

# VILLAGE OF DORCHESTER

CLARK & MARATHON COUNTIES

## ORDINANCE 204:

### AN ORDINANCE REGARDING SEXUAL OFFENDER RESIDENCY RESTRICTIONS

The Village Board of the Village of Dorchester does hereby ordain as follows:

- I. Purpose.
  - A. Findings and Intent
  - B. Definitions
  - C. Sexual Offender and Sexual Predator Residency; Prohibitions; Penalties; Exceptions.
  - D. Property Owners Prohibited from Renting Real Property to Certain Sexual Predators and Sexual Offenders; Penalties
  - E. Safety Zone
  - F. Injunctions and Other Penalties for Violations
  - G. Appeals
- II. Forfeitures; Penalties.
- III. Severability.
- IV. Effective Date.

I. **Purpose.**

A. **Findings and Intent.**

(1) **Findings.**

- a. This chapter is a regulatory measure aimed at protecting the health and safety of children in the Village of Dorchester from the risk that convicted sex offenders may reoffend. 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, licensed day care facilities, public parks, and other places children frequent.
- b. According to a 1997 report by the United States Department of Justice, sex offenders have high rates of recidivism which are much higher than rates for other types of violent crimes. Sex offenders are the least likely to be cured and the most likely to re-offend and prey on the most vulnerable members of the community.
- c. While Federal and State Fair Housing Statutes prohibit unlawful discrimination, they do not extend the same protections to a sex offender (as defined herein) with respect to a place of residency (as defined herein) where a Safety Zone (as defined herein) has been established.
- d. The Village Board of the Village of Dorchester has been advised of the decision of the United States Court of Appeals for the 8<sup>th</sup> Circuit, in Doe v. Miller, 405 F.3d 700 (8<sup>th</sup> Cir. 2005), which provides in part at page 716 of that decision the following:

*“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. [Citations 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 policy makers 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 a rational basis...”*

- (2) **Intent.** It is the intent of this Section not to impose a criminal penalty but rather to serve the Village of Dorchester’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 establishing temporary or permanent residence.

B. **Definitions.** The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them as follows, except where the context clearly indicates a different meaning:

- (1) **Child.** A person of or under the age of sixteen (16) for purposes of this Section.
- (2) **Designated Offender (Sex Offender).** Any person who is required to register under Section 301.45, Wis. Stats., and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Section 301.46(2) and (2m), Wis. Stats. Included in this definition is 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”.
- (3) **Minor.** A person under the age of seventeen (17).
- (4) **Permanent Residence.** A place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.
- (5) **Temporary Residence.** A place where the person abides, lodges, or resides for a period of fourteen (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 (4) or more consecutive or non-consecutive days in any month and which is not the person’s permanent address. A residence may be mobile or transitory.
- (6) **Loitering.** Whether in a group, crowd, or as an individual, to stand about, loaf, prowl, congregate, wander, linger aimlessly, proceed slowly with many stops, delay, or dawdle.
- (7) **Sexually Violent Offense.** Shall have the meaning as forth in Section 980.01(6), as amended from time to time.
- (8) **Safety Zones.** Any real property that supports or upon which there exists any facility used for or that supports a school for children, a public park, park facility, Village-designated recreational trail or pathway, place of worship, or a licensed daycare center.
- (9) **Crimes against Children.** Shall mean any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or federal government, having like elements necessary for conviction, respectively:

940.225	Rape
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 a Minor & Not the Offender’s Child
940.31	Kidnapping – Victim was a Minor & Not the Offender’s Child
944.06	Incest
948.02	Sexual Intercourse or Indecent Behavior with a Child
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)	Exposing a 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 or an Included Offense
975.06	Sex Crime Law Commitment

