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1 STATE OF WISCONSIN WAUKESHA COUNTY VILLAGE OF HARTLAND

2 ORDINANCE NO. 877-23

3 AN ORDINANCE CREATING SUBSTITUTED AMENDMENT §66-12

4 OF THE VILLAGE OF HARTLAND CODE OF ORDINANCES

5 REGULATING RESIDENCY RESTRICTIONS FOR SEX OFFENDERS

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7 **THE VILLAGE BOARD OF THE VILLAGE OF HARTLAND DO ORDAIN AS**  
8 **FOLLOWS:**

9 **SECTION 1:**

10 **§66-12 of the CODE OF ORDINANCES OF THE VILLAGE OF HARTLAND is hereby**  
11 **repealed and the ordinance in SECTION 2 is hereby substituted in its place.**

12 **SECTION 2:**

13 **§66-12 of the CODE OF ORDINANCES OF THE VILLAGE OF HARTLAND is hereby**  
14 **created as follows:**

15 **Sec. 66-12 Sex Offender Residency Restrictions**

16 (a) Findings and Intent.

17 (1). §66-12 (c) and (d) enacted on 9-24-2018 contemplated that there be an on-going  
18 monitoring of the saturation level for Designated Offenders in the Village of  
19 Hartland that has occurred. To date the concentration level has diminished to a  
20 level where the Village Board believes that Village Ordinance §66-12 can  
21 reasonably be amended in light of the progress made toward the initial saturation  
22 level goal.

23 (2). It is the intent of this ordinance not to impose a criminal penalty, but rather serve  
24 the Village's compelling interest to promote, protect and improve the public health,  
25 safety and welfare of the Children and citizens of the Village by creating areas  
26 around non-commercial locations where Children regularly congregate in  
27 concentrated numbers wherein a Sex Offender is prohibited, excluded or restricted  
28 from establishing temporary or permanent residence. This section seeks to balance  
29 the Village's compelling interest of protecting its Children and citizens from  
30 recidivism with constructive and safe assimilation of certain Offenders into the  
31 community on an individualized exemption basis.

32 (3). The Village finds and declares that convicted Sex Offenders are a serious threat to  
33 public safety. When convicted Sex Offenders re-enter society, they are more likely

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34 than any other type of offender to be re-arrested for a new rape or sexual assault.<sup>1</sup>  
35 Given the elevated rate of recidivism for Sex Offenders and that reducing  
36 opportunity and temptation is important to minimizing the risk of re-offense, there  
37 is a need to protect Children where they congregate or play in non-commercial  
38 public places in addition to the protections afforded by state law near schools, day-  
39 care centers and other places Children frequent. The Village finds and declares that  
40 in addition to schools, Children congregate or play at public parks.

41 (b) Definitions.

42 (1). *Board* means the Village Board of Trustees, which acts as the administrative  
43 appeals review board.

44 (2). *Child* or *Children* means any person under the age of eighteen (18) years old;

45 (3). *Code* means the Hartland Code of Ordinances.

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<sup>1</sup> The United States Supreme Court has recognized that the risk of recidivism posed by Sex Offenders is serious, and when convicted Sex Offenders re-enter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See *Smith v. Doe*, 538 US 84, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003) and *McKune v. Lile*, 536 US 24, 34, 122 S. Ct. 2017, 153 L.Ed.2d 47 (2002), citing United States Department of Justice Bureau of Justice Statistics, Sex Offenses and Offenders, 27 (1997) U.S. Department of Justice Bureau of Justice Statistics Recidivism of Prisoners Released in 1994 (2003). Additionally, the Village has reviewed the holdings and findings from the following cases: *Vill. Of Menomonee Falls v. Ferguson*, 334 Wis.2d 131 (Wis. Ct. App. 2011); *City of S. Milwaukee v. Kester*, 347 Wis. 2d 334 (Wis. Ct. App. 2013); *McKune v. Lile*, 122 S. Ct. 2017 (2002); *Hoffman v. Vill. of Pleasant Prairie*, 249 F. Supp. 3d 951 (E.D. Wis. 2017); *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018); *Evenstad v. City of West St. Paul*, 306 F. Supp. 3d 1086 (D. Minn. 2018).

