

VILLAGE OF ELLSWORTH

ORDINANCE NO. 664

An Ordinance relating to Sex Offender Residency Requirements and Prohibited Conduct of Designated Sex Offender.

WHEREAS, the United States District Court for the Eastern District of Wisconsin issued an Order on April 17, 2017, in the case titled *Hoffman v. Village of Pleasant Prairie*, which contained findings, holdings and decision that directly addressed the constitutionality of municipal ordinances regulating residency for child sex offenders within their border; and

WHEREAS, on October 9, 2017, the Village of Ellsworth Health, Welfare and Licensing Committee met to discuss the Committee Members' review of the following written materials:

1. Wisconsin League of Municipalities Article: Recent Decision in Case Challenging Sex Offender Residency Regulations Yield Important Lessons; 09/23/17;
2. The Case of *Hoffman v. Village of Pleasant Prairie*, United States District Court, Eastern District of Wisconsin, decided April 17, 2017;
3. Wisconsin Department of Corrections, Sex Offender Registry, Frequently Asked Questions (19 pages);
4. An Overview of Sex Offender Management, Center for Sex Offender Management, US Department of Justice, July 2002;
5. Sex Offender Management Assessment and Planning Initiative, Office of Justice Programs (Chapter 5: Adult Sex Offender Recidivism by Roger Przybylski);
6. Sex Offender Management Assessment and Planning Initiative (SMART), US Department of Justice (2012 SOMAPI Forum);
7. Recidivism of Adult Sexual Offenders, by Roger Przybylski (SOMAPI, July 2015);
8. Ordinance No. 6-207 of the Village of Mount Pleasant, Wisconsin; and

WHEREAS, the Village Board collectively, and the members individually, reviewed the Report and Recommendation of the Health, Welfare and Licensing Committee, and reviewed the foregoing materials; and

WHEREAS, the Village Board has taken further note of a 2015 report prepared by the State of Wisconsin Department of Corrections, Office of the Secretary, Research and Policy Unit titled "Sex Offender Recidivisms After Release From Prison," which stated, among other things, that "of the most common offenses for sexual recidivists, convictions for offenses that specifically reference children were generally more

common than offenses without a specific victim reference and non-contact offenses." The study noted offenses against children constituted more than half of the top 10 most common re-offense types; and

WHEREAS, on October 9, 2017, the Village of Ellsworth Health, Welfare and Licensing Committee reviewed a proposed Ordinance and discussed various changes which should be made to it, directing changes be made by the Village Attorney for review at a Committee Meeting to be held November 6, 2017; and

WHEREAS, the Village of Ellsworth Health, Welfare and Licensing Committee met on November 6, 2017, and reviewed this revised draft of Ordinance and approved same and ratified the report and recommendation attached to the Minutes of said Committee Meeting;

WHEREAS, the Village Board believes this Ordinance is necessary to protect children based upon the substantial risks posed to them by sexual offender recidivists;

NOW THEREFORE, the Village Board of the Village of Ellsworth does hereby ordain as follows:

Section 1. Sections 11-21 and 11-22 of the Village of Ellsworth Municipal Code are hereby created to read as follows:

11.21 SEX OFFENDER RESIDENCY RESTRICTIONS

(1) Findings and Intent.

- A. **Findings.** Studies show that sex offenders, including sex offenders who use physical violence or the threat thereof and sex offenders who prey on children are sex predators who present a serious threat to the public safety. These offenders present an alarming high risk of re-offending once released. Sex offenders are extremely likely to use physical violence when they offend; and many sex offenders commit multiple offenses, have more victims that are never reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society great, and it justifies efforts to protect the public from such victimization. Because reducing both opportunity and temptation will minimize the risk of re-offense for those Sex Offenders who are likely to re-commit sex offenses especially those against children, there is a compelling need to separate Sex Offenders from places where children congregate or play in public places.
- B. **Intent.** This Section is a regulatory measure aimed at protecting the health and safety of children in the Village from the risk that convicted sex offenders may re-offend in locations close to their residence and parks, schools, daycares and churches where they are cared for, recreate, study or worship. The Village establishes

these regulations in order to provide protection to children in the Village by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism. It is the intent of the Village Board to protect the safety and welfare of its citizens by creating zones around places where children regularly gather, in which certain Sex Offenders are prohibited from establishing Residency. It is expressly not the intent of the Village Board to impose additional punishment on Sex Offenders.