C. **Sexual Offender and Sexual Predator Residency; Prohibitions; Penalties; Exceptions.**

- (1) **Prohibited Location of Residence.** It is unlawful for any designated offender to establish a permanent residence or temporary residence within Seven Hundred Fifty (750) feet of any school, licensed day care center, park, Village-designated recreational trail or pathway, playground, place of worship, or any other place designated by the Village of Dorchester as a place where children are known to congregate.
- (2) **Prohibited Activity.**
  - a. **Loitering.** It is unlawful for any designated offender to loiter within Seven Hundred Fifty (750) feet of any school, licensed day care center, park, Village-designated recreational trail or pathway, playground, place of worship or any other place designated by the Village of Dorchester as a place where children are known to congregate.
  - b. **Holiday Events/Parties.** It is unlawful for any designated offender to participate in a holiday event involving children under eighteen (18) years of age, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, or wearing an Easter Bunny costume on or preceding Easter, or other similar activities. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this Subsection. "Participation" is to be defined as actively taking part in this event.
- (3) **Measurement of Distance.**
  - a. For purposes of determining the minimum distance separation, the requirement shall be measured by following the straight line from the outer property line of the permanent residence or temporary residence to the nearest outside property line of a school, licensed day care center, park, Village-designated recreational trail or pathway, playground, place of worship, or any other place designated by the Village of Dorchester where children are known to congregate.
  - b. The Village Clerk-Treasurer shall maintain an official map showing prohibited locations as defined by this Section. The Village Clerk-Treasurer shall 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. The map is to be displayed or available in the office of the Village Clerk-Treasurer.

- (4) **Violations; Penalties.** A person who violates this Subsection shall be punished by forfeiture as outlined in Section II. Each day a person maintains a residence in violation of this Section constitutes a separate violation. The Village of Dorchester may also seek equitable relief.
- (5) **Exceptions.** A designated offender residing within a prohibited area as described in Subsection (c)(1) does not commit a violation of this Section if any of the following apply:
  - a. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Section 340.45, Wis. Stats., before the original effective date of this Section.
  - b. The person is a minor or ward under guardianship and is not required to register under Sections 301.45 or 301.46 Wis. Stats.
  - c. The school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the Village as a place where children are known to congregate within Seven Hundred Fifty (750) feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered pursuant to Section 301.45, Wis. Stats.
  - d. The residence is also the primary residence of the person's parents, grandparents, siblings, spouse, or children, provided that such parent, grandparent, sibling, spouse, or child established the residence at least ten (10) years before the designated offender established the residence at the location.

**D. Property Owners Prohibited from Renting Real Property to Certain Sexual Predators and Sexual Offenders; Penalties.**

- (1) **Prohibition.** It is unlawful to let 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 Section, if such place, structure, or part thereof, trailer, or other conveyance is located within a prohibited location zone described in Subsection (c)(1). A person letting or renting a place or structure shall be deemed to have such knowledge if, at least ten (10) days prior to letting or renting the place or structure, the sex offender's name appears on the Wisconsin Department of Correction's sex offender registry and the person letting or renting the place knew the sex offender would be residing at the subject place or structure.
- (2) **Violations; Penalties.** A property owner's failure to comply with the provisions of this Subsection shall constitute a violation of this Section, and shall subject the property owner to the Code enforcement provisions in Subsection (c)(4) as provided in this Section. Each day a violation continues shall constitute a separate offense.

**E. Safety Zone.**

- (1) **Presence Regulated.** A sex offender shall not enter into or be present upon or within a Safety Zone.
- (2) **Safety Zone Exceptions.** A sex offender who enters into or who is present upon or within a safety zone does not commit a violation of this Subsection if any of the following apply:

- a. The property also supports a church, synagogue, mosque, temple, or other house of religious worship, subject to all the following conditions:
  1. The sex offender's entrance and presence upon the property occurs only during the hours of worship or other religious programs/services as posted to the public; and
  2. The sex offender shall not participate in any religious education programs that include individuals under the age of eighteen (18).
- b. The property also supports a use lawfully attended by a sex offender's natural or adopted children, which reasonably requires the attendance of the sex offender as the child's parent upon the property. 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.
- c. The property also supports a polling location in a local, state, or federal election, subject to all of the following conditions:
  1. The sex offender is eligible to vote;
  2. The property is the designated polling place for the sex offender; and
  3. The sex offender enters the polling place property, proceeds to cast a ballot, and vacates the property immediately after voting.
- d. The property supports a school lawfully attended by a sex offender as a student under which circumstances the sex offender may enter 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.
- e. The property supports a court, governmental office, or room for public governmental meetings, subject to all of the following conditions:
  1. 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
  2. The sex offender leaves the property immediately upon completion of the business or meeting.

(3) **Violations; Penalties.** A person who violates this Subsection shall be punished by a forfeiture as outlined in Section II. Each day a violation continues shall constitute a separate offense.

- F. **Injunctions and Other Penalties for Violations.** Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the Village of Dorchester from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this Chapter. If an offender establishes a residence in violation of Subsections (c) or (d) above, or enters or is present upon or within a Safe Zone in violation of Subsection (e) above, an attorney appointed by the Village Board may bring an action in the name of the Village of Dorchester in circuit court to permanently enjoin any such violation as a public nuisance.
- G. **Appeals.** The above requirements may be waived or modified upon approval of the Village Board of the Village of Dorchester through appeal by the affected party. Such appeal shall be made to the Village Clerk-Treasurer, who shall forward the request to the Village President and Village Board, which shall request and receive reports from law enforcement authorities serving the Village on such appeal. The Village President and Village Board shall convene and consider the public interest as well as the affected party's presentation and concerns. After deliberation and determination, the Village President and Village Board shall forward its decision to the law

enforcement authorities serving the Village of Dorchester for its information and action. A written copy of the decision shall be provided to the affected party.

II. **Forfeitures; Penalties.**

A. **General Penalty.** Any person over the age of seventeen (17) years who violates any of the provisions of this Ordinance shall, upon conviction of such violation, be subject to a penalty, which shall be as follows:

1. **First offense:** not less than One Hundred Fifty Dollars (\$150.00) nor more than One Thousand Five Hundred Dollars (\$1500.00), together with all costs, surcharges, penalty assessments, and any other item of cost as provided for by the laws of the State of Wisconsin as applicable to forfeiture actions that are in effect at the time of the offense.
2. **Second and subsequent offenses:** any person over the age of seventeen (17) who is found guilty of violating any part of this Ordinance who has been previously convicted of violating any part of this Ordinance within five (5) years from the date of the last conviction to the date of current offense shall, upon conviction thereof, forfeit not less than Two Hundred Fifty Dollars (\$250.00) nor more than Two Thousand Five Hundred Dollars (\$2500.00) for each such offense, together with all costs, surcharges, penalty assessments, and any other item of cost as provided for by the laws of the State of Wisconsin as applicable to forfeiture actions that are in effect at the time of the offense.

B. **Continued Violations.** Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Ordinance shall preclude the Village from maintaining any appropriate action to prevent or remove a violation of any provision of this Ordinance.

C. **Other Remedies.** The Village of Dorchester shall have any and all other remedies afforded by the Wisconsin Statutes in addition to the forfeitures and costs of prosecution above.

1. Execution or assessment against defendant's property. If any person fails to pay the forfeiture and costs of prosecution upon the order of any court for violation of this Ordinance the court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for said forfeiture and costs. Alternatively, upon authorization of the court imposing any such forfeiture and costs, such sum as remains unpaid shall be assessed against any real property owned by the defendant within the Village and shall be added to the Village's portion of the property tax liability.
2. In addition to any forfeiture imposed under this Section, the Village may institute an action or proceeding to enjoin any violation. Such violation or any nonpayment of any forfeiture and costs shall constitute the basis for revocation or denial of any and all licenses and permits wherein the Village is the issuing authority.
3. Upon stipulation of the parties, and subject to the approval of the court upon finding that such stipulation is in the public interest and serves the interests of justice, the court may impose terms not to exceed Five Hundred Dollars (\$500.00) against a defendant upon dismissal of the action. The Clerk of Municipal Court shall, within seven (7) days of receipt thereof, transfer such sum to the Village Clerk-Treasurer for deposit in the general fund.

III. **Severability.**

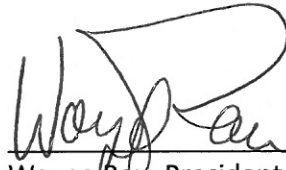
If any provision of this Ordinance is invalid or unconstitutional, or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

IV. **Effective Date.**

This Ordinance shall take effect upon passage and publication as provided by law.

Passed at a regular session of the Village Board this 7<sup>th</sup> day of October, 2015.

This ordinance shall be effective upon publication.

  
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Wayne Rau, President

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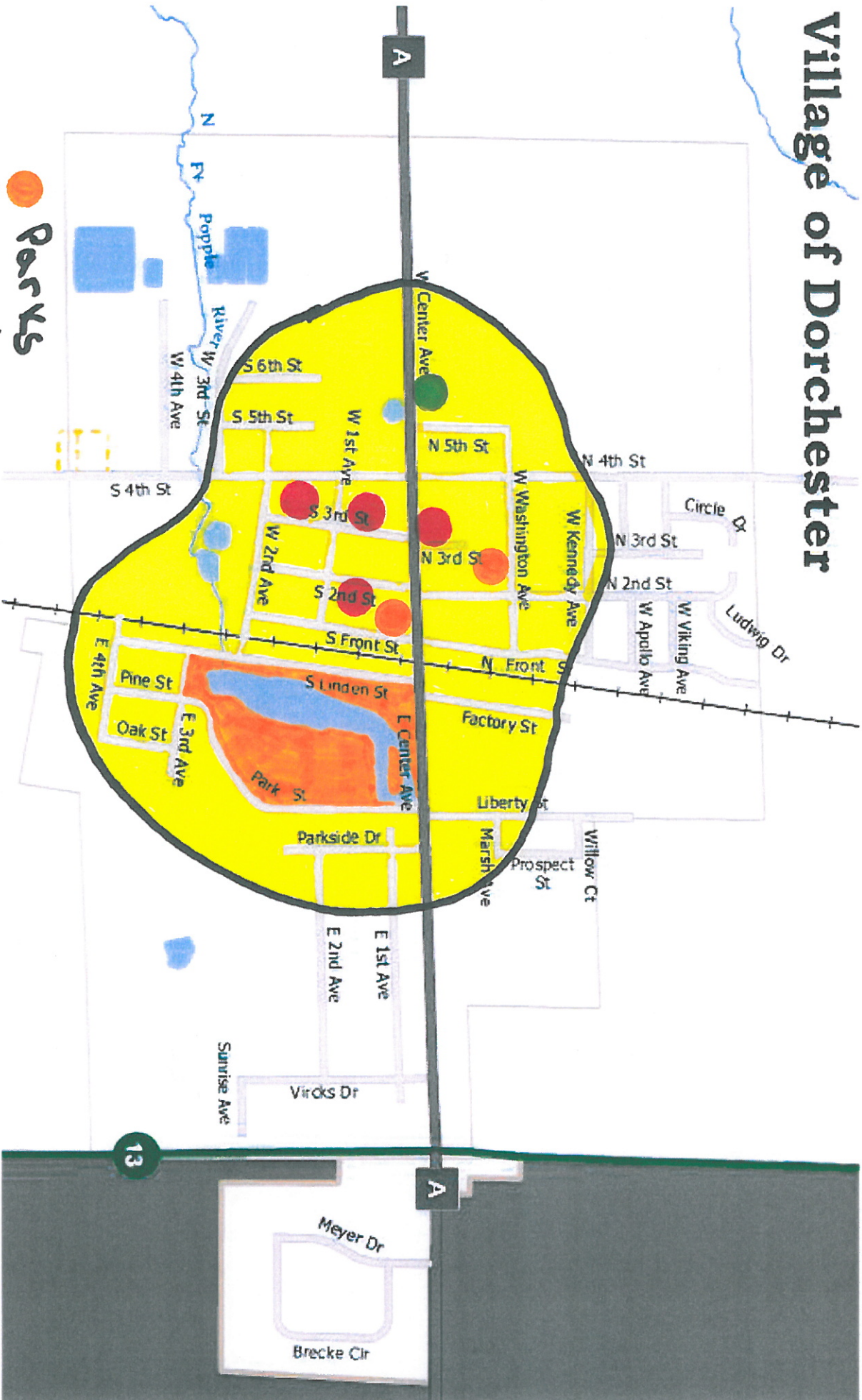
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Brooke Ruge, Village Clerk

Published: \_\_\_\_\_



# Village of Dorchester



-  Parks
-  Churches
-  Licensed Daycare