Based upon a 2003 study by the United States Department of Justice, Bureau of Justice Statistics, titled Recidivism of Sex Offenders Released from Prison in 1994, Sex Offenders released from prison were four (4) times more likely to be rearrested for a sex crime as compared to non-Sex Offenders released from prison. Of those individuals included in the study, forty percent (40%) of new sex crimes committed by those Sex Offenders released from prison had occurred within the first twelve (12) months of release. Further, child molesters who were released from prison were at least six (6) times more likely to be rearrested for another sex crime against a child as compared to a non-Sex Offender released from prison. Based upon a 2019 study by the United States Department of Justice, Bureau of Justice Statistics, titled Recidivism of Sex Offenders Released from State Prison: A Nine-Year Follow-Up (2005-14), released Sex Offenders were more than three (3) times as likely as other released prisoners to be arrested for rape or sexual assault, and released Sex Offenders accounted for five percent (5%) of releases in 2005 and sixteen percent (16%) of arrests for rape or sexual assault during the nine-year follow-up period.

The Village has been made aware of research on Sex Offenders, including the findings of a number of states across the United States, as they pertain to laws adopted and which relate to imposing restrictions on Sex Offenders with respect to residency; and in addition, the United States Court of Appeals for the 8th Circuit Decision on *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005) providing, in part, “the record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward or 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 (citations omitted). The policymakers 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 rational basis.”

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- 46 (4). *Conditional Exemption* means an exemption subject to conditions, which may  
47 include, but is not limited to, containing the following terms:
- 48 a. Curfew restrictions;
  - 49 b. Cohabitation restrictions or requirements;
  - 50 c. Sobriety restrictions;
  - 51 d. Conduct restrictions; or
  - 52 e. Residency restrictions.
- 53 (5). *Crime Against Children* means any of the following offenses set forth in the  
54 Wisconsin Statutes, as amended, or the laws of this or any other state or federal  
55 government, having like elements necessary for conviction and involving a Child,  
56 respectively:
- 57 a. § 940.225(1): First Degree Sexual Assault;
  - 58 b. § 940.225(2): Second Degree Sexual Assault;
  - 59 c. § 940.225(3): Third Degree Sexual Assault;
  - 60 d. § 940.22(2): Sexual Exploitation by Therapist;
  - 61 e. § 940.30: False Imprisonment-victim was minor and not the offender's  
62 child;
  - 63 f. § 940.31: Kidnapping-victim was minor and not the offender's child;
  - 64 g. § 944.01: Rape (prior statute);
  - 65 h. § 944.06: Incest;
  - 66 i. § 944.10: Sexual Intercourse with a Child (prior statute);
  - 67 j. § 944.11: Indecent Behavior with a Child (prior statute);
  - 68 k. § 944.12: Enticing Child for Immoral Purposes (prior statute);
  - 69 l. § 948.02(1): First Degree Sexual Assault of a Child;
  - 70 m. § 948.02(2): Second Degree Sexual Assault of a Child;
  - 71 n. § 948.025: Engaging in Repeated Acts of Sexual Assault of the Same Child;
  - 72 o. § 948.05: Sexual Exploitation of a Child;
  - 73 p. § 948.055: Causing a Child to View or Listen to Sexual Activity;
  - 74 q. § 948.06: Incest with a Child;
  - 75 r. § 948.07: Child Enticement;
  - 76 s. § 948.075: Use of a Computer to Facilitate a Child Sex Crime;
  - 77 t. § 948.08: Soliciting a Child for Prostitution;
  - 78 u. § 948.09: Sexual Intercourse with a Child Age 16 or Older
  - 79 v. § 948.095: Sexual Assault of a Student by School Instructional Staff;
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- 80 w. § 948.11(2)(a) or (am): Exposing Child to Harmful Material-felony  
81 sections;
- 82 x. § 948.12: Possession of Child Pornography;
- 83 y. § 948.13: Convicted Child Sex Offender Working with Children;
- 84 z. § 948.30: Abduction of Another's Child;
- 85 aa. § 971.17: Not Guilty by Reason of Mental Disease-of an included offense;
- 86 and
- 87 bb. § 975.06: Sex Crimes Law Commitment.
- 88 cc. § 980.01(7) Sexually Violent Persons

