
ORDINANCE NO. 2016-05**Ordinance to Repeal and Recreate Section 54.132
Of the Municipal Code of the Village of Pewaukee
Relative to Sex Offender Loitering and Residency**

The Village Board of the Village of Pewaukee, Waukesha County, Wisconsin, do ordain as follows:

SECTION I

Section 54.132 of the Municipal Code of the Village of Pewaukee is hereby repealed and recreated to read as follows:

Section 54.132 – Sex Offenders.

(a) Findings and Intent.

- (1) The Wisconsin legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community. Indeed, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons. The purpose of this Ordinance is to protect the public, to reduce the likelihood that convicted sex offenders will engage in such conduct in the future.

The United States Supreme Court has recognized that the risk of recidivism posed by sex offenders is high, and when convicted sex offenders re-enter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See Smith v. Doe, 538 US 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2003) and McKune v. Lile, 536 US 24, 34, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002), citing United States Department of Justice Bureau of Justice Statistics, Sex Offenses and Offenders, 27 (1997) U.S. Department of Justice Bureau of Justice Statistics Recidivism of Prisoners Released in 1983 (1997).

The Village Board has reviewed research on sex offenders, including the findings of a number of states across the United States, including, but not limited to Florida, Georgia, Alabama, Iowa and California as they pertain to laws adopted and which relate to imposing restrictions on sex offenders with respect to residency; and in addition, the United States Court of Appeals for the 8th Circuit Decision on 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 or 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 re-offense. 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 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. (Citations 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”.

The Board finds the negative consequences of failing to regulate the movement of sex offenders is a hazard to children and the community. Thus, the Village has a duty and need to regulate where sex offenders reside and loiter within the Village once they are reintegrated into the community. This Chapter is a regulatory measure aimed at protecting the health and safety of the children in the Village of Pewaukee from the risk that convicted sex offenders may reoffend in locations close to their residences. It is the intent of this section not to impose a criminal penalty but rather to serve the Village’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 residence; and by regulating certain activities that may be used by sexual offenders to prey on children.

- (2) The Village 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 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, day-care centers and other places children frequent. The Village finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.

The Board notes that Wisconsin Statute Section 61.34 authorizes the Village Board to enact legislation for the health, safety and welfare of the public. In addition, Wisconsin Statute Section 61.34(5) notes that the powers, rights and privileges accorded villages under said Chapter are to be liberally construed in order to promote the general welfare, peace, good order and prosperity of the village.

- (3) This Ordinance will not apply to sexually violent persons, as defined in Wisconsin Statute §980.01(7), because these persons are controlled under the regulations of Wisconsin Statute §980.

- (b) Definitions. As used in this Chapter and unless the context otherwise requires:
- (1) *Child* is a person under the age of 18.
 - (2) *Child Safety Location* is the site upon which any of the following are located:
 - a. A public park, parkway, parkland, park facility;
 - b. A public beach;
 - 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 day-care center;
 - i. A tutoring facility;
 - j. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;
 - k. Any facility for children [which means a public or private school or a group home, as defined in § 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats.; a shelter care facility, as defined in § 48.02(17), Wis. Stats.; a foster home, as defined in § 48.02(6), Wis. Stats.; a treatment foster home, as defined in § 48.02(17q), Wis. Stats.; a day-care center licensed under § 48.65, Wis. Stats.; a day-care program established under § 120.13(14), Wis. Stats.; a day-care provider certified under § 48.651, Wis. Stats.; or a youth center, as defined in § 961.01(22), Wis. Stats.].
 - (3) *Child Safety Zone* is any place within the Village that is physically located within 1,500 feet of any Child Safety Location.
 - (4) *Crime Against Children* is any of the 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, respectively:

Wisconsin Statute Sections

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| 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; and
975.06	Sex Crimes Law Commitment.
980.01(7)	Sexually Violent Persons

- (5) *Sex Offender* 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.
- (6) *A residence* is where a person sleeps, which may include more than one location and may be mobile or transitory.
- (7) *A sexually violent offense* shall have the meaning as set forth in §980.01(6) Wis. Stats., as amended from time to time.

(c) Residency Restrictions

- (1) *Child Safety Zone Restriction.* Subject to the definitions in Sections (a) above and the exceptions set forth in Section (d) below, no sex offender shall establish a residence within the Village that is within a Child Safety Zone.
- (2) *Original Domicile Restriction.* No person and no individual who has been convicted of a crime against children shall be permitted to reside in the Village of Pewaukee, unless such person was domiciled in the Village of Pewaukee at the time of the offense resulting in the person's most recent conviction for committing a crime against children. Domicile shall mean an individual's fixed and permanent home, where the individual intends to remain permanently and indefinitely and to which, whenever absent, the individual intends to return except that no individual may have more than one domicile at any time. Domicile is not a residence for any special or temporary purpose .

