

CHAPTER 21
SEX OFFENDER RESIDENCY

- 21.01 Title.
- 21.02 Recitals.
- 21.03 Purpose.
- 21.04 Definitions.
- 21.05 Residency restriction.
- 21.06 Residency restriction exceptions.
- 21.07 Safety zones.
- 21.08 Safety zone exceptions.
- 21.09 Original residency restriction.
- 21.10 Sale or rental of property for use by sex offenders.
- 21.11 Enforcement.
- 21.12 Petition for exemption and appeals.

SEX OFFENDER RESIDENCY 21.01

21.01 Title. This Ordinance shall be entitled the “Sex Offender Residency Ordinance.”

21.02 Recitals. The Wisconsin Statutes, including Chapters 940, 944, and 948 thereof, govern the punishment of individuals who commit sex crimes. The Wisconsin Statutes also govern the release into the community of such individuals. The city is responsible to maintain the public health, safety, and welfare and finds that sex offenders have high recidivism rates that threaten the public health, safety, and welfare, especially that of children.

The city council has reviewed findings in several studies related to recidivism and risk related to individuals who have committed sex crimes. Those studies include the following:

- Center for Sex Offender Management Fact Sheet: What You Need to Know About Sex Offenders. This fact sheet provided information about sex offender recidivism, including that it is estimated that one in every five girls and one in every seven boys are sexually abused by the time they reach adulthood; that one in six adult women and one in 33 adult men experience an attempted or completed sexual assault; that approximately 67 percent of all victims of reported sexual assaults are under age 18 and more than half are under age 12; and that about 12 to 24 percent of sex offenders will re-offend.
- U.S. Department of Justice, Bureau of Justice Statistics—Recidivism of Sex Offenders Released from Prison in 1994. This study found that compared to non-sex offenders released from state prisons, released sex offenders were four times more likely to be re-arrested for a sex crime.
- Correctional Service Canada—Forum on Corrections Research. This study of 178 sex offenders released from a maximum-security psychiatric facility found that after an average follow-up of 59 months, 27.5 percent of sex offenders in the study sexually recidivated and 40.4 percent of the sex offenders were arrested, convicted, or returned to a psychiatric facility for a violent offence.
- California Research Bureau—The Impact of Residency Restrictions on Sex Offenders and Correctional Management: A Literature Review. This study found that at the time it was written 22 states had enacted some form of residency restriction that prohibits sex offenders from living within a certain distance of schools, daycare centers, or places where children congregate. The least restrictive among them was 500 feet, but distances from 1,000 to 2,500 feet were common.
- National Bureau of Economic Research—There Goes the Neighborhood? Estimates of the Impact of Crime Risk on Property Values from Megan's Laws. This study found that the majority of both violent and non-violent offenses take place less than one mile from victims' homes. It also found that prices of homes near sex offenders declined considerably following an offender's arrival in the neighborhood.

SEX OFFENDER RESIDENCY 21.02

- An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri. This study found that while in Michigan, residency restrictions led to a slight increase in recidivism, in Missouri, the reconviction rate declined.
- Whereas the Common Council acknowledges that literature on sex offender recidivism, sex offender desistance, and sex offender residency restrictions contains studies which report varying effectiveness of certain strategies. The Common Council intends to use these strategies and studies to best create a regulatory framework which protects the children of the City of Black River Falls yet allows for a constructive and safe assimilation of designated sex offenders into the community.
- The Common Council 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 Common Council is also aware that absent a domicile clause, the city would have open doors for nonresident 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 city and its residents. Studies show increased recidivism rates for offenders who frequently move or do not have established community networks. These studies support maintaining a domicile clause thereby limiting designated offenders with no ties to the community and increasing the likelihood that a designated offender implements appropriate and existing community support while allowing the community to remain intelligently attentive, aware, and provide adequate and appropriate intervention if needed.
- The Common Council further acknowledges difficulties and risks associated with designated offenders who are left homeless if reasonable efforts and considerations are not made to enable said individuals to secure proper housing, as long as the need to protect the health, safety and welfare of the public is prioritized.
- Accordingly, the Common Council has created this regulatory measure designed to protect the health and safety of the children in the city against the threat posed by certain designated sex offenders. Sex offenders who prey on children represent a substantial danger to victims, target a particularly vulnerable group within the community who are less able to articulate or report abuse, and create a significant impact on law enforcement time and community resources to investigate abuses and mitigate risks. This chapter is also intended to demonstrate the city's resolute goal of protecting children in areas of potential vulnerability and impart the community's confidence by demonstrating safe, productive, and law-abiding behavior while residing within the city. It is the intent of the Common Council that this regulatory scheme is civil and nonpunitive to serve the city's compelling interest to promote, protect, and improve the health, safety, and welfare of all citizens of the city.