89 (6). *Facility for Children* means any of the following located within the Village or  
90 within any other municipality immediately abutting a boundary of the Village  
91 functions as a:

- 92 a. Public school (as defined under Wis. Stat. § 115.01(1));
- 93 b. Private school (as defined under Wis. Stat. § 115.001(3));
- 94 c. Public park, parkway, parkland, park facility, but excluding pathways  
95 providing access to, or between Public Park(s);
- 96 d. Public swimming pool;
- 97 e. Public library;
- 98 f. Public playground;

99 (7). *Permanent Residence* means a place where a person lawfully commenced, under a  
100 then controlling village ordinance, residing abiding, lodging, renting or residing for  
101 fourteen (14) or more consecutive days.

102 (8). *Person* means any human being, corporation, limited liability, partnerships, sole  
103 proprietorships, estates, trusts or any other entity that legally may own real estate  
104 within the Village.

105 (9). *Sex Offender* means any person who has been (1) convicted of, found delinquent  
106 of, or been found not guilty by reason of disease or mental defect of a Crime Against  
107 Children and (2) is required to register under Wis. Stat. § 301.45.

108 (10). *Structure* means any place, house, apartment, condo, townhome, structure,  
109 trailer or other conveyance (or part thereof) that can be legally used by a Person as  
110 a dwelling.

111 (11). *Temporary Residence* means a place where a person lawfully commenced,  
112 under a then controlling village ordinance, residing, abiding, lodging, renting or  
113 residing for a period of fourteen (14) or more days in the aggregate during any  
114 calendar year and which is not the person's permanent residence address or place  
115 where the person routinely abides, lodges or resides for a period of four (4) or more  
116 consecutive or nonconsecutive days in any month and which is not the person's  
117 permanent residence address.

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- 118 (c) Residency Restrictions.
- 119 (1). A Sex Offender shall not establish a Permanent Residence or Temporary Residence  
120 on a parcel within 750 feet of any parcel which, in whole or in part, is a Facility for  
121 Children.
- 122 (2). The distance shall be measured from the closest boundary line of the Permanent  
123 Residence or Temporary Residence parcel in a straight line to the closest boundary  
124 line of the real property parcel that supports or upon which there exists a Facility  
125 for Children within the Village or within any other municipality immediately  
126 abutting a jurisdictional boundary of the Village.
- 127 (3). A map depicting the above resulting residency restriction distances (Exhibit A) is  
128 hereby adopted by the Village, which map may be amended from time to time to  
129 correct errors or to reflect changes affecting any Facility for Children and which  
130 shall be on file in the office of the Village Clerk for public inspection.
- 131 (d) Residency Restrictions Exemptions. A Sex Offender does not violate § 66-12(c)(1) if any  
132 of the following apply:
- 133 (1). The Sex Offender established a Permanent Residence or Temporary Residence and  
134 reported and registered the residence pursuant to Wis. Stat. § 301.45 (if required)  
135 before the effective date of this § 66-12 ordinance amendment;
- 136 (2). The Sex Offender was a Child or ward under guardianship and is not required to  
137 register under Wis. Stats. § 301.45;
- 138 (3). The Facility for Children began/opened after the Sex Offender had established a  
139 Permanent Residence or Temporary Residence and reported and registered the  
140 residence pursuant to Wis. Stat. § 301.45 (if required); or
- 141 (4). The Sex Offender has been granted an exemption pursuant to § 66-12(h).
- 142 (e) Original Domicile Eligibility. In addition to the foregoing, a Sex Offender shall be  
143 permitted to reside in the Village, if such Sex Offender was domiciled in the Village at  
144 the time of the offense resulting in the Sex Offender's most recent conviction for  
145 committing a Crime Against Children.
- 146 (f) Prohibition Against Renting Real Property to Sex Offenders. No Person  
147 shall let, license or rent any Structure to a Sex Offender, with the knowledge that such  
148 Structure will be used as a Permanent Residence or Temporary Residence by the Sex  
149 Offender contrary to § 66-12(c).
- 150 (g) Violation.
- 151 (1). If a Sex Offender or a Person, respectively violates § 66-12(c)(1) or § 66-12(f), the  
152 Sex Offender or Person shall be subject to the following:
- 153 a. A forfeiture as provided for in §1-4. of this Code or as provided in Appendix  
154 B regarding citation deposits of this Code, whichever is higher, that shall be  
155 imposed for an initial or subsequent offenses but in no event less than \$565  
156 for a 1<sup>st</sup> offence, \$691 for a 2<sup>nd</sup> offence and \$754 for a third offence ,  
157 together with all costs of prosecution.
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- 158                   b. Each violation and each day a violation continues by a Sex Offender or  
159                   Person will constitute a separate offense subject to Sec. § 66-12(g)(1)a.; and  
160                   c. The Village Attorney may bring an action in Waukesha County Circuit  
161                   Court to permanently declare such residency to be a public nuisance and to  
162                   seek any other available relief therewith.  
163                   d. Further, the Village may pursue any and all other legal and equitable  
164                   remedies to prevent or terminate a violation under this § 66-12 by any Sex  
165                   Offender or Person.