- (3) *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 real property that supports or upon which there exists any of the applicable above-enumerated use(s).

(d) Residency Restriction Exemptions:

- (1) A person residing within 1,500 feet of the real property comprising any of the uses enumerated in (b)(2), above, does not commit a violation of this chapter if any of the following apply:
- a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
 - b. The person is a minor or ward under guardianship.
 - c. The person has established a residence prior to the effective date of this Chapter on __ day of ____, 2016, which is within 1,500 feet of any of the uses enumerated in ____, above, or such enumerated use is newly established after such effective date and it is located within such 1,500 feet of a residence of a person which was established

(e) Renting Real Property:

No person shall let or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that it will be used as a permanent or temporary residence by a sex offender contrary to the provisions of Section (c) above.

(f) Holiday Events and Public Gatherings:

- (1) It is unlawful for a sex offender to actively take part in any public holiday event involving children under 18 years of age where the distributing of candy or other items to children takes place, including but not limited to holiday parades or similar gatherings, Halloween trick or treating, wearing a Santa Claus costume in a public place in relationship to Christmas, wearing an Easter Bunny costume in a public place in relationship to Easter, or wearing any other costume reasonably expected to attract children in a public place, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a sex offender.
- (2) Exception. This section does not apply to any event in which the sex offender is the parent or guardian of the child(ren) involved, and the sex offender's child(ren) are the only child(ren) present.

(g) Loitering.

- (1) It shall be unlawful for any sex offender as defined in section (b) above, to loiter or prowl within 1,500 feet of any school or school property, recreational trail, playground or park, any specialized school for children including, but not limited to, gymnastics academy, martial arts academy, dance academy, music school, public

beach or public library in a place at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of children in the vicinity. 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 law enforcement officer, refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object.

- (2) Unless flight by an actor or other circumstances makes it impractical, a law enforcement 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 or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement 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 law enforcement at the time, would have dispelled the alarm.
- (3) An offender does not commit a violation of loitering in a Child Safety Zone as stated above and the enumerated uses may allow such person on the property supporting such use if any of the following apply:
 - a. The property supporting an enumerated use also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:
 - (i) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - (ii) Written advance notice is made from the person to an individual in charge of the church, and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the person; and
 - (iii) The person shall not participate in any religious education programs, which include individuals under the age of 18.
 - b. The property supporting an enumerated use also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:
 - (i) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
 - (ii) 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 person.
 - c. The property supporting an enumerated use also supports a polling location in a local, state or federal election, subject to the following conditions:
 - (i) The person is eligible to vote; and
 - (ii) The designated polling place for the person is an enumerated use; and

- (iii) The person enters the polling place property and proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the person vacates the property immediately after voting; and
 - (iv) The property supporting an enumerated use also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school..
- (h) **Child Safety Zone Map**

The Village Clerk's Office shall maintain an official map showing the Child Safety Zones within the Village. The Village Clerk's Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the Village Clerk. In the event of a conflict, the terms of this ordinance shall control. In no event shall a failure to update the map in compliance with this Ordinance preclude the persecution or conviction of any sex offender under this Ordinance.
- (i) **Violations and Penalties**

If a person violates Section (c), above, by establishing a residence or occupying residential premises within 1,500 feet of those premises as described therein, without any exception(s) as also set forth above, the Village Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police 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 or safety of another or others, shall bring an action in the name of the Village in the Circuit Court for Waukesha County to permanently enjoin such residency as a public nuisance. If a person violates Section (c) and (g), in addition to the aforesaid injunctive relief, such person shall be subject to the general penalty provisions set forth under Section 1.102 of the Municipal Code. Each day a violation continues shall constitute a separate offense. In addition, the Village may undertake all other legal and equitable remedies to prevent or remove a violation of this chapter

SECTION II

All ordinances or parts of ordinances contravening the terms and conditions of this ordinance are hereby to that extent repealed.

SECTION III

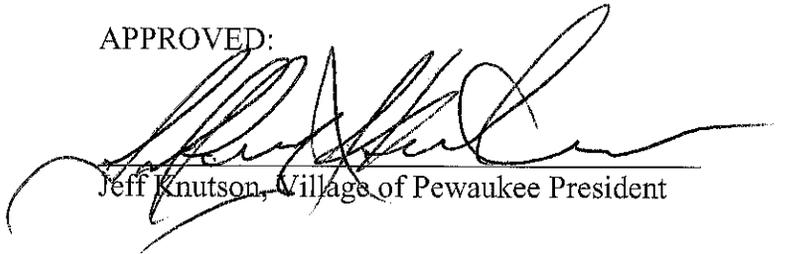
The several sections of this ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the ordinance.

