Sec. 58-81. Sex offender residency restrictions—Loitering.

(a) *Purpose and intent.*

(1) The city 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 and daycare centers. The city finds and declares that, in addition to schools and daycare centers, children congregate or play in a number of public places, including public parks and other facilities for children.

(2) This section is a regulatory measure aimed at protecting the health and safety of children in the City of Fort Atkinson 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 city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing 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.

(b) *Definitions.* As used in this section and unless the context otherwise requires:

"Crime against children" means any of the following 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 and involving a person under the age of 18 years, respectively:

Wisconsin Statute Sections	
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
975.06	Sex Crimes Law Commitment

"Facility for children" means a public or private school, a group home, as defined in Wis. Stats. § 48.02(7), a residential care center for children and youth, as defined in Wis. Stats. § 48.02(15d), a shelter care facility, as defined in Wis. Stats. § 48.02(17), a daycare center licensed under Wis. Stats. § 48.65, a daycare program established under Wis. Stats. § 120.13(14), a daycare provider certified under Wis. Stats. § 48.651, or a youth center, as defined in Wis. Stats. § 961.01(22).

"Loitering or *prowling"* means a person who commits a violation if he loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that reasonably warrant alarm for the safety of persons or property 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 on a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself or an object. Unless flight by the actor or other circumstances makes it impracticable, a peace 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 to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the peace 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 the peace officer at the time, would have dispelled the alarm.

"Offender" means 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.

"Permanent residence" means the place where a person sleeps, abides, lodges or resides for 14 or more consecutive days or which qualifies as a residence under the holdings of the Wisconsin Supreme Court and which may include more than one location, and may be mobile or transitory.

"Recreational trail" means all parts and segments of City of Fort Atkinson designated recreational trails meant for foot or bike travel.

"Sexually violent offense" shall have the meaning as set forth in Wis. Stats. § 980.01(6), as amended from time to time.

"Temporary residence" means residence or premises meeting any of the following criteria:

(1) 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 and which is not that person's permanent residence as defined in this section;

(2) A place where the person routinely sleeps, abides, lodges or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not that person's permanent residence as defined in this section; or

(3) A place where a person sleeps, or which qualifies as a temporary residence under the holdings of the Wisconsin Supreme Court, and which may include more than one location, and may be mobile or transitory.

(c) *Residency restrictions.*

(1) An offender shall not reside within 1,500 feet of real property that supports or upon which there exists any of the following uses:

a. Any facility for children;

b. A public park, parkway, parkland, park facility;

c. A public swimming pool;

d. A public library/museum;

e. A recreational trail;

f. A public playground;

g. A school for children;

h. Athletic fields used by children;

i. A daycare center;

j. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school; or

k. Aquatic facilities open to the public.

(2) *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 the real property that supports or upon which there exists any of the uses enumerated in subsection (a) of this section.

(3) *Residency restriction exceptions.* An offender residing within 1,500 feet of real property that supports or upon which there exists any of the uses enumerated in subsection (a) of this section does not commit a violation of this section if any of the following apply:

a. The offender is required to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental facility.

b. The offender has established a residence prior to the effective date of the ordinance codified in this chapter.

c. The use enumerated in subsection (a) of this section began after the offender stablished a residence.

d. The offender is a minor or ward under guardianship.

(d) *Loitering.*

(1) It is unlawful for any person defined as an offender pursuant to subsection (b) to loiter or prowl in the locations enumerated in subsection (c), in a place, at a time, or a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity.

(2) 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 peace officer, refuses to identify himself/herself or manifestly endeavors to conceal himself/herself or any object. Unless flight by the actor or other circumstances make it impracticable, a peace 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/her to identify himself/herself and explain his/her presence and conduct at the locations enumerated in subsection (c). No person shall be convicted of an offense under this section if the peace 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 the peace officer at the time, would have dispelled the alarm.

(e) *Loitering exceptions.* The previous section shall not apply where the actor was accompanied by his/her parent, guardian or other adult person having his/her care, custody or control, or where that actor was exercising First Amendment rights protected by the United States Constitution or Wisconsin Constitution, including freedom of speech, the free exercise of religion and the right of assembly.

(f) *Penalties and remedies.*

(1) *Forfeitures.* Any person found guilty of violating this section shall be subject to a forfeiture of not less than $1,000.00 nor more than $5,000.00 for each violation. Each violation and each day a violation continues or occurs may constitute a separate offense. Neither the issuance of a citation, nor the imposition of forfeiture hereunder shall preclude the city from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this section.

(2) *Injunction—Violation of residency restrictions.* If an offender establishes a permanent or temporary residence in violation of subsection (c), the chief of police may refer the matter to the city attorney. The referral shall include a written determination by the chief of police that, upon all of the facts and circumstances and the purpose and intent of this section, such violation interferes substantially with the comfortable enjoyment of life, health, safety of another or others. Upon such referral, the city attorney shall bring an action in the name of the city in circuit court to permanently enjoin such residency as a public nuisance.

(g) *Severability.* If any portion of this section is held to be invalid, illegal or unenforceable, such determination shall not impair the enforceability of the remaining terms and provisions contained herein.

(h) *Appeal*.

(1) *Option to appeal.* An offender may seek an exemption from this article by appealing to the sex offender residence board.

(2) *Membership.* The board shall consist of five members. A city council member (appointed by the city manager), the city manager, the chief of police or his designee may be a member, and two citizens. Three members shall constitute a quorum. The city manager shall appoint members for a term of two years, subject to confirmation by the council.

(3) *Procedure.* The board shall approve an official appeal form. An offender shall completely fill in the official form and submit it to the city clerk, who shall forward it to the board, which shall receive reports from the police department on such appeal. The board shall then convene and consider the public interest as well as the offender's presentation and concerns. The board shall decide by majority voice whether to grant or deny an exemption. An exemption may be conditional or limited to a certain address or time. After deliberation, the board shall forward its decision, in writing, to the offender, the City of Fort Atkinson and the City of Fort Atkinson Police Department for their information and action.

(Ord. No. 742, 2-16-16; Ord. No. 760, 8-15-17)

Editor's note(s)—Ord. No. 742 set out the above provisions intended for use as § 58-80. Due to the section number already in existence, to avoid duplication of section numbers, and at the editor's discretion, these provisions have been included as § 58-81.