(2) Definitions. The following words, terms and phrases, when used in Section 11.21 and 11.22, shall have the meanings ascribed to them below:

- A. "Child" or "children" or "minor" means a person who has not attained the age of 18 years, for purposes of this Section.
- B. "Child Care Facility" means a childcare facility that is operated by a person under Wis. Stat. §48.65 or certified under s.48.651 or that is established or contracted for under Wis. Stat. §120.13(4), or a group home as defined in Wis. Stat. §48.02(7).
- C. "Child Safety Zone" in this Section 11.21 means an area within 1,000 feet of any school, park, child care facility licensed pursuant to Wis. Stat. §48.65, or certified under Wis. Stat. §48.65(1) or that is established or contracted for under Wis. Stat. §120.123(4), group home as defined in Wis. Stat. §48.02(7), or youth center within the Village of Ellsworth.
- D. "Park" means a children's playground or park, including one having athletic facilities used by children, or a recreational trail, owned or maintained by the State or by a City, Village, Town or County, or by a homeowners association, condominium association, church, or school.
- E. "Residence" means a place where a person resides or dwells, or is used by a person as the primary location for basic life functions such as sleeping or eating, whether short-or long-term, but for an aggregate of 14 or more days in an one-year period.
- F. "School" means a public, parochial or private school as defined in Wis. Stat. §115.001(15m) which provides an educational program for one or more grades between grades 4-K and 12 and which is commonly known as a pre-school, elementary school, middle school or high school.
- G. "Sex Offender" means any person who is or was required to register under Section 301.45, Wisconsin Statutes, for any sexual offense against a child, or any person who is or was required to

register under Section 301.45, Wisconsin Statutes, and who has been designated a Special Bulletin (SBN) sex offender pursuant to Sections 301.46(2) and (2m), Wisconsin Statutes.

H. "Youth Center" means any center, including one sponsored by or at a church, that provides, on a regular basis, recreational, vocational, academic, service group (such as 4H, Boy Scouts, Girl Scouts) or social service activities for children and their families.

(3) Residence Restriction, Exceptions. No Sex Offender shall establish or maintain a Residence within a Child Safety Zone, except under the following circumstance:

A. It is specifically ordered that the Sex Offender reside within a Child Safety Zone by a circuit court having competent jurisdiction.

B. The Sex Offender established the Residence within 1,000 feet of a school, park, child care facility, group home or youth center, and reported and registered the Residence pursuant to Wis. Stats §301.45, before the effective date of this ordinance, that being November 6, 2017.

C. The person is excepted from sex-offender registration pursuant to Wis. Stats. §301.45(1m).

D. The school, park, child care facility, group home or youth center around which a Child Safety Zone exists first existed after the Sex Offender established Residence and reported and registered the Residence pursuant to Wis. Stats. §301.45.

E. The Sex Offender's Residence is within a jail, juvenile facility or other correctional facility at which the Sex Offender is servicing a court-ordered sentence.

F. The Sex Offender is a Minor or ward under guardianship, or is a person under age 21 and currently enrolled in high school, and is residing with his or her parent or guardian. In such cases involving a Minor or ward placed in accordance with this exception, when the Minor or ward turns 18 years of age, the Minor or ward shall be allowed to continue to reside at the already established residence.

(4) Measurement of Distances. The boundaries of the Child Safety Zone shall be determined by measuring from the outer property boundary of schools, parks, child care facilities, or group homes along the shortest line to the outer property boundary of a Sex Offender's Residence. If any portion of a property is within a Child Safety Zone, then the entire property shall be deemed within the Child Safety Zone.

- (5) **Map.** A map depicting the above-enumerated uses and resulting residency restriction distances shall be adopted by Resolution of the Village Board, and which map may be amended from time to time, is on file in the Office of the Village Clerk for public inspection.
- (6) **Notification.** A Sex Offender must notify the Police Department a minimum of twenty-eight (28) days prior to establishing a Residence within the Village of Ellsworth.
- (7) **Property Owners Prohibited from Renting Real Property to Certain Sexual Offenders and Sexual Predators.** It shall be unlawful for any property owner to lease or rent any place, structure, mobile home, trailer or any part thereof, with the knowledge that it will be used as a Residence by any person prohibited from establishing a Residence therein pursuant to this Section, if such place, structure, or mobile home, trailer or any part thereof, is located within a Child Safety Zone as defined in Section 54-20(b)(5).
- (8) **Public Nuisance.** Any violation of this Section shall be deemed a public nuisance affecting peace and safety, and the Village may proceed to abate the nuisance under Chapter 10 and/or 25 of the Code of Ordinances and/or Chapter 823 of the Wisconsin Statutes.
- (9) **Injunction for Violation of Residence Restrictions.** If an offender establishes a Residence in violation of subsection (c) above, the Chief of Police may refer the matter to the Village Attorney. The referral shall include a written determination by the Chief or 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, and safety of another or others. Upon such referral, the Village Attorney shall bring an action in the name of the Village in Circuit Court to permanently enjoin such Residence as a public nuisance.
- (10) **Severability.** Should any section, paragraph, sentence, clause or phrase of this Section be declared unconstitutional or invalid, or be repealed, it should not affect the validity of this Section as a whole, or any part thereof, other than the part so declared to be invalid or repealed.
- (11) **Appeal for an Exemption.**
- A. A Sex Offender may seek an exemption from this Section by appealing to the Sex Offender Residency Board (the "Appeals Board").
 - B. The Appeals Board shall consist of three citizens and one alternate who are residents of the Village. For the initial

