

Village of Menomonee Falls Ordinance No. 835-O-21

**AN ORDINANCE AMENDING SECTION 62-51 OF THE MUNICIPAL CODE
OF THE VILLAGE OF MENOMONEE FALLS CREATING A PROCEDURE FOR
EXEMPTION PETITIONS**

WHEREAS, on June 18, 2007, the Board of Trustees adopted Ordinance 380-O-07 creating Section 62-51 [Sex Offender Residency Restrictions; Child Safety Zones] of the Menomonee Falls Municipal Code; and

WHEREAS, as set forth in Section 62-51(a)(2), the intent of Ordinance 380-O-07 is 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 establish temporary or permanent residence; and by creating child safety zones where children regularly congregate in concentrated numbers wherein access by certain sexual offenders and sexual predators to such zones shall be restricted or excluded; and

WHEREAS, in revisiting this matter, the Village intends to, and does, reconsider the whole issue, from its most basic premises, to ensure that the regulations are tailored to the circumstances of the Village, while preserving the intent to promote public safety particularly to protect children from potential recidivism of convicted sex offenders; and

WHEREAS, the Village has conducted an analysis to estimate the percentage of residential units within the Village that are available to offenders beyond the 1,500 foot restriction set forth in Section 62-51(c) of the Municipal Code and estimates that approximately 33.9% of the Village's residential units are located beyond the 1,500 foot restriction and therefore available for residence by an offender; and

WHEREAS, the Board of Trustees has reviewed reports and studies related to creating and implementing specific desistance factors to reduce recidivism of sex offenders and acknowledges that the literature on sex offender recidivism, sex offender desistance, and sex offender residency restrictions report varying effectiveness of certain strategies; and

WHEREAS, the Board of Trustees has specifically reviewed the following studies: Tatar, J. & Jones, M. (August 2016). *Recidivism after Release from Prison*, State of Wisconsin Department of Corrections; Steiner, B., Makarios, M.D., & Travis, L.F. (2015). *Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism*. Crime and Delinquency, Vol. 61(3) 375-401; Mann, R.E., de Vries Robbe, M., Maruna, S., & Thornston, D. (2015). *An Exploration of Protective Factors Supporting Desistance from Sexual Offending*. *Sexual Abuse: A Journal of Research and Treatment*, Vol. 27(1) 16-33; and

WHEREAS, the Board of Trustees finds that the risk of recidivism decreases over time from the date of the last conviction, especially in circumstances where offenders have community connections, goals, and employment. The Board of Trustees is also aware that absent the original domicile restriction in Section 62-51, the Village would have open doors for non-resident sex offender residency when other communities have closed doors, inviting a substantial increase in child sex offender placements, thereby increasing potential negative

impacts on the health, safety, welfare, and additional cost to the Village and its residents. Studies show increased recidivism rates for offenders who frequently move or do not have established community networks. These studies support maintaining the original domicile restriction in order to limit the number of offenders with no ties to the community and increasing the likelihood that an offender have access to community support; and

WHEREAS, the Board of Trustees has reviewed the sex offender residency restriction appeals procedures adopted by surrounding communities and finds that those procedures balance the Village's compelling interest of protecting the children of the Village of Menomonee Falls from recidivism with the constructive and safe assimilation of certain offenders into the community on an individualized exemption basis; and

WHEREAS, it is therefore deemed to be in the best interest of the Village of Menomonee Falls that the Municipal Code of the Village of Menomonee Falls be further modified and amended in the manner hereinafter more particularly set forth;

NOW, THEREFORE, the Board of Trustees of the Village of Menomonee Falls do hereby ordain as follows:

Section 1. Section 62-51 [Sex Offender Residency Restrictions; Child Safety Zones] of Division 1 [Generally] of Article I [Offenses Involving Public Safety] of Chapter 62 [Offenses and Miscellaneous Provisions] of the Municipal Code is hereby amended by adding the double underlined language:

(a) *Purpose and intent*

- (3) This section seeks to balance the Village's compelling interest of protecting the children of the Village of Menomonee Falls from recidivism with the constructive and safe assimilation of certain offenders into the community on an individualized exemption basis.

