



KENNETH G. CALEWARTS

DENNIS M. DUFFY

ROBERT R. GAGAN

ERIC R. ERDMAN

716 PINE STREET, P.O. BOX 488  
GREEN BAY, WISCONSIN 54305-0488  
TELEPHONE (920) 432-4391  
FACSIMILE (920) 432-4158  
www.cdgelaw.com

RAYMOND E. EVRARD  
(1894-1974)  
JOHN P. DUFFY  
(1921-1990)  
JOSEPH P. HOLMAN  
(1915-2003)  
WAYNE R. PETERSON  
(RETIRED)

## Memorandum

**To:** Steve VandenAvond, Village President  
Allouez Village Board of Trustees  
Brad Lange  
DEO Rick Loppnow

**From:** Attorney Dennis M. Duffy

**Date:** August 1, 2014

**Re:** Sex Offender Residency Restriction Ordinance

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For your review and consideration I enclose the following:

1. A proposed Ordinance Creating Section 31.42 of the Village of Allouez Municipal Code relating to Sexual Offender Residency Restrictions (2000 foot residential restriction).
2. Village Maps with residential restrictions of 1000 and 1,500 feet.
3. A Journal-Sentinel article from July 28, 2014 regarding the Mayor of the City of Milwaukee signing an Ordinance on Sexual Offender Residency Restrictions in the City.

The news article from the Journal-Sentinel describes the political and policy issues for all the municipalities in the State of Wisconsin as it relates to residential placement of convicted sex offenders, the Wisconsin Department of Corrections and the absence of any uniform statewide legislation. The Village of Allouez, on a smaller scale, has a problem similar to Milwaukee with the increased number of sex offenders residing in the Village due to the City of Green Bay and other municipalities having residency restriction ordinances.

The Sex Offender Residency Restriction Ordinance that I have prepared for the Village is based on the ordinance that was recently approved by the City of Milwaukee. Many parts of the City of Milwaukee's Sex Offender Ordinance are similar to other municipal ordinances in Milwaukee County. I would recommend that the Village proceed with the proposed ordinance for the following reasons.

- The Ordinance includes recognized findings relating to statistical criminal information on convicted sex offenders as a rationale for the restrictions.

Memo to: Village President, Village Board Trustees,  
Brad Lange, DEO Loppnow  
Re: Sex Offender Residency Restriction Ordinance  
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- The Ordinance cites both Federal and Wisconsin State Court Decisions addressing the legality of sex offender residency restriction ordinances.

The Village requested that I address the following ordinances which were discussed as part of the Board's prior discussion on the placement of convicted sex offenders in the community.

**City of Green Bay Sex Offender Residency Ordinance**

The proposed ordinance does not include an Appeals Board for convicted sex offenders to apply for an exemption to live in the restricted areas. A large number of other municipalities in Wisconsin have elected to proceed with sex offender residential restriction ordinances without an Appeals Board. If the Village wanted to include an Appeals Board, I would recommend a study of the fiscal impact and Village Staff time to support the Board.

**Reciprocity with City of Green Bay Sex Offender Appeals Board**

Again, with the proposed ordinance there is no Appeals Board. The status of a convicted sex offender's appeal in the City of Green Bay would be irrelevant for residential placement in the Village. If the Village were to consider its own Appeals Board, I would not recommend the Village accept decisions made in other communities as its decision. I believe it would create a credible argument for due process claims.

**Density Restrictions.**

The Village should keep its existing restriction on the number of sex offenders that can reside in a residence. I have some difficulty with placing a number restriction for convicted sex offenders in the unrestricted areas found on the map. The map should be evaluated for the number of units that would be available to sex offenders outside the restricted areas. I have not seen another community ordinance that limits the number of sex offenders by area.

**Village Registration of Sex Offenders.**

I would not recommend that the Village attempt to implement its own registry for sex offenders. I believe the current State registration requirements and the proposed ordinance will give the Village a more manageable situation with the placement of sex offenders. I think this local registration concept could be court tested.

**ORDINANCE NO. 2014-17**

**AN ORDINANCE CREATING SECTION 31.42 OF CHAPTER 31,  
OFFENSES AGAINST PUBLIC PEACE, SAFETY AND MORALS  
OF THE VILLAGE OF ALLOUEZ MUNICIPAL CODE RELATING  
TO SEXUAL OFFENDER RESIDENCY RESTRICTIONS**

Whereas, The Wisconsin Statutes provide for punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community; and

Whereas, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically, at s. 980.08, Wis. Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

Whereas, According to a 1997 report titled *Sex Offenses and Offenders*, by the U.S. Department of Justice, the median age of the victims of imprisoned sexual assaulters was less than 13 years old and the median age of rape victims was 22 years; and 19% of those serving time for sexual assault and an estimated 24% of those serving time for rape had been on probation or parole at the time of the offense; and

Whereas, In 1994, it was estimated that 12% of imprisoned violent sex offenders had a prior conviction for rape or sexual assault while 61% had a prior felony for other crimes; and

Whereas, Furthermore, the Village Board has reviewed the findings of a number of State Legislatures across the United States, including, Pennsylvania, Alabama, Iowa, Florida, Maine and Louisiana, as they pertain to laws enacted which relate to, and in part impose restrictions upon sex offenders with respect to residency; and

Whereas, The Village Board has reviewed the decision of the U. S. Court of Appeals for the 8<sup>th</sup> Circuit, in *Doe v. Miller*, 405 F.3d 700, 716 (8<sup>th</sup> 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, fear of, or a bare desire to harm a politically unpopular group. [Citation 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 re-offend, 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 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"; and

