

ORDINANCE NO. 160

AN ORDINANCE TO CREATE §9.20 OF THE MUNICIPAL CODE OF ORDINANCES OF THE VILLAGE OF MERTON RELATING TO SEXUAL OFFENDER RESTRICTIONS.

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

SECTION 1. Section 9.20 of the Municipal Code of Ordinances is created to read as follows:

9.20 WHEREAS, the Village Board has been advised 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, 123 S.Ct. 1140 155 L.Ed. 2d 164 (2003) and McKune v. Lile, 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed. 2d 47 (2002);

WHEREAS, the Village Board has been advised of the decision of the United States Court of Appeals of the 8th District, in Doe v. Miller, 405 F.3d 700 (8th Cir. 2005), which recognizes that sex offenders have a high recidivism rate, that reducing opportunity and temptation is important to minimizing the risk of re-offense, and that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense;

WHEREAS, Wis. Stat. §61.34 authorizes the Village Board to enact legislation for the health, safety and welfare of the public;

WHEREAS, the establishment of a Safety Zone, (as hereafter defined) and Residency Restrictions, (as hereafter defined), is the most reasonable and least intensive means of protection children from further crimes by a Sex Offenders (as hereafter defined); and

1. DEFINITIONS.

A. “Sex Offender” is any person who is required to register under §301.45, Wis. Stats., and in any amendments thereto or is under court ordered supervision by the Wisconsin Department of Corrections for any sexual offense against a child, unless the person is under age 18 at the time of the offense and the offender was not tried and convicted of the offense as an adult.

B. "Child" or "Children" means a person age 16 or younger for purposes of this ordinance.

C. "Minor" means a person age 17 or younger.

D. A "Residence" is a place where a person sleeps, lodges, or resides either on a permanent or temporary basis. For purposes of this Chapter, a residence means a place where the person sleeps, abides, lodges or resides for 14 or more consecutive days and a temporary residence means a place that is not a permanent residence and is a place where the person sleeps, abides, lodges or resides for a period of 14 or more days in the aggregate during any calendar year or four or more days in any month. A Residence may be mobile or transitory.

E. A "Safety Zone" is any real property that supports or upon which there exists any facility used for or that supports a school for children, public park, park facility, park pathway or a daycare center.

F. The "Sexual Offender Restriction Map" is an official map, maintained by the Village, showing the Safety Zone and the residency restriction zone. The Village shall update the Sexual Offender Restriction Map at least annually to reflect any changes in the location of the Safety Zone or the Residency Restrictions zone set forth in Section 9.20(2), below. The Sexual Offender Restriction Map shall be posted in the office of the Village Clerk.

2. RESIDENCY RESTRICTIONS.

A. A Sex Offender shall not reside within five hundred (500) feet of any real property that supports or upon which there exists any of the following uses:

- (1) a school for children
- (2) a bike path, hiking trail, public park, park facility or park pathway, including the bug line
- (3) a daycare center
- (4) Or any other place designated by the Village Board as a place where children are known to congregate and as set forth in the Sexual Offender Restriction Map.

B. The distance shall be measured from the closest boundary line of the real property supporting the residence of a Sex Offender to the closest boundary line of the real property that supports or upon which there exists any of the uses enumerated in Section 9.20(2)(A) above.

C. It is unlawful to lease or rent any place, structure, or part thereof with the knowledge that it will be used as a Residence by a Sex Offender if such place, structure, or part thereof is located within five hundred (500) feet of any of the uses enumerated in Section 9.20(2)(A) above. A person leasing or renting a place,

structure or part thereof shall be deemed to have such knowledge if, at least ten (10) days prior to letting or renting the place, the Sex Offender's name appears on the Wisconsin Department of Corrections sex offender registry and the person letting or renting the place knew the Sex Offender would be residing at the subject place, structure, or part thereof.

D. RESIDENCY RESTRICTION EXCEPTIONS.

A Sex Offender residing within five hundred (500) feet of any real property that supports or upon which there exists any of the uses enumerated in Section 9.20(2)(A) above, does not commit a violation of this ordinance if any of the following apply:

- (1) The Sex Offender physically resides in a residence that was established, reported and registered pursuant to Wisconsin Statute § 301.45 prior to the effective date of this ordinance.
- (2) The use enumerated in Section 9.20(2)(A) above is commenced, opened or established after the Sex Offender established a residence and reported and registered that residence pursuant to Wis. Stats. §301.45.
- (3) The Convicted Sex Offender is a minor or ward under guardianship.

3. SAFETY ZONES.

A. A Sex Offender shall not enter upon or be present upon or within a Safety Zone.

B. Safety Zone Exceptions.

A Sex Offender who enters upon or who is present upon or within a Safety Zone does not commit a violation of this ordinance if any of the following apply:

- (1) The property also supports a church, synagogue, mosque, temple or other house of religious worship, subject to all of the following conditions:
 - (a) The Sex Offender's entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - (b) The Sex Offender shall not participate in any religious education programs that include individuals under the age of 18.
- (2) The property also supports a use lawfully attended by a Sex Offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the Sex Offender as the child's parent upon the property, subject to the following condition:
 - (a) The Sex Offender's entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public.
- (3) The property also supports a polling location in a local, state or federal election, subject to all of the following conditions:
 - (a) The Sex Offender is eligible to vote;

- (b) The property is the designated polling place for the Sex Offender; and
- (c) The Sex Offender enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is to any member of the electorate, and vacates the property immediately after voting.

(4) The property also supports a school lawfully attended by a Sex Offender as a student under which circumstances the Sex Offender may enter upon the property supporting the school at which the Sex Offender is enrolled, for such purposes and at such times as are reasonably required for the educational purposes of the school.