SEX OFFENDER RESIDENCY 21.02

Based on the above studies and other information presented to the Common Council, the Council determines that the restrictions set forth in this section serve the purpose of protecting the public health, safety, and welfare from the risk of recidivism of sex offenders. The Council further determines that the intent and effect of this article is not to banish sex offenders from residing within the city, and careful attention has been given to ensure that there are ample locations for sex offenders to reside within the city in compliance with the requirements of this article.

The Council further determines that the opportunity for individualized consideration of the risks and benefits of residency restrictions on a case-by-case basis is the best approach to achieve the purposes of this article and, to that end, this article establishes an "exemption" process by which a sex offender may seek an exemption from its residency restrictions by petition, which is further covered by an appeals process.

21.03 Purpose. The purpose of this article is to protect the public health, safety, and welfare in the City by regulating the residency of sex offenders.

21.04 Definitions.

(a) "Sex offender" shall mean a person who has been convicted of, found delinquent of, or found not guilty by reason of mental disease or defect of a sexually violent offense or a crime against children.

(b) "Sexually violent offense" shall have the meaning set forth in Wis. Stat. § 980.01(6).

(c) Crime against children. Shall mean any of the following offenses set forth in the Wisconsin Statutes, as amended, or in the laws of this or any other state or the federal government having like elements necessary for conviction, respectively:

Wis. Stat. § 940.225(1) First Degree Sexual Assault.

Wis. Stat. § 940.225(2) Second Degree Sexual Assault.

Wis. Stat. § 940.225(3) Third Degree Sexual Assault.

Wis. Stat. § 940.22(2) Sexual Exploitation by Therapist.

Wis. Stat. § 940.30 False Imprisonment — Victim was Minor and Not Offender's Child.

Wis. Stat. § 940.31 Kidnapping — Victim was Minor and Not Offender's Child.

Wis. Stat. § 944.02 Rape (prior statute, now Wis. Stat. § 940.225).

Wis. Stat. § 944.06 Incest.

Wis. Stat. § 944.10 Sexual Intercourse with a Child (prior statute, now Wis. Stat. § 948.02).

Wis. Stat. § 944.11 Indecent Behavior with a Child (prior statute, now Wis. Stat. § 948.02).

Wis. Stat. § 944.12 Enticing Child for Immoral Purposes (prior statute, now Wis. Stat. § 948.07).

Wis. Stat. § 948.02(1) First Degree Sexual Assault of a Child.

Wis. Stat. § 948.02(2) Second Degree Sexual Assault of a Child.

Wis. Stat. § 948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child.

SEX OFFENDER RESIDENCY 21.04

- Wis. Stat. § 948.05 Sexual Exploitation of a Child.
- Wis. Stat. § 948.055 Causing a Child to View or Listen to Sexual Activity.
- Wis. Stat. § 948.06 Incest with a Child.
- Wis. Stat. § 948.07 Child Enticement.
- Wis. Stat. § 948.075 Use of a Computer to Facilitate a Child Sex Crime.
- Wis. Stat. § 948.08 Soliciting a Child for Prostitution.
- Wis. Stat. § 948.095 Sexual Assault of a Student by School Instruction Staff.
- Wis. Stat. § 948.11(2)(a) or (am) Exposing a Child to Harmful Material.
- Wis. Stat. § 948.12 Possession of Child Pornography.
- Wis. Stat. § 948.13 Convicted Child Sex Offender Working with Children.
- Wis. Stat. § 948.30 Abduction of Another's Child.
- Wis. Stat. § 971.17 Not Guilty by Reason of Mental Disease or an Included Offense.
- Wis. Stat. § 975.06 Sex Crime Law Enforcement.