166           (h) Exemption. A Sex Offender may seek an exemption from § 66-12(c)(1) through the  
167           following:

- 168                   (1). By submitting a written request for exemption, including any pertinent rationale for  
169                   an exemption, to the Board via the Village Clerk's office prior to establishing a  
170                   residence that would be in violation of this Section or within thirty (30) days after  
171                   notification that the Sex Offender is in violation of this Section.

172                   The Board shall hold a hearing on each appeal, during which the Board may review  
173                   any pertinent information and may accept sworn oral and sworn written statements  
174                   from any Sex Offender or person.

- 175                   (2). The Board may base their decision upon any factors related to the Village's interest  
176                   in promoting, protecting, and improving the health, safety, and welfare of the  
177                   community, including, but not limited to:

- 178                   a. Nature of the offense that resulted in Sex Offender status.  
179                   b. Date of offense;  
180                   c. Age at time of offense;  
181                   d. Recommendation of any probation or parole officer;  
182                   e. Recommendation of any Police Department;  
183                   f. Recommendation of any treating practitioner;  
184                   g. Counseling, treatment and rehabilitation status of the Sex Offender;  
185                   h. Remorse of the Sex Offender;  
186                   i. Duration of time since the Sex Offender's incarceration;  
187                   j. Support network of the Sex Offender;  
188                   k. Relationship of the Sex Offender and the victim(s);  
189                   l. Presence or use of force in the offense(s);  
190                   m. Adherence to terms of probation or parole;  
191                   n. Proposals for safety assurances of the Sex Offender.  
192                   o. Conditions to be placed on any exception from the requirements of this  
193                   Section.
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- (3). The Board shall issue a decision by a majority vote of those in attendance and such decision shall be final. 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 Sex Offender in person or by first-class mail at the Sex Offender's last-known address. A Sex 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 Sex Offender must provide a copy of the signed Conditional Exemption to the Village Clerk's office and the Village police department. The Sex 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 Sex Offender need not sign an exemption that has been denied by the Board or an exemption approved without any necessary conditions by the Board.
  - (4). If an exemption or Conditional Exemption is granted, that exemption will only apply to the specific Sex Offender who had applied for the exemption at the requested residence and will not be transferable to any other or to any other location within the village.
  - (5). An exemption expires when the Sex Offender who was granted said exemption changes his/her domicile and/or changes his or her residence, whether within the Village or outside the Village.
  - (6). An issued exemption or Conditional Exemption may be revoked by the Board if the Sex Offender is found to have violated the conditions contained in the Conditional Exemption, or there is probable cause to believe the Sex 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 Sex Offender. The Village shall provide written notice to the Sex 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 Sex Offender's last known address or if delivered in person to the Sex Offender's last known address. If the Sex Offender cannot be located, the notice shall be deemed to be properly delivered if a copy is left at the Sex 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.
  - (7). The revocation of an exemption may be presented to the Board for possible reconsideration pursuant to the above procedure .

**SECTION 3:**

If any section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of such ordinance.

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**SECTION 4:**

This ordinance shall be promptly published, and shall take effect upon passage and publication pursuant to Wis. Stat. § 61.50(1). Adopted this 20 day of May, 2023.

VILLAGE OF HARTLAND  
By: *Jeffrey Pfannerstill*  
Jeffrey Pfannerstill, Village President

ATTEST:  
*Darlene Igl*  
Darlene Igl, Village Clerk  
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