

Ordinance 08-04-2015, Ordinance to Provide Regulations Relating to Residency for Sex Offenders

State of Wisconsin
Town of Montrose
Dane County

WHEARAS, The Wisconsin Statutes provide for the punishment, treatment and supervision of Offenders convicted or otherwise responsible for sex crimes against children, including their release into the community; and

WHEREAS, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent Offenders, 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 Offenders into the community; and

WHEREAS, the Town of Montrose 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 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend and prey on the most innocent members of our society, and more than two-thirds of the victims of 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 Town Board has considered the findings of a number of Legislatures of these United States, including Wisconsin, and including, but not limited to Pennsylvania, Alabama, Iowa, Florida, Main and Louisiana, as they pertain to laws adopted which relate to and, in part, impose restrictions upon sex offenders with respect to residency; and

WHEREAS, the Town Board has also considered 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 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 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 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, Sec. 60.10 (2)(c) Wis. Stats. Authorizes the Town Board of the Town of Montrose to enact legislation for the health, safety and welfare of the public, and

NOW, THEREFORE, the Town Board of the Town of Montrose does ordain as follows:

SECTION 1: PURPOSE, FINDINGS AND INTENT

1. This Ordinance is a regulatory measure intended to protect the health and safety of children in Town of Montrose from the risk that convicted sex offenders may reoffend in locations close to their residences. The Town 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 re-crested 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, day-care centers and other places children frequent. The Town finds and declares that in addition to schools and day-care centers, children congregate or play at child oriented facilities such as parks and playgrounds and other facilities.
2. It is not the intent of this ordinance 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 children of the Town by prohibiting convicted sexual offenders from loitering, residing, or being present in specified areas around locations where children regularly congregate. It is the further intent of this section to recognize that convicted sexual offenders must re-enter the community, and the Town of Montrose hereby accepts that it has a responsibility to ensure that, in addition to promoting regulatory measures aimed at protecting children, its regulatory measures are not aimed at prohibiting convicted sexual offenders from being part of this society.

SECTION 2. DEFINITIONS.

Except where an inconsistent definition is expressly specified, the terms used in this ordinance shall be interpreted consistent with Wis. Stat. ch. 948 *Crimes Against Children*, Wis. Stat. §301.45 *Registered Sex Offenders*, and Wis. Stat. ch. 980 *Sexually Violent Person Commitments*. The following definitions are generally applicable:

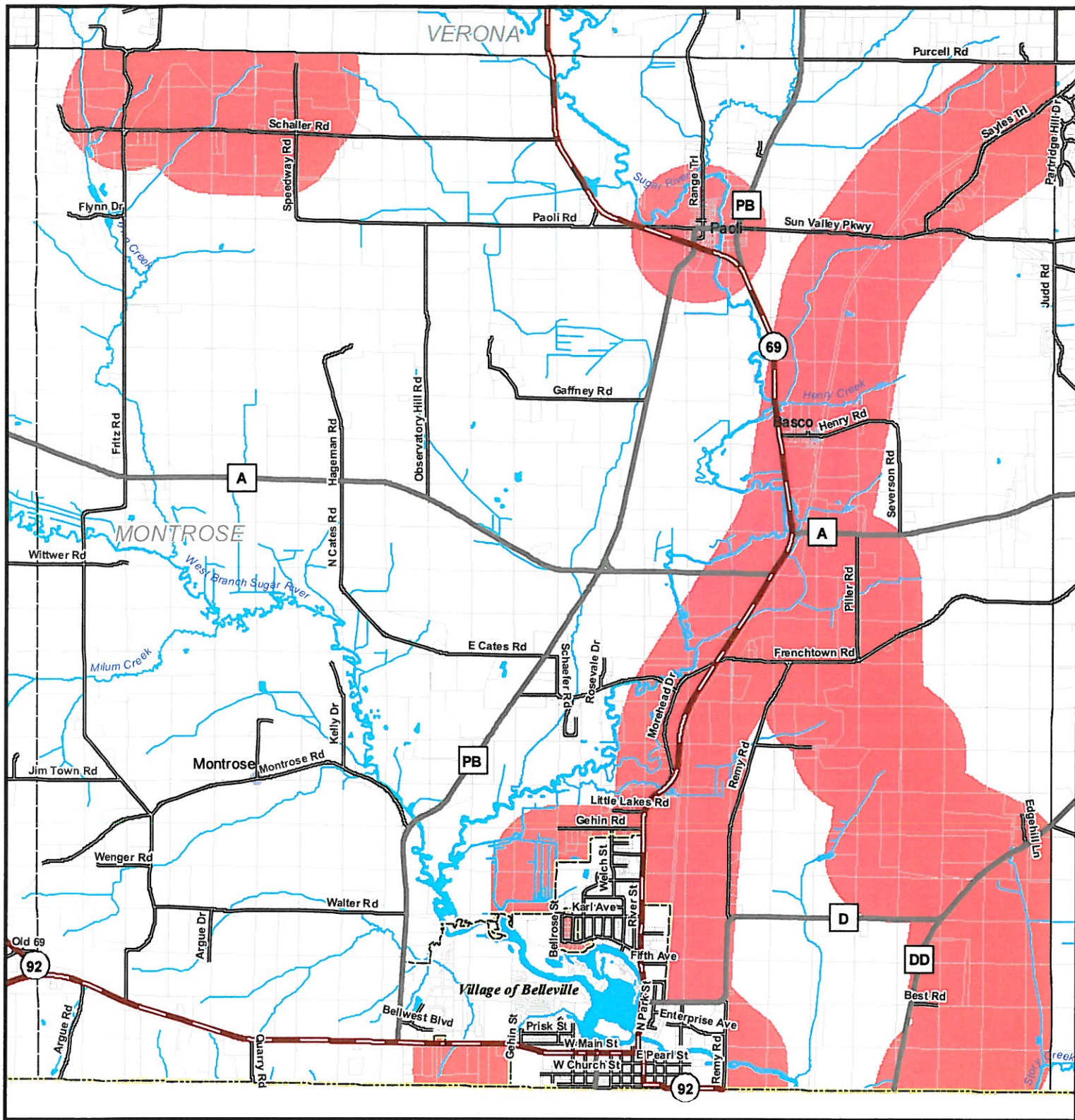
1. Child means a person age 16 or younger for purposes of this ordinance.
2. Minor means a person under the age of 17.
3. Adult means a person who has attained the age of 18 years or older.
4. Child Congregation Area means an area where children congregate to play, and shall include publicly owned areas, privately owned areas with public accommodations that cater to children and/or privately owned areas where and when children are present. All Child Congregation Areas are protected as child safety areas.
5. Designated Offender means any person who is required to register under Wis. Stat. §301.45 and is under court ordered supervision by the Wisconsin Department of Corrections for any sexual offense against a child, unless the person is under the age of eighteen at the time of the offense and the offender was not tried and convicted of the offense as an adult.
6. Permanent Residence means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.
7. Temporary Residence means 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.

8. Loitering means, 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.
9. Zones:
 - a. Restricted Zones: certain areas that are designated by the Town as areas children congregate, including, but not limited to, public park, parkway, parkland, park facility, public swimming pool, public library, recreational trail, public playground, school for children, athletic fields used by children, daycare center, a ski hill or sledding hill open to the public, a private recreational facility designed or operated for the purpose of providing recreational activities primarily for children under 16 years of age, any facility for children (which means a public or private school, a group home, as defined in §48.02(7), Stats., a residential care center for children and youth, as defined in §48.02(15d), Stats., a shelter care facility, as defined in §48.02(17), Stats., a foster home, as defined in §48.025(6), Stats., a treatment foster home, as defined in §48.02(17q), Stats., a day care center licensed under §48.65, Stats., a day care program established under §120.13(14), Stats., a day care provided certified under §48.651, Stats., or a youth center, as defined in §961.01(22), Stats.).
1. Restricted Zone Maps: an official map, maintained by the Town, showing Restricted Zones designated in Red. (the "Restricted Zone Map"). A map depicting the locations of the real property supporting the above enumerated uses, as amended from time to time, is on file in the Office of the Town Clerk for public inspection.