(d) Residence. A place where a person sleeps, abides, lodges, or resides on a permanent or regular basis. For purposes of this definition, a permanent basis means 14 or more consecutive days and a regular basis, means 14 or more aggregate days during any calendar year and four or more days in any month. A person may have more than one residence.

(e) “City” shall mean the City of Black River Falls, located in Jackson County, Wisconsin.

21.05 Residency restriction. (a) Except as otherwise provided in this Ordinance, a Sex Offender may not reside within 750 feet of any real property upon which there exists any of the following uses:

- (1) A school for children.
- (2) A public park, park facility, or pathway.
- (3) A daycare licensed by the State of Wisconsin.
- (4) A public library.
- (5) A public playground.
- (6) A public athletic field used by children.
- (7) A residential care center for children.
- (8) A public swimming pool.
- (9) A public community center

SEX OFFENDER RESIDENCY 21.05

(10) Designated School Bus Stops (pick-up/drop-off) as provided by the Black River Falls School District and the Ho-Chunk Nation.

(b) For purposes of this section, distance is to be measured in a straight line from the closest boundary line of the real property upon which the sex offender's residence is located to the closest boundary line of the real property of the applicable use. A map depicting the above-enumerated uses and the resulting residency restriction distances shall be created annually. Such map shall be the official map for purposes of this section until the new annual map is created and filed annually. The official map shall be on file in the office of the City Clerk for public inspection.

21.06 Residency restriction exceptions. A sex offender residing within an area otherwise prohibited by section 21.05 does not commit an offense if any of the following apply:

(1)The person is required to serve a sentence at a jail, prison, juvenile facility, or other facility located at the otherwise prohibited location.

(2)The person had established a residence, as defined in section 21.04(d) above, at the location prior to the effective date of this article.

(3)The use enumerated in section 21.05(a) was established after the sex offender established a residence at the location and registered that residence as required by law.

(4)The sex offender is a minor or ward under guardianship.

(5) The designated offender's most recent offense, which falls under section 21.04 above occurred more than ten years ago and it has been at least ten years since the designated offender has completed any period of incarceration or court mandated supervision for any offense.

21.07 Safety zones. No sex offender may enter or be present on any real property upon which there exists any facility used for or which supports the use of:

(1) A school for children.

(2) A public park, park facility, or pathway.

(3) A daycare licensed by the State of Wisconsin.

(4) A public library.

(5) A public playground.

(6) A public athletic field used by children.

(7) A residential care center for children.

(8) A public swimming pool.

(9) A public community center.

SEX OFFENDER RESIDENCY 21.08

21.08 Safety zone exceptions. A Sex Offender present in an area otherwise prohibited by section 21.07 does not commit an offense if any of the following apply:

(1) The property supporting a use enumerated in section 21.07 also supports a church, synagogue, mosque, temple, or other house of religious worship, subject to the following conditions:

- a. Entrance and presence on the property may occur only during hours of worship or other religious program or service.
- b. The person may not participate in any religious education programs that include individuals under the age of 18.

(2) The property supporting a use enumerated in section 21.07 also supports a use lawfully attended by the sex offender's natural or adopted child or children, which child's use reasonably requires the attendance of the sex offender, provided that entrance and presence on the property occurs only during hours of activity related to the use by the child or children.

(3) The property supporting a use enumerated in section 21.07 also supports a polling location in a local, state, or federal election, subject to the following conditions:

- a. The sex offender is eligible to vote.
- b. The polling location is the designated polling location for the sex offender.
- c. The sex offender casts his or her ballot with whatever usual and customary assistance is available and vacates the property immediately after voting.

(4) The property supporting a use enumerated in section 21.07 also supports a school lawfully attended by the sex offender as a student, provided that the sex offender may only remain on the property at such times that are reasonably required for his or her educational purposes.

(5) The property supporting a use enumerated in section 21.07 also supports a police station, City Hall, or other governmental building, provided that the sex offender vacates the property immediately after completing the activity that required his or her presence at the property.