Section 2. Section 62-51 [Sex Offender Residency Restrictions; Child Safety Zones] of Division 1 [Generally] of Article I [Offenses Involving Public Safety] of Chapter 62 [Offenses and Miscellaneous Provisions] of the Municipal Code is hereby amended by adding the following language:

(f) *Petition for Exemption*

- 1) The Chief of Police may grant an Offender an exemption from this Section. An Offender requesting an exemption from this Section must submit a written request for exemption, including any pertinent rationale for an exemption, to the Chief of Police prior to establishing a residence that would be in violation of this Section or within thirty (30) days after notification that the Offender is in violation of this Section. 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 below. The Chief of Police 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 thirty (30) days of receiving the request for exemption and shall provide a written copy of that decision to the Offender, Village Clerk, and the Village Attorney’s Office. Any request for an exemption which has not been approved, approved for a conditional exemption, or denied by the Chief of Police within thirty (30) days of the request shall be deemed to be denied for the purpose of this Section.

- 2) An Offender may appeal the decision of the Chief of Police by submitting a written appeal to the Village Clerk’s Office within thirty (30) days of the decision. The Village Clerk shall schedule a Committee of the Whole meeting for the appeal to be heard by the Board of Trustees during which any pertinent information and accept oral and written statements from any person may be reviewed and considered.
- 3) The Chief of Police and/or the Village 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 an 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 Offender.
 - i. Conditions to be placed on any exception or variance from the requirements of this Section.
 - j. Support systems in place by the Offender.
 - k. Who the 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 Offender.
 - n. The Offender's current employment or social activities.
 - o. The Offender's criminal history.
- 4) The Village Board shall issue a decision by a majority vote to deny an exemption, issue an exemption, or issue a conditional exemption. A written copy of the decision shall be provided to the Offender in person or by first-class mail at the Offender's last-known address. An 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 decision and conditions. The Offender must provide a copy of the signed conditional exemption to the Village Clerk's Office and the Police Department. The Offender will have fourteen (14) 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. An Offender need not sign an exemption that has been denied by the Village Board or an exemption approved without any necessary conditions.
- 5) A conditional exemption may include, but is not limited to, containing the following terms:
- a. Curfew restrictions.
 - b. Cohabitation restrictions or requirements.
 - c. Sobriety restrictions.
 - d. Conduct restrictions.
 - e. Residency restrictions.
- 6) Any exemption or conditional exemption issued under this Section:
- a. Only applies to the specific Offender who applied for the exemption at the requested residence and shall not be transferable to any other or to any other locations.
 - b. Expires when the Offender who was granted said exemption changes his/her domicile and/or changes his/her residence, whether within the Village or outside the Village.
- 7) Revocation. An exemption issued pursuant to this Section may be revoked by the Chief of Police if the Offender is found to have violated the conditions or there is probable cause to believe the Offender has committed an act, whether committed before or after the exemption was issued, that would cause a person

to be classified as an Offender. The Chief of Police shall provide written notice to the Offender that the exemption or conditional exemption has been revoked. The notice shall be deemed properly delivered if sent by either first class mail to the Offender's last known address or if delivered in person to the Offender's last known address. If the Offender cannot be located, the notice shall be deemed to be properly delivered if a copy is left at the Offender's address which had been exempted in the presence of some competent member of the family at least fourteen (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 1 notice. The revocation of an exemption by the Chief of Police may be appealed to the Village Board pursuant to the above procedure.

- 8) For the purposes of this Section, pursuant to Wisconsin Statutes Section 68.16, the Village of Menomonee Falls is specifically electing not to be governed by Chapter 68 of the Wisconsin Statutes.
- 9) If the Village Board denies the request for exemption or upholds a revocation of exemption or conditional exemption, the Offender may appeal the decision within thirty (30) days to the circuit court.

Section 3. Except as specifically modified and amended by this ordinance, the Municipal Code of the Village of Menomonee Falls shall remain in force and effect exactly as originally adopted and previously amended. All ordinances or parts of ordinances inconsistent with or in contravention of the provisions of this ordinance are hereby repealed.

Section 4. This ordinance shall take effect and be in full force from and after its passage and publication.

Section 5. SEVERABILITY. If a court of competent jurisdiction adjudges any section, clause, provision or portion of this ordinance unconstitutional or invalid, the remainder of this ordinance shall not be affected thereby.

Adopted by the Board of Trustees of the Village of Menomonee Falls on the
18th day of October, 2021.

David Glasgow, Village President

Date Published: 10/21/21 – 11/4/21

Village Clerk-Treasurer