SECTION IV

This ordinance shall take effect upon passage and publication as approved by law, and the Village Clerk shall so amend the Code of Ordinances of the Village of Pewaukee, and shall indicate the date and number of this amending ordinance therein.

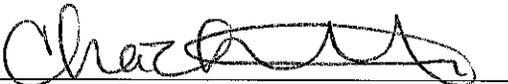
Passed and adopted this 7th day of April 2016 by the Village Board of the Village of Pewaukee.

APPROVED:

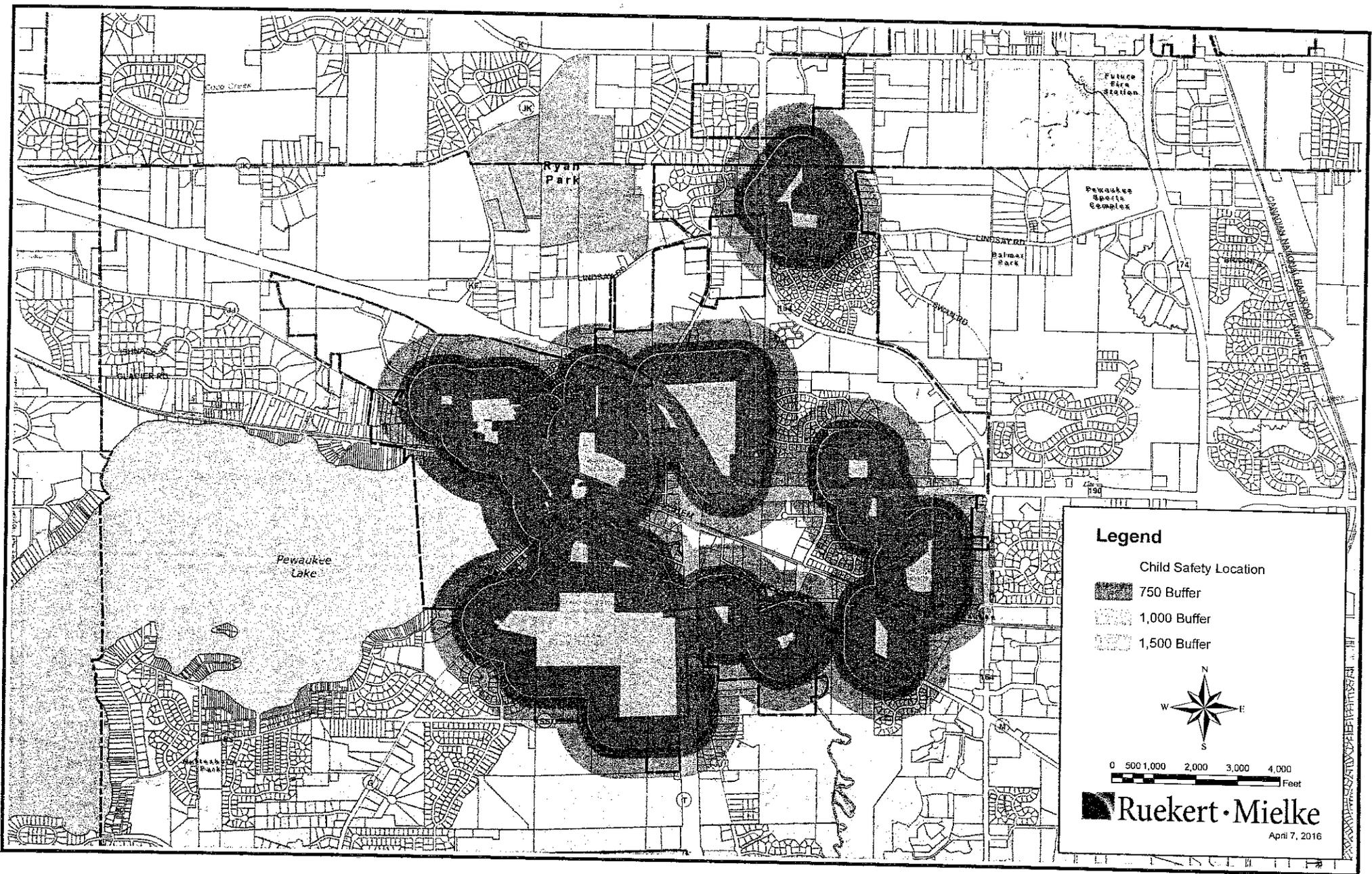


Jeff Knutson, Village of Pewaukee President

Countersigned:

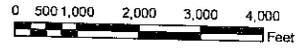
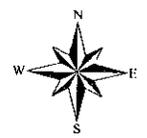


Chaz Schumacher,
Village of Pewaukee Clerk



Legend

- Child Safety Location
- 750 Buffer
- 1,000 Buffer
- 1,500 Buffer



Ruekert • Mielke
April 7, 2016