

ORDINANCE No. [REDACTED]

AN ORDINANCE ESTABLISHING SEXUAL OFFENDER RESIDENCY, PROHIBITED  
ACTIVITIES, AND LOITERING RESTRICTIONS  
WITHIN THE MUNICIPALITY OF THE VILLAGE OF PALMYRA

WHEREAS, the Wisconsin State legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release in the community; and

WHEREAS, Ch. 980 of the Wis. Stats provides for the civil commitment of sexually violent persons. The purpose of the statute is to protect the public, to treat convicted sex offenders who are at a high risk to reoffend, to reduce the likelihood that they will engage in such conduct in the future, and following such commitment sec. 980.08 Wis. Stats. provides, under certain conditions, for the supervised release of such persons into the community; and

WHEREAS, according to the US Department of Justice, Bureau of Justice Statistics, in 2001 there were approximately three hundred eighty-six thousand (386,000) convicted sex offenders registered in forty-nine (49) states and the District of Columbia; and

WHEREAS, according to a 1997 report prepared by the US Department of Justice titled "Sex Offenses and Offenders", nearly two-thirds of the victims of convicted rape and sexual assault offenders serving time in state prison were under the age of eighteen (18); the median age of victims of imprisoned sexual assault offenders was less than thirteen (13) years; the median age for rape victims was about twenty-two (22) years; an estimated twenty-four percent (24%) of those serving time for rape and nineteen percent (19%) of those serving time for sexual assault had been on probation or parole at the time of the offense; and

WHEREAS, the United States Supreme Court has recognized that the risk of recidivism posed by sexual offenders is "frightening and high" and "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". *Smith v. Doe*, 538 U.S. 84 (2003) and *McKune v. Lile*, 536 U.S. 24, 34 (2002) citing U.S. 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*, page 6 (1997); and

WHEREAS, a number of states across the United States, including but not limited to Florida, Georgia, Alabama, Iowa and California, impose restrictions on sex offenders with respect to residency; and

WHEREAS, 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), provides, 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 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. [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 is authorized to exercise all powers related to villages and conferred on village boards by Ch. 61, Wis. Stats., all in accordance with § 60.10(2)(c), Wis. Stats.; and

WHEREAS, § 61.34(1), Wis. Stats. grants the "power to act for the government and good ... and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means"; and

WHEREAS, the Wisconsin Court of Appeals stated in Village of Menomonee Falls v. Ferguson (2011 WI App 73, 334 Wis.2d 131, 799 N.W.2d 473) that "Wisconsin does not have a sex offender residency restriction statute. Instead, Wisconsin municipalities are allowed and commonly do enact sex offender residency restriction ordinances"; and

WHEREAS, the Village Board finds that the adoption of residency and loitering restrictions for sexual offenders will promote the health, safety and welfare of the public.

Now, Therefore, the Village Board of the Municipality of Palmyra, Jefferson County, Wisconsin DO ORDAIN AS FOLLOWS:

**SEX OFFENDER RESIDENCY, PROHIBITED ACTIVITIES, AND LOITERING RESTRICTIONS.**

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## SECTION 1

An ordinance entitled "Sexual Offenders Residency and Loitering Restrictions," is hereby created to read as follows:

### 1. Findings and Intent.

(a) This Chapter is a regulatory measure aimed at protecting the health and safety of children from the risk that convicted sex offenders may re-offend in locations close to their residences. The Governing Body finds and declares that 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 sexual assault. The Governing Body further finds that, 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 other places children frequent. The Governing Body finds and recognizes that, in addition to schools, there are other areas where children congregate or play.

(b) This Chapter is not intended to impose a criminal penalty or punishment of sexual offenders, but rather to serve the municipality's compelling interest to promote, protect, and improve the health, safety, and welfare of children in the municipality by creating areas around locations where children regularly congregate in concentrated numbers where sexual offenders and sexual predators are prohibited from loitering and/or establishing temporary or permanent residence and by regulating certain activities that may be used by sexual offenders to prey upon children.

(c) 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, the Governing Body finds that there is a compelling need to protect children where they congregate or play in public places.

### 2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

**ADULT CHILD** — For the purposes of this chapter, means a person who is 18 years of age or older.

**CHILD** — A person under the age of 18 for the purpose of this chapter.

CHILD SAFETY LOCATION — Site upon which any of the following are located without regard to whether such site is located within the geographic limits of the Municipality of the Village of Palmyra:

1. Facility for children;
2. Group home, as defined in Wis. stat. sec. 48.02(7);
3. Library, that is held open for use by the public;
4. Licensed day care center as defined in Wis. Stat. sec. 48.65;
5. School property, public or private primary, elementary, secondary, middle, junior high, or high school;
6. Recreational trail, playground or park, athletic fields;
7. Specialized school for children, including, without limitation, a gymnastics academy, dance academy, or music school;
8. Swimming pool, wading pool, or aquatic facility held open for use by the public, public beach; and
9. A public or private golf course or range.
10. Church or places of worship

CHILD SAFETY ZONE — Any place within the municipality that is physically located within 500, 750, 1000 feet away from any Child Safety Location.

