120.13 (14), Stats., a daycare provider certified under Section 48.651, Stats., or a youth center, as defined in Section 961.01 (22), Stats.); and/or

2. Any path, route, area or facility used for

- a. a public park, parkway, parkland, park facility;
- b. a public swimming pool;
- 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 daycare center;

any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;

- j. aquatic facilities open to the public;
- k. rehabilitative agencies for children and adults with developmental disabilities, (i.e. Portal Industries. Inc.

The distance shall be measured from the closest boundary line of the real property supporting the residence of an offender to the closest real property

boundary line of the applicable above enumerated use(s). A map depicting the above-enumerated uses and the resulting residency restriction distances, as amended from time to time, is on file in the Office of the Village Clerk for public inspection.

G. "Residency restriction exceptions" means an offender establishing a residence in any location on a parcel of land which, in whole or in part, is within one thousand feet (1000') of the real property comprising any of the uses enumerated in Section 171-3(F), does not commit a violation of this subsection if any of the following apply:

1. The offender has established a residence prior to the effective date of this Chapter (to ***be inserted upon approval***) which is within one thousand feet (1000') of any of the uses enumerated in Section 171-3(F) above, or such enumerated use is newly established after such effective date and it is located within such one thousand feet (1000') of a residence of an offender, which was established prior to the effective date of this Section.

2. The offender is a minor or ward under guardianship.

§ 171-4. Property owners prohibited from renting real property to certain sexual offenders and sexual predators; penalties.

A. 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 offender prohibited from establishing such permanent residence or temporary residence pursuant to this ordinance, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in 171-3(F) and not subject to an exception set forth in 171-3(G) above,

B. A property owner's failure to comply with provision of this section shall constitute a violation of this section, and shall subject the property owner to the code enforcement provisions in Section 171-8 as provided in this ordinance.

§ 171-5. Original domicile restriction.

In addition to and notwithstanding the foregoing, but subject to Section 171-3(G). above, no person and no individual who has been convicted of a crime against children shall be permitted to establish a residence in the Village of Hustisford, unless such person was domiciled in Dodge County at the time of the offense resulting in the person's most recent conviction for committing the crime against children.

§ 171-6 Designated walk zone restriction.

In addition to and notwithstanding the foregoing, but subject to Section 171-3(G), no person and no individual who has been convicted of a crime against children shall be permitted to establish a residence in a designated walking zone for schools or school districts.

§ 171-7. Density regulation.

In addition to and notwithstanding the foregoing, but subject to Section 171-3(G) above, no offender shall be permitted to establish a permanent or temporary residence within one thousand feet (1000') of a temporary or permanent residence of another offender in the Village of Hustisford. This restriction shall not apply to offenders who have established residence within one thousand feet (1000') of another offender prior to the effective date of this ordinance, but all existing offender residences shall be considered when calculating distance and determining residence availability for any offenders establishing a residence after the effective date of the ordinance.

§ 171-8. Violations.

If an offender violates any provisions of this Chapter, without any exception(s) as also set forth above, said offender shall be subject to a forfeiture of not less than \$1,000 and not more than \$2,500 for each violation. Each day that a violation exists shall be considered a separate offense. If any person, corporation, or business entity of any kind rents to an offender, in violation of the terms of this ordinance, said person, corporation, or business entity shall be subject to a forfeiture of not less than \$1,000 and not more than \$2,500 for each violation. Each day that a violation exists shall be considered a separate offense. In addition to all relief called for herein, the Village may also seek equitable relief, including, but not limited to, an action in the name of the Village in the Circuit Court for Dodge County to permanently enjoin such residency.

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

SECTION III. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

SECTION IV. This ordinance shall take effect and be in force from and after its passage and publication.

Dated this 2ND day of June, 2008

Signed:



Don Degner, Village Board President

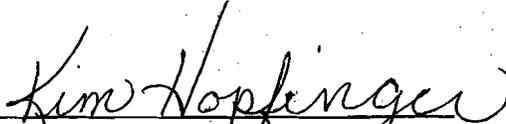
INTRODUCED:

June 2, 2008

ADOPTED:

June 9, 2008

ATTEST:


Kim Hopfinger, Village Clerk