

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

ORDINANCE NO. 2025-2696

AN ORDINANCE TO REPEAL CHAPTER 167 SEX OFFENDERS AND RECREATE  
CHAPTER 167 ENTITLED SEX OFFENDER RESIDENCY RESTRICTIONS AND CHILD  
SAFETY ZONES, OF THE MUNICIPAL CODE OF FRANKLIN, WISCONSIN

---

WHEREAS, the Common Council passed and adopted Ordinance No. 2007-1905 on January 9, 2007, amending prior Ordinances No. 2006-1895 and No. 2006-1901, to create Chapter 167 Sex Offenders, which was amended by Ordinance No. 2013-2116 on October 1, 2013, to add regulations for holiday events and public gatherings; and

WHEREAS, subsequent to the adoption of the aforesaid Ordinances, there have been Wisconsin legislative statutory changes to Chapter 980 of the Wisconsin Statutes providing for the civil commitment of sexually violent persons, including the provisions at Wis. Stat. § 980.135 prohibiting the enforcement of a municipal ordinance which restricts housing with regard to an individual under supervised release, the individual is residing where ordered to reside and is in compliance with all court orders, and there have been court opinions and decisions case law varying in part conclusions with regard to municipal sex offender residency restrictions ordinances than those in existence at the time of the adoption of the aforesaid Ordinances; and

WHEREAS, there have been studies conducted and reported with regard to the subject matter subsequent to the adoption of the aforesaid Ordinances; and

WHEREAS, the Common Council having determined upon the review of the aforesaid Ordinances with regard to the foregoing laws, and following review of the aforesaid studies, that changes to the sex offender residency restrictions, and to continue and maintain sex offender residency restrictions for the City, is reasonable and necessary to protect the health, safety and welfare of the residents and the Community.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: Chapter 167 of the Municipal Code of the City of Franklin, Wisconsin, is hereby repealed and recreated to read as follows:

SEX OFFENDER RESIDENCY RESTRICTIONS AND CHILD SAFETY  
ZONES

§167-1 Findings and Intent:

- A. Whereas, the Common Council has the power, pursuant to Wis. Stat. § 62.11(5), to enact legislation promoting the health, safety, and welfare of the public.

- B. Whereas, the Common Council has reviewed the holdings and findings of the following court cases: *McKune v. Lile*, 122 S. Ct. 2017 (2002); *Smith v. Doe*, 123 S. Ct. 1140 (2003); *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005); *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); *Hoffman v. Vill. of Pleasant Prairie*, 249 F. Supp. 3d 951 (E.D. Wis. 2017); *Evenstad v. City of West St. Paul*, 306 F. Supp. 3d 1086 (D. Minn. 2018); *Werner v. City of Green Bay*, 743 Fed. Appx. 10 (7th Cir. 2018); *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018); *Koch v. Village of Hartland*, 43 F.4th 747 (7th Cir. 2022) (overruled *Vasquez v. Foxx*); *Schroeder v. City of Muskego*, 20-CV-1066 Decision and Order (E.D. Wis. 2022); and *Nelson v. Town of Paris*, 78 F.4th 389 (7th Cir. 2023).
- C. Whereas, 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 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 9-Year Follow-Up (2005-14)*, released sex offenders were more than three times as likely as other released prisoners to be arrested for rape or sexual assault, and released sex offenders accounted for 5% of releases in 2005 and 16% of arrests for rape or sexual assault during the 9-year follow-up period.
- D. Whereas, in addition to reviewing the studies in C. above, the Common Council has also conducted a review of other reports and studies related to creating and implementing specific desistance factors to reduce recidivism of sex offenders. The studies and reports that have been reviewed include the following: *Recidivism After Release from Prison*, State of Wisconsin Department of Corrections, Tatar, J. & Jones, M. (August 2016); *Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism*, Crime and Delinquency 61(3), 375-401, Steiner, B., Makarios, M. D., & Travis, L. F. (2015); *Examining Sexual Offenses through a Sociological Lens: A Socio-Cultural Exploration of Causal and Desistance Theories*, European Journal of Probation, 8(3), 170-184, Kyle, D. (2016); *Criminal Careers in the Short-Term: Intra-Individual*

*Variability in Crime and Its Relation to Local Life Circumstances*, American Sociological Review, 60(5), 655-673, Horney, J., Osgood, W., & Marshall I.H., (1995); and *An Exploration of Protective Factors Supporting Desistance from Sexual Offending*, Sexual Abuse: A journal of Research and Treatment, 27(1), 16-33, Mann, R.E., de Vries Robbe, M., Maruna, S., & Thornton, D. (2015).