appointments to the Appeals Board, the Village President shall appoint three members to staggered terms of one, two or three years, subject to confirmation by the Village Board and one alternate to a term of three years. Terms will end on April 30. After the initial appointment of members to a term of one, two and three years respectively, the Village President shall annually, between the first Monday of April and the first Monday of May, appoint one member for a term of three years and one alternate for a term of three years every third year, subject to confirmation by the Village Board. At the first meeting held by the Appeals Board after the first Monday of May of each year, the members of the Appeals Board shall vote by majority to select a chair for its meetings and any appeal that come before it.

- C. The Appeals Board shall approve an official appeal form, establishing filing procedures, a hearing schedule and deadlines for filing an appeal. A Sex Offender seeking an exemption shall complete this official form and submit it to the Village Clerk, who shall forward it to the Appeals Board. Notice in the form of an agenda shall be posted and/or published as required by law and provided to the Appeals Board.
- D. The Village elects not to be bound by Chapter 68 of the Wisconsin Statutes with respect to administrative procedure in the appeal process. The Appeals Board shall hold a hearing on each appeal to conduct an individual risk assessment in each case, during which the Appeals Board may review any pertinent information and may accept oral and written statements from any person. The Sex Offender that filed the appeal shall appear at any hearing held, unless otherwise approved by the Appeals Board. The Appeals Board shall consider the public interest as well as the applicant's presentation and concerns, giving the applicant a reasonable opportunity to be heard. The Appeals Board shall also consider any oral, emailed, and written statements from any person at the hearing or received in advance of the hearing. The Sex Offender shall be given copies of same prior to the hearing. The Appeals Board shall consider the specific facts and circumstances of each applicant and determine whether the Sex Offender presents a threat to public safety if he or she resides at that proposed location. The Appeals Board shall consider factors which may include, but are not limited to the following:
 - 1. Circumstances surrounding the offense.
 - 2. Relationship of offender and victim.

3. Presence or use of force.
4. Presence of enticement.
5. Need to protect victim or similarly situated individuals.
6. Current dangerousness of the offender.
7. Proximity in time from original offense.
8. Any criminal offenses, ordinance or rule violations committed since offense including failures to register or comply with restrictions set by a bond, parole or probation.
9. Time out of incarceration.
10. Current supervision status by the Department of Corrections.
11. Counseling and treatment history.
12. Credibility of offender.
13. Remorse
14. Proximity of proposed residence to a Child Safety Zone.
15. Support network of offender near proposed Residence.
16. Alternative options for housing.

E. The Appeals Board shall decide by majority vote to grant or deny any exemption. An exemption may be unconditional or be conditional to a certain address or period of time. In the case of an approval or denial, the Appeals Board shall provide a written copy of the decision containing the reasons therein for its decision to the Village Attorney and to the Sex Offender. The decision of the Appeals Board may be appealed to the Pierce County Circuit Court by any aggrieved party within 30 days of filing of the final decision of the Village Clerk's office, a copy of which shall be mailed to the Sex Offender who appealed. The review shall be a review by certiorari and the Circuit Court may affirm or reverse the final decision, or remand to the decision maker for further proceedings consistent with the Court's decision.

(12) Penalties. Any Person who violates any provision of this Section

shall, upon conviction thereof, be subject to the penalty provided in Section 25.04.

11.22 PROHIBITED CONDUCT OF SEX OFFENDER

(1) Findings and Intent.

A. **Findings.** Repeat sex offenders, sex offenders who use physical violence or threat thereof, and sex offenders who prey on children are sex predators who present a serious threat to the public safety. Sex offenders are extremely likely to use physical violence when they offend, and many sex offenders commit multiple offenses, have more victims that are never reported and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society great, and it justifies efforts to protect the public from such victimization. Reducing both opportunity and temptation will minimize the risk of re-offense for those Sex Offenders who in the absence of such reduction would be likely to re-commit sex offenses against children. Therefore, there is a compelling need to separate Sex Offenders from places where children congregate or play in public places.