21.09 Original residency restriction In addition to the other residency restrictions set forth herein and subject to the limitations in section 21.06, no sex offender may establish a residence in the city unless he or she was a resident of the city at the time of the most recent offense resulting in the person's most recent conviction, commitment, or placement as a sex offender. This limitation shall not apply to the establishment of a residence at a dwelling that is owned by a member of the sex offender's family at the time the sex offender establishes residence therein. For purposes of this section, a member of a

SEX OFFENDER RESIDENCY 21.09

sex offender's family means the sex offender's spouse, mother, father, brother, sister, child, or grandparent.

21.10 Sale or rental of property for use by sex offenders. No person may sell or rent any place, structure, or part thereof with knowledge that it will be used as a residence by any sex offender that is prohibited from establishing residence therein by this article.

21.11 Enforcement. A person violating this article shall be subject to forfeitures in an amount of not less than \$200.00 nor more than \$1,000.00 for each violation plus the costs of prosecution (including reasonable attorneys' fees). For purposes of calculating forfeitures, each day that a violation exists shall constitute a separate offense. Violations of this article are also deemed public nuisances, and the city may bring an action in circuit court to enjoin or abate any violation.

21.12 Petition for exemption and appeals. (a) 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 Black River Falls 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 this Chapter. The Chief of Police or his/her designee shall approve an exemption, 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, City Administrator, and the city 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 or his/her designee within 30 days of the request shall be deemed to be denied for the purpose of this chapter.

(b) 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 City's Administrative Review Appeals Board as established under Chapter 6 of the City of Black River Falls Code of Ordinances (hereafter "the board") via the City Administrator's office. The board shall hold a hearing on each appeal within thirty (30) days of the City Administrator's actual receipt of the written appeal, during which the board may review any pertinent information and may accept oral and written statements from any person.

(c) The Chief of Police or his/her designee and/or the board shall base their decision upon any factors related to the city's interest in promoting, protecting, and improving the health, safety, and welfare of the community, including, but not limited to:

- (1) The nature of the predicate offense causing the appellant to be a designated offender.
- (2) Police reports related to the predicate offense if available.
- (3) Proximity of the requested residence to the victim.

SEX OFFENDER RESIDENCY 21.12

- (4) The age of the offense, offender, and victim.
 - (5) Recommendation of the probation or parole officer, if one exists.
 - (6) Recommendation of the police department.
 - (7) Recommendation of any treatment practitioner.
 - (8) Proposals for safety measures and assurances by the designated offender.
 - (9) Conditions to be placed on any exception or variance from the requirements of this chapter.
 - (10) Support systems in place by the designated offender.
 - (11) Who the designated offender will be or is living with at the prohibited location.
 - (12) Statements of the surrounding community or victim.
 - (13) Treatment, sobriety, or rehabilitative measures taken by the designated offender.
 - (14) The designated offender's current employment or social activities.
 - (15) The designated offender's criminal history.
 - (16) Whether the designated offender meets any of the exceptions listed in this Chapter.
- (d) 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 City Administrator's office and the City of Black River Falls Police Department. The designated 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 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.
- (e) A conditional exemption may include, but is not limited to, the following terms:
- (1) Curfew restrictions.
 - (2) Cohabitant restrictions or requirements.

SEX OFFENDER RESIDENCY 21.12

- (3) Sobriety restrictions.
- (4) Conduct restrictions.
- (5) Residency restrictions.

(f) 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.

(g) 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 city or outside the city.

(h) 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 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 I notice. The revocation of an exemption may be appealed to the board pursuant to the above procedure.

(i) For the purposes of this chapter, pursuant to Section 68.16, Wisconsin Statutes, the City of Black River Falls is specifically electing not to be governed by Chapter 68, Wisconsin Statutes. As such, appeals under this Chapter shall be heard by the Administrative Review Appeals Board established under Chapter 6 of the City of Black River Falls Code of Ordinances, but the process of such appeals shall be governed by this Section 21.12 rather than as may be set forth in the aforementioned Chapter 6, as allowed by section 6.06 thereunder.

(j) 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 thirty (30) days to the circuit court.