DESIGNATED OFFENDER — Any person who is required to register under Wis. Stats. § 301.45 for any sexual offense against a child or any person who is required to register under Wis. Stats. § 301.45 for whom a bulletin to law enforcement agencies has been issued under Wis. Stats. § 301.46(2m).

CRIME AGAINST CHILDREN — 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 where the victim is a child, 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 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;

**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.

**DOMICILE** — 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 provided, however, that no individual may have more than one domicile at any time. Domicile does not include a residence for any special or temporary purpose.

**PERMANENT RESIDENCE** — A place where the person abides, lodges, or resides for 14 or more consecutive days.

**TEMPORARY RESIDENCE** — A 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 address or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

### **3. Sexual offender and sexual predator residence; prohibition; penalties; exceptions.**

A. Prohibited location of residence. It is unlawful for any designated offender to establish a permanent residence or temporary residence within 500, 750, 1,000 feet of any Child Safety Location.

B. Prohibited loitering. It is unlawful for any designated offender to loiter within 500, 750, 1,000 feet of any Child Safety Location, or any other place designated by the Village as a place where children are known to congregate.

C. Prohibited activity. It is unlawful for any designated offender to participate in a holiday event involving children under 18 years of age, such as distributing candy or other items to children. Holiday events in which the offender is the parent or guardian of the children involved, and no nonfamilial children are present, are exempt from this subsection. "Participation" is to be defined as actively taking part in the event.

D. Measurement of distance.

- (1) For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer

property line of the permanent residence or temporary residence to nearest outer property line of a school, licensed day-care center, park, recreational trail, playground, place of worship or any other place designated by the Village as a place where children are known to congregate.

- (2) The Village Clerk shall prepare an official map showing prohibited locations as defined by this section. The Village Clerk shall maintain the map on file at the Village Hall and 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.

E. Penalties.

- (a) Any violation of this ordinance shall be subject to the penalties and remedies as set forth in the Municipality of the Village of Palmyra General Penalties Ordinance, Ordinance No. [REDACTED] entitled "[REDACTED]," dated on or about [REDACTED], including such amendments and recodification or readoption of such general penalties as may be made from time to time.
- (b) In addition and not to the exclusion or prejudice of such other penalties and remedies as may apply, violation of § 3 or § 4 of this Ordinance shall also constitute a public nuisance, which the Village may enforce by action or proceeding to enjoin or abate such public nuisance.

F. Exceptions. A designated offender residing within a prohibited area as described in this section does not commit a violation of this section if any of the following apply:

- (1) The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stats. § 301.45 before the effective date of this chapter.
- (2) The school, licensed day-care center, park, recreational trail or playground within 500, 750, 1,000 feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stats. § 301.45.
- (3) The residence is also the primary residence of the person's parents, grandparents, siblings, spouse or adult children, provided that such parent, grandparent, sibling, spouse or adult child established the residence at least two years before the designated offender established residence at the location.

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

- A. It is unlawful for a property owner to allow a designated offender 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 chapter, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in § 3A, and not subject to an exception set forth in § 3F above.

- B. A property owner's failure to comply with this section shall constitute a violation of this chapter and shall subject the property owner to the penalties set forth in § 3E.

## **5. Exemption Appeal.**

A designated offender may seek an exemption from §3A through the following:

- (1) Procedure. A designated offender may request an exemption from this chapter by submitting a written request for exemption, including any pertinent rationale for an exemption, to the Palmyra Police Department prior to establishing a residence that would be in violation of this chapter or within 30 days after notification that the designated offender is in violation of this chapter. The Chief of Police or his/her designee shall conduct a review of the request for an exemption using any pertinent information and the criteria set forth in Subsection (C) of this section. The Chief of Police or his/her designee shall approve, approve an exemption subject to necessary conditions (hereafter "conditional exemption") or deny the request. The Chief of Police or his/her designee shall issue the decision within 30 days of receiving the request for exemption and shall provide a written copy of that decision to the designated offender, Village Clerk, and the Village Board. Any request for an exemption which has not been approved, approved for a conditional exemption, or denied by the Chief or his/her designee within 30 days of the request shall be deemed to be denied for the purpose of this chapter.
- (2) The decision by the Chief of Police or his/her designee may be appealed by the designated offender within 30 days by submitting a written appeal to the Palmyra Village Board (hereafter "the Board") via the Village Clerk's office. The Board shall hold a hearing on each appeal, during which the Board may review any pertinent information and may accept oral and written statements from any person.
- (3) The Chief of Police or his/her designee and/or the Board shall base their decision upon any factors related to the Village's interest in promoting, protecting, and improving the health, safety, and welfare of the community, including but not limited to:
  - a) The nature of the predicate offense causing the appellant to be a designated offender.
  - b) Police reports related to the predicate offense if available.
  - c) Proximity of the requested residence to the victim.
  - d) The age of the offense, offender, and victim.