B. **Intent.** It is the intent of the Village Board to protect the safety and welfare of its citizens by creating Child Safety Zones around places where children regularly gather. Sex Offenders are prohibited from establishing Residency. It is not the intent of the Village Board to impose additional punishment on Sex Offenders.

(2) **Definitions.** The phrase "Child Safety Zone" in this Section 11.22 means an area within 250 feet of any school, park, child care facility, licensed pursuant to Wis. Stat. §48.65, or certified under Wis. Stat. §48.65(1) or that is established or contracted for under Wis. Stat. §120.123(4), group home as defined in Wis. Stat. §48.02(7), or youth center within the Village of Ellsworth.

To the extent not otherwise delineated above, any facility for children [which means a public or private school or group home, as defined in Wis. Stat. §48.02(7); a residential care center for children and youth, as defined in Wis. Stat. §48.02(15d); a shelter care facility, as defined in Wis. Stat. §48.02(17); a foster home, as defined in Wis. Stat. §48.02(6); a treatment foster home, as defined in Wis. Stat. §48.02(17q); a daycare provider certified under Wis. Stat. §48.651; a youth center, as defined in Wis. Stat. §961.01(22)].

(3) No Presence Areas. No Designated Sex Offender shall enter upon or be present in a Child Safety Zone.

(4) Holiday Events Prohibited. It is unlawful for any Sex Offender to participate in a holiday event involving children unless the Offender is the parent or guardian of the children involved, and no non-familial children are present. Participation is defined as actively taking part in the event and shall include, but is not limited to, distributing candy or other items to children on Halloween, wearing a Santa Claus costume, or wearing an Easter Bunny costume. Where a Sex Offender accompanies his/her children to a Holiday Event, but does not actively participate in it (such as distributing candy or other items), that shall not be considered participation in the event; and, further, if the event takes place in a Child Safety Zone the Offender may be present with his/her children notwithstanding the prohibition in sub. 3 above.

(5) Exceptions. A Sex Offender may be present in a Child Safety Zone under any of the conditions set forth in Section 11.21(3), as well as the following instances:

- A. The Sex Offender is accompanied at all times by a minor child of which they have legal custody and the Department of Corrections or Department of Human Services has authorized the contact, as required by the conditions of the person's release.
- B. The Sex Offender's presence on the property of a school is for the purpose of discussing the education of a minor child of which they have legal custody, and their presence is with the prior knowledge and consent of the school official with whom the person is meeting and the Department of Corrections or Department of Human Services has authorized the visit, as required by the conditions of the person's release.
- C. The Child Safety Zone also serves a use lawfully attended by a Sex Offender's natural or adopted child(ren) or natural or adopted grandchild(ren), which child's use reasonably requires the attendance upon the property of the Sex Offender as the child's parent or grandparent, subject to the following conditions:
 - i. Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
 - ii. Written advance notice is given by the Sex Offender to an individual in charge of the use upon the property, and approval from the individual in charge of the use upon the property as designated by the owner of the use upon the

property is made in return, of the attendance by the Sex Offender.

- D. The Child Safety Zone also serves as a polling location in a local, State, or Federal election, subject to the following conditions:
- i. The Sex Offender is eligible to vote;
 - ii. The designated polling place for the Sex Offender is an enumerated use; and
 - iii. The Sex Offender enters the polling place property and proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the Sex Offender vacates the property immediately after voting.
- E. The Child Safety Zone also serves as a school attended by a Sex Offender as a student, under which circumstances the Sex Offender who is a student may enter upon the property supporting the school at which he or she is enrolled, as is reasonably required for the educational purposes of the school.
- F. The Sex Offender is within a motor vehicle in transit.
- G. The Sex Offender is transporting his/her natural or adopted child(ren) or natural or adopted grandchild(ren) to or from school or a daycare facility, provided there is prior knowledge and consent of the school or facility and the Department of Corrections or Department of Health Services has authorized the transport as required by the condition of the person's release.

(6) Severability. Should any section, paragraph, sentence, clause or phrase of this section be declared unconstitutional or invalid, or be repealed, it shall not affect the validity of this Section as a whole, or any part thereof, other than the part so declared to be invalid or repealed.

(7) Penalties. Any person who violates any provision of this Section shall, upon conviction thereof, be subject to the penalty provided in Section 25.04.

Section 2: This Ordinance shall take effect upon passage and publication.

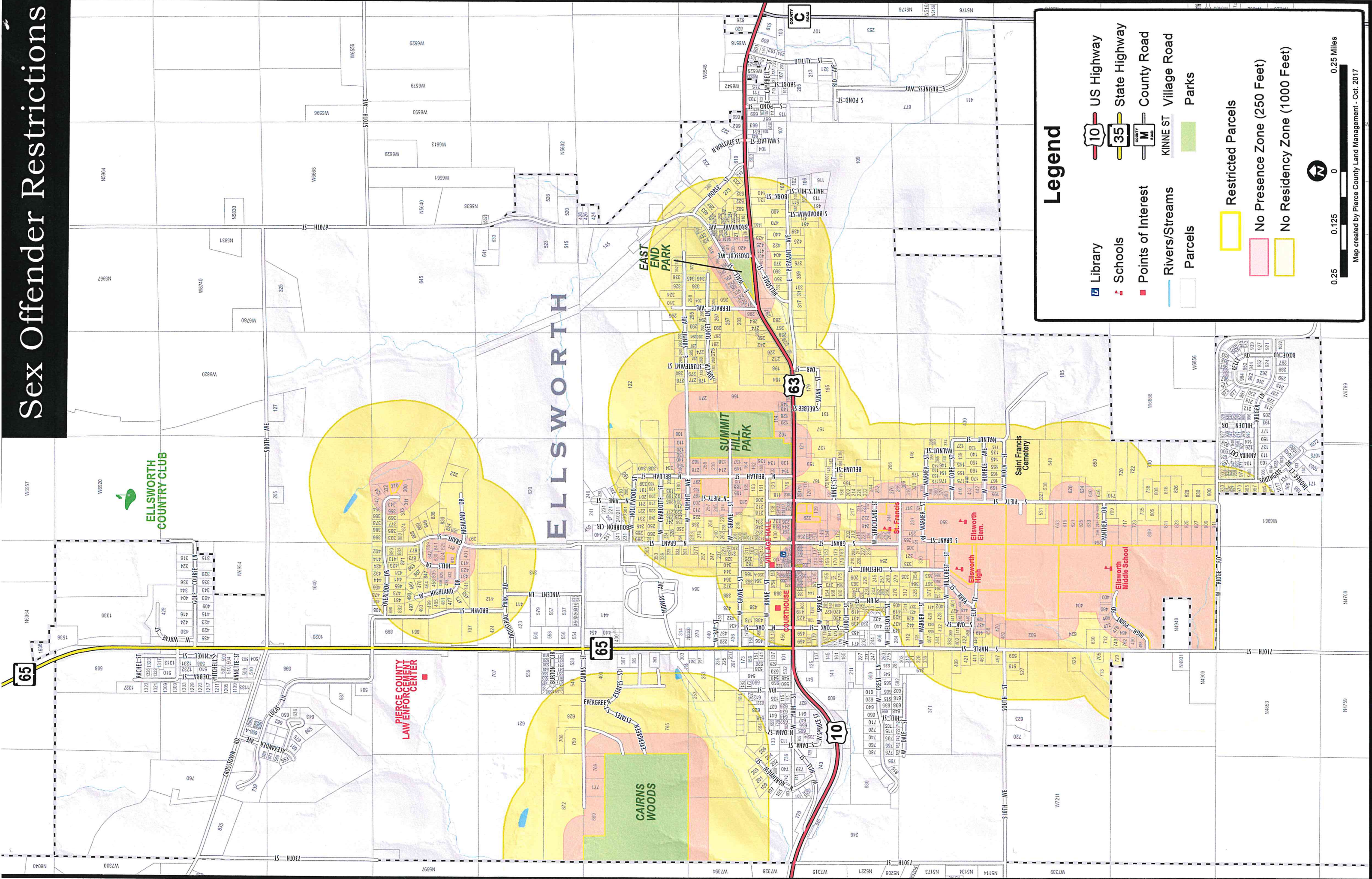
Passed and adopted this 6th day of November, 2017.

VILLAGE OF ELLSWORTH

By: *Gerald DeWolfe*
Gerald DeWolfe
Village President

Attest: *Peggy A. Nelson*
Peggy A. Nelson
Village Clerk

Sex Offender Restrictions



Legend

- Library
- Schools
- Points of Interest
- Rivers/Streams
- Parcels
- US Highway 10
- State Highway 35
- County Road M
- Kinne St
- Village Road
- Parks
- Restricted Parcels
- No Presence Zone (250 Feet)
- No Residency Zone (1000 Feet)

0 0.125 0.25 Miles

Map created by Pierce County Land Management - Oct. 2017