- E. 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 Franklin (hereinafter "City"), yet allows for a constructive and safe assimilation of designated sex offenders into the community.
- F. 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 necessary expectation that designated sex offenders released into the community must maintain 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 non-punitive in order to serve the City's compelling interest to promote, protect, and improve the health, safety and welfare of all citizens of the City.

§167-2 Definitions. As used in this Chapter and unless the context otherwise requires:

- A. A *Sexually Violent Offense* shall have the meaning as set forth in Wis. Stat. § 980.01(6).
- B. A *Crime Against Children* shall mean any of the following offenses set forth within the Wisconsin Statutes, or the laws of this or any other state or the federal government, having like elements necessary for conviction, respectively:

§ 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 Child by a School Staff Person or a Person Who Works or Volunteers with Children;  
§ 948.11(2)(a) or (am) Exposing Child to Harmful Material or Harmful Descriptions or Narrations – felony Sections;  
§ 948.12 Possession of Child Pornography;  
§ 948.13 Child Sex Offender Working with Children;  
§ 948.30 Abduction of Another's Child; Constructive Custody  
§ 971.17 Not Guilty by Reason of Mental Disease or Mental Defect - of an included offense; and  
§ 975.06 Sex Crimes Law Commitment.

- a. *Person* 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.
- b. *Residence ("reside")* means the place where a Person sleeps, which may include more than one location, and may be mobile or transitory.

§167-3 Residency restrictions.

A. A Person shall not reside within the City within 1,250 feet of the real property comprising any of the following (whether located within the City or not):

(1) Any facility for children (which means a public or private school, a 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 child care center licensed under Wis. Stat. § 48.65, a child care program established under Wis. Stat. § 120.13(14), a child care provider certified under Wis. Stat. § 48.651, or a youth center, as defined in Wis. Stat. § 961.01(22); and/or

(2) Any facility used for:

- i. A public park, parkway, parkland, park facility, nature preserve;
- ii. A public swimming pool or beach;
- iii. A public library;
- iv. A recreational trail;
- v. A public playground;
- vi. A school for children;
- vii. Athletic fields used by children;
- viii. A movie theatre;
- ix. A daycare center;
- x. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school; and
- xi. Aquatic facilities open to the public.

B. The distance shall be measured from the closest boundary line of the real property supporting the residence of a Person to the closest real property boundary line of the applicable above enumerated use(s). A map depicting the above enumerated uses and the resulting residency restriction distances, as amended from time to time, shall be kept on file in the office of the City Clerk for public inspection.

§167-4 Residency restriction exceptions.

A Person residing within 1,250 feet of the real property comprising any of the uses enumerated in §167-3 above, does not commit a violation of this Chapter if any of the following apply:

- A. The Person is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution or facility.
- B. The Person has lawfully established a residence prior to the effective date of this Chapter, August 28, 2025, which lawful basis continues and is within 1,250 feet of any of the uses enumerated in §167-3 above, or such enumerated use is newly established after such effective date and it is located within such 1,250 feet of a residence of a Person which was lawfully established prior to the effective date of this Chapter, and which lawful basis continues.
- C. The Person is a minor residing with a parent or legal guardian who serves as parent or legal guardian to no more than one Person.

§167-5 Child safety zones.

- A. No Person shall enter or be present upon any real property in the City upon which there exists any facility used for or which supports a use of:
  - (1) A public park, parkway, parkland, park facility or nature preserve;
  - (2) A public swimming pool or beach;
  - (3) A public library;
  - (4) A recreational trail;
  - (5) A public playground;
  - (6) A school for children;
  - (7) Athletic fields used by children;
  - (8) A movie theatre;
  - (9) A daycare center;
  - (10) Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school;
  - (11) Aquatic facilities open to the public; and
  - (12) Any facility for children (which means a public or private school, a 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 child care center licensed under Wis. Stat. § 48.65, a child care program established under Wis. Stat. § 120.13(14), a child care provider certified under Wis. Stat. § 48.651, or a youth center, as defined in Wis. Stat. § 961.01(22)).

B. A map depicting the locations of the real property supporting the above enumerated uses, as amended from time to time, shall be kept on file in the office of the City Clerk for public inspection.

§167-6 Child safety zone exceptions.

A Person does not commit a violation of §167-5 and the enumerated uses may allow such Person on the property supporting such use if any of the following apply:

A. The property supporting an enumerated use under §167-5 also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:

- (1) Entrance and presence upon the property occurs only during hours of worship or other religious program service as posted to the public;
- (2) Written advance notice is made from the Person to an individual in charge of the church and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the Person; and
- (3) The Person shall not participate in any religious education programs which include individuals under the age of 18.

B. The property supporting an enumerated use under §167-5 also supports a use lawfully attended by a Person's natural or adopted child/children, which child's use reasonably requires the attendance of the Person as the child's parent upon the property, subject to the following conditions:

- (1) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
- (2) Written advance notice is made from the Person to an individual in charge of the use upon the property and approval from an 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 Person.

C. The property supporting an enumerated use under §167-5 also supports a polling location in a local, state or federal election, subject to the following conditions:

- (1) The Person is eligible to vote;
- (2) The designated polling place for the Person is an enumerated use; and
- (3) The Person enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate; and the Person vacates the property immediately after voting.

D. The property supporting an enumerated use under §167-5 also supports an elementary or secondary school lawfully attended by a Person as a student, under which circumstances the Person who is a student may enter upon that property supporting the school at which the Person is enrolled, as is reasonably required for the educational purposes of the school.

#### §167-7 Holiday events and public gatherings.

It is unlawful for any Person to actively take part in any public holiday event involving children under 18 years of age where the distributing of candy or other items to children takes place, including but not limited to Halloween trick or treating, holiday parades and other similar public gatherings. This section does not apply to any event in which the Person is the parent or guardian of the children involved, and the Person's children are the only children present.

#### §167-8 Violations.

If a Person violates §167-3 above, by establishing a residence or occupying residential premises within 1,250 feet of those premises as described therein, without any exception(s) as also set forth above, the City Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the purpose of this Chapter, such residence or occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others, shall bring an action in the name of the City in the Circuit Court for Milwaukee County to permanently enjoin such residency as a public nuisance. If a Person violates §167-5, in addition to the aforesaid injunctive relief, such Person shall be subject to the general penalty provisions set forth under §1-19 of this Code. Each day a violation continues shall constitute a separate offense. In addition, the City may undertake all other legal and equitable remedies to prevent or remove a violation of this Chapter.



§167-9 Appeal.

A designated offender may request an exemption from this Chapter.

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 Franklin Police Department prior to establishing a residence that would be in violation of this Chapter or within thirty (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 Subsection C. below. The Chief of Police or his/her designee shall approve, 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 thirty (30) days of receiving the request for exemption and shall provide a written copy of that decision to the designated offender, City Clerk, 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 or his/her designee within thirty (30) days of the request shall be deemed to be denied for the purposes of this Chapter.

B. The decision by the Chief of Police or his/her designee may be appealed by the designated offender within thirty (30) days by submitting a written appeal to the Sex Offender Residency Appeal Board (hereafter "the Board") via the City Clerk's Office. The Board shall hold a hearing on each 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.
- (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 §167-4.

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. 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 Clerk's Office and the Franklin 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.
- (3) Sobriety restrictions.
- (4) Conduct restrictions.
- (5) Residency restrictions.

F. If an exemption or conditional exemption is granted by the Chief 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 designated offender 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 or his/her designee or the Board may be revoked by the Chief 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 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. 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 Wisconsin Statute § 68.16, the City of Franklin is specifically electing not to be governed by Chapter 68 of the Wisconsin Statutes.

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 Milwaukee County Circuit Court.

K. The Sex Offender Residency Appeal Board shall consist of three Alderperson members. Members shall be appointed by the Mayor. Members shall serve in two year terms, which term may expire earlier upon such date as the Alderperson is no longer in office.

§167-10 Exception for placements under Wis. Stat. Chapter 980.

To the extent required by Wis. Stat. § 980.135, and notwithstanding the foregoing provisions of this Chapter, the City of Franklin hereby exempts and may not enforce any portion of this Chapter that restricts or prohibits a sex offender from residing at a certain location or that restricts or prohibits a

person from providing housing to a sex offender against an individual who is released under Wis. Stat. § 980.08, or against a person who provides housing to such individual, so long as the individual is subject to supervised release under Wis. Stat. Chapter 980, the individual is residing where he or she is ordered to reside under Wis. Stat. § 980.08, and the individual is in compliance with all court orders issued under Wis. Stat. Chapter 980.

SECTION 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 4: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this 19th day of August, 2025, by Alderperson Day.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 19th day of August, 2025.

APPROVED:

  
\_\_\_\_\_  
John R. Nelson, Mayor

ATTEST:

  
\_\_\_\_\_  
Shirley J. Roberts, City Clerk

AYES 4 NOES 1 (Ald. Craig) ABSENT 1 (Ald. Peccarelli)