SECTION 3. RESIDENCY RESTRICTIONS

2. Designated Offender shall not reside within two thousand (2000) feet of the real property comprising any of the following:
 - b. a public park, parkway, parkland, park facility;
 - c. a public library;
 - d. a public swimming pool;
 - e. aquatic facilities open to the public;
 - f. a recreational trail;
 - g. a public playground
 - h. a school for children
 - i. athletic fields used by children;
 - j. a daycare center;
 - k. a ski hill or sledding hill open to the public;
 - l. a private recreational facility designed or operated for the purpose of providing recreational activities primarily for children under 16 years of age.
 - m. any facility for children (which means a public or private school, a group home, as defined in §48.02(7), Stats., a residential care center for children and youth, as defined in §48.02(15d), Stats., a shelter care facility, as defined in §48.02(17), Stats., a foster home, as defined in §48.025(6), Stats., a treatment foster home, as defined in §48.02(17q), Stats., a day care center licensed under §48.65, Stats., a



Town of Montrose - Restricted Zone Map

Legend

- | | | | | | |
|--|-----------------------|---|----------------------|---|--------------------|
|  | 2000 foot Buffer Zone |  | Unincorporated Place |  | Lakes and Ponds |
|  | Interstate Highway |  | County Boundary |  | Rivers and Streams |
|  | US Highway |  | City Boundary |  | Tax Parcels |
|  | State Highway |  | Village Boundary | | |
|  | County Highway |  | Town Boundary | | |
|  | Local Road | | | | |



0 0.25 0.5 1 Miles



Dane County
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Office

day care program established under §120.13(14), Stats., a day care provided certified under §48.651, Stats., or a youth center, as defined in §961.01(22), Stats.).

3. The distance shall be measured from the closest boundary line of the real property supporting the residence of the Designated Offender to the closest real property boundary line of the applicable above enumerated use(s) .

SECTION 4. RESIDENCY RESTRICTION EXCEPTIONS

1. A Designated Offender residing within two thousand feet of the real property comprising any of the uses enumerated in (D) above, does not commit a violation of this Ordinance if any of the following apply
 - a. The Designated Offender is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility;
 - b. The Designated Offender established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. §301.45 before the effective date of this Ordinance;
 - c. The Designated Offender is a minor and is not required to register under Wis. Stat. §301.45 or §301.46.
 - d. The school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the Town as a place where children are known to congregate within two thousand (2,000) feet of the Designated Offenders permanent or temporary residence was opened after the Designated Offender established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. §301.45.
 - e. The Designated Offender established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. §301.45 before the effective date of this Ordinance;

SECTION 5. VIOLATIONS AND OR PENALTIES

If an Offender violates Section 3 above, by establishing a residence or occupying residential premises within two thousand (2000) feet of those premises as described therein, without any exception(s) as also set forth above, the Town Attorney, upon referral from a law enforcement officer and the written determination by the law enforcement officer that upon all of the facts and circumstances and the Purpose of this Chapter, such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others, shall bring an action in the name of the Town in the Circuit Court for Dane County to permanently enjoin such residency as a public nuisance. Each day a violation continues shall constitute a separate offence.


SECTION 6. SEVERABILITY

Each Section, subsection, paragraph, sentence, clause, phrase, and provision of the foregoing Ordinance is, and the same as hereby declared to be, severable and if any portion or provision thereof is duly determined to be invalid for any reason, such determination shall not invalidate any other portion or provision thereof.

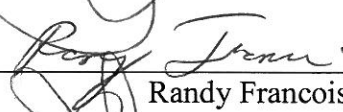
All Ordinances and parts of ordinance in contravention of this ordinance are hereby repealed.

This ordinance shall take effect and be enforced from and after its passage and posting as required by law. The town clerk shall properly publish this ordinance as required under §60.80, Wis. Stats.

Adopted by the Town Board of the Town of Montrose, Dane County, State of Wisconsin this 1st day of September, 2015



Roger Hodel, Chair



Randy Francois, First Supervisor



Dan Palmer, Second Supervisor

Attest: 

Julie L. Bigler, Town Clerk