- e) Recommendation of the probation or parole officer if one exists.
  - f) Recommendation of the Police Department.
  - g) Recommendation of any treatment practitioner.
  - h) Proposals for safety measures and assurances by the designated offender.
  - i) Conditions to be placed on any exception or variance from the requirements of this chapter.
  - j) Support systems in place by the designated offender.
  - k) Who the designated offender will be or is living with at the prohibited location.
  - l) Statements of the surrounding community or victim.
  - m) Treatment, sobriety, or rehabilitative measures taken by the designated offender.
  - n) The designated offender's current employment or social activities.
  - o) The designated offender's criminal history.
  - p) Whether the designated offender meets any of the exceptions listed in § 3 above.
- (4) The Board shall issue a decision by a majority vote. The Board may decide to deny an exemption, issue an exemption, or issue a conditional exemption. A written copy of the decision shall be provided to the designated offender in person or by first-class mail at the designated offender's last known address. A designated offender must consent to the terms of the conditional exemption for the conditional exemption to be valid and must demonstrate acceptance of the terms of the conditional exemption by signing and dating a copy of the Board's decision and conditions. The designated offender must provide a copy of the signed conditional exemption to the Village Clerk's office and the Palmyra Police Department. The designated offender will have 10 days from the date the written conditional exemption is issued to accept and return a signed copy to the appropriate locations or the conditional exemption will be deemed as void and the appeal denied by the Board. A designated offender need not sign an exemption that has been denied by the Board or an exemption approved without any necessary conditions by the Board.
- (5) A conditional exemption may include, but is not limited to, the following terms:
- a) Curfew restrictions.
  - b) Cohabitant restrictions or requirements.
  - c) Sobriety restrictions.
  - d) Conduct restrictions.
  - e) Residency restrictions.
- (6) If an exemption or conditional exemption is granted by the Chief of Police or his/her designee or the Board, that exemption will only apply to the specific designated offender who had applied for the exemption at the requested residence and shall not be transferable to any other or to any other location.

- (6) An exemption expires when the designated offender who was granted said exemption changes his/her domicile and/or changes his or her residence, whether within the Village or outside the Village.
- (7) An exemption or conditional exemption issued by the Chief of Police or his/her designee or the Board may be revoked by the Chief of Police or his/her designee if the designated offender is found to have violated the conditions or there is probable cause to believe the designated offender has committed (an) additional act(s), which had occurred either before or after the exemption or conditional exemption was issued, that would cause a person to be classified as a designated offender. The Chief of Police or his/her designee shall provide written notice to the designated offender that the exemption or conditional exemption has been revoked. This notice shall be deemed properly delivered if sent by either first class mail to the designated offender's last known address or if delivered in person to the designated offender's last known address. If the designated offender cannot be located, the notice shall be deemed to be properly delivered if a copy is left at the designated offender's address which had been exempted in the presence of some competent member of the family at least 14 years of age or a competent adult currently residing there. If notice cannot be so served, it may be served by publishing a Class I notice. The revocation of an exemption may be appealed to the Board pursuant to the above procedure.
- (8) For the purposes of this chapter, pursuant to § 68.16, Wis. Stats., the Village of Palmyra is specifically electing not to be governed by Chapter 68, Wis. Stats.
- (9) If the Board denies the request for exemption or upholds a revocation of exemption or conditional exemption, the designated offender may appeal the decision within 30 days to the circuit court.

## **SECTION 2**

If any section, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of such ordinance.

## **SECTION 3**

This ordinance shall be promptly published, and shall take effect upon passes and publication pursuant to Wis. Stat. § 61.50(1). Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2026.

VILLAGE OF PALMYRA

BY: \_\_\_\_\_  
Timothy Gorseger, Village President

ATTEST:

BY: \_\_\_\_\_  
Laurie Mueller, Village Clerk

DRAFT