(5) The property also supports a court, government office or room for public governmental meetings, subject to all of the following conditions:

- (a) The Sex Offender is on the property only to transact business at the government office or place of business, other than a public library, or attend an official meeting of a governmental body; and
- (b) The Sex Offender leaves the property immediately upon completion of the business or meeting.

4. PENALTIES AND REMEDIES.

A. Forfeitures. Any person who shall violate any provision of this Chapter or any regulation, rule or order made herein shall be subject to forfeiture as set forth in Section 20.1 of the Village Code as amended from time to time. Each day a violation continues shall constitute a separate offense. Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the Village Board from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this Chapter.

B. Injunction. If any offender establishes a residence in violation of Section 9.20(2) above, or enters or is present upon or within a Safety Zone in violation of Section 9.20(3) above, the Village Attorney may bring an action in the name of the Village in Circuit Court to permanently enjoin any such violation as a public nuisance.

SECTION 2: If any section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or 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 take effect and be in full force from and after passage publication.

PASSED AND APPROVED, THIS 20th day of May, 2010
by the Village Board of Merton, Waukesha County, Wisconsin.



Robert Weber
Village President

ATTEST:



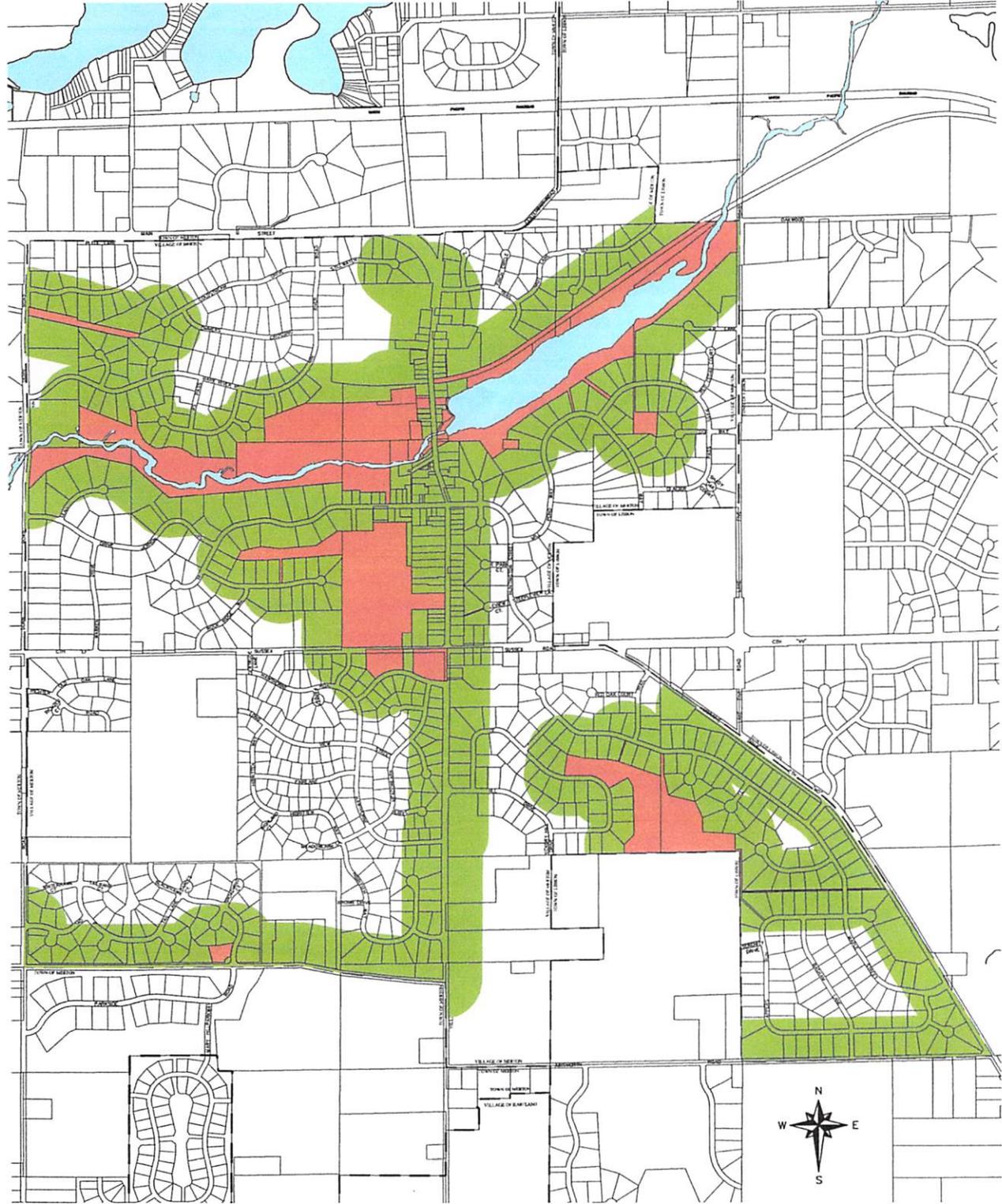
Tom Nelson
Village Administrator, Village Clerk



Posted 5-22-10
Thomas A. Nelson
Clerk -

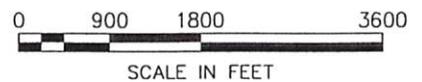
Sex Offender Restriction Map

VILLAGE OF MERTON, WISCONSIN



LEGEND

- Safety Zone
- 500' Buffer Area



DATE OF LAST REVISION	
DATE	DESCRIPTION
05/27/10	Create Map - DKA