Whereas, Since 2007, there have been 3 Wisconsin court cases addressing the legality of sex offender residency restriction ordinances: City of Franklin v. Steven R. Hanke, 07-CV-9978 (Milw. County Cir. Ct. 2007), Village of Menomonee Falls v. Jason R. Ferguson, 2011 WI App 73 (Wis. Ct. App. 2011), and City of South Milwaukee v. Kester, 2013 WI App 50 (Wis. Ct. App. 2013); and

Whereas, In each of the 3 Wisconsin cases, the courts upheld the legality and enforceability of sex offender residency restriction ordinances; and

Whereas, The Village of Allouez is a place of residence for families with children; and

Whereas, s. 61.34, Wis. Stats., provides that the Village Board may enact legislation to protect the health, safety and welfare of the residents of the Village of Allouez; now, therefore

**THE VILLAGE BOARD OF THE VILLAGE OF ALLOUEZ DOES HEREBY ORDAIN THAT SECTION 31.42 OF CHAPTER 31, OFFENSES AGAINST PUBLIC PEACE, SAFETY AND MORALS, OF THE VILLAGE OF ALLOUEZ MUNICIPAL CODE RELATING TO SEXUAL OFFENDER RESIDENCY RESTRICTIONS BE CREATED TO READ AS FOLLOWS:**

**SECTION 1. Section 31.42 SEXUAL OFFENDER RESIDENCY RESTRICTIONS**

A. FINDINGS AND INTENT. The Village Board finds that repeat sex offenders, sex offenders who use physical violence, and sex offenders who prey on children are sex predators who present an extreme threat to the public safety. Sex offenders are extremely likely to use physical violence and to repeat their offenses; and most sex offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society, while incalculable, clearly exorbitant. It is the intent of this section not to impose a criminal penalty but to serve the village'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 sex offenders and sex predators are prohibited from establishing temporary or permanent residence.

B. DEFINITIONS. For the purposes of this section:

- (1) "Child" means a person under the age of 16 years.
- (2) "Designated offender" means any person who is required to register under s. 301.45, Wis. Stats., for any offense against a child or any person who is required to register under s. 301.45, Wis. Stats., and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to s. 301.46(2) and (2m), Wis. Stats.
- (3) "Permanent residence" means a place where the person abides, lodges or resides for 14 or more consecutive days.

- (4) "Temporary residence" means a place where the person abides, lodges or resides for a period of 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 4 or more consecutive or non-consecutive days in any month and which is not the person's permanent residence.

#### C. RESIDENCY RESTRICTION.

- (1) Restriction. In absence of a court order specifically exempting a designated offender from the residency restriction in this subsection, a designated offender shall not establish a permanent residence or temporary residence within 2,000 feet of any school, licensed day care center, park, recreational trail, playground or any other place designated by the village as a place where children are known to congregate.
- (2) Measurement of Distance.
  - (a) The distance shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest outer property line of a school, licensed day care center, park, recreational trail, playground or any other place designated by the village as a place where children are known to congregate.
  - (b) The village clerk shall maintain an official map showing prohibited locations. The village clerk shall update the map at least annually to reflect any changes in the prohibited locations. These prohibited locations shall be designated on the map as child safety zones.

D. RESIDENCY RESTRICTION EXCEPTIONS. A designated offender residing within a prohibited area as specified in sub. 3 does not commit a violation of this section if any of the following applies:

- (1) The person established a permanent residence or temporary residence and reported and registered the residence as provided in s. 301.45 Wis. Stats., before the effective day of this section.
- (2) The person was under 17 years of age and is not required to register under s. 301.45 or 301.46, Wis. Stats.
- (3) The school, licensed day care center, park, recreational trail, playground or any other place designated by the village as a place where children are known to congregate within 2,000 feet of the person's permanent or temporary residence was opened after the person established the

permanent or temporary residence and reported and registered the residence as provided in s. 301.45, Wis. Stats.

- (4) The residence is also the primary residence of the person's spouse, parents, grandparents, siblings or children provided that the spouse, parents, grandparents, siblings or children established the residence at least 2 years before the designated offender established residence at the location.

E. PENALTIES. If a person violates sub. C. by establishing a residence or occupying a residential premises within 2000 feet of those premises as described herein, without any exception(s) as also set forth above, the Village Attorney, upon referral from the Chief of Police or his/her designee and the written determination by the Chief of Police or his/her designee that upon all of the facts, circumstances and the purposes of this ordinance such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health or safety of another or others, shall bring an action in the name of the Village in the Circuit Court for Brown County to permanent enjoin such residency as a public nuisance. In addition to the aforesaid injunctive relief, such person shall be subject to a forfeiture of not less than \$1,000 nor more than \$2,500 for each violation and in default of payment may be imprisoned as provided by law. Each day a violation continues shall constitute a separate offense. In addition, the Village may undertake all other legal and equitable remedies to prevent or remove a violation of this ordinance.

F. SEVERABILITY. The provisions of this ordinance shall be deemed severable and it is expressly declared that the Village Board would have passed the other provisions of this ordinance irrespective of whether or not one or more provisions may be declared invalid. If any provision of this ordinance is held invalid, the remainder of the ordinance shall not be affected.

**SECTION 2.** All ordinances or parts of ordinances, in conflict herewith are hereby repealed.

**SECTION 3.** This ordinance shall take effect upon its adoption and publication.

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Steven VandenAvond, Village President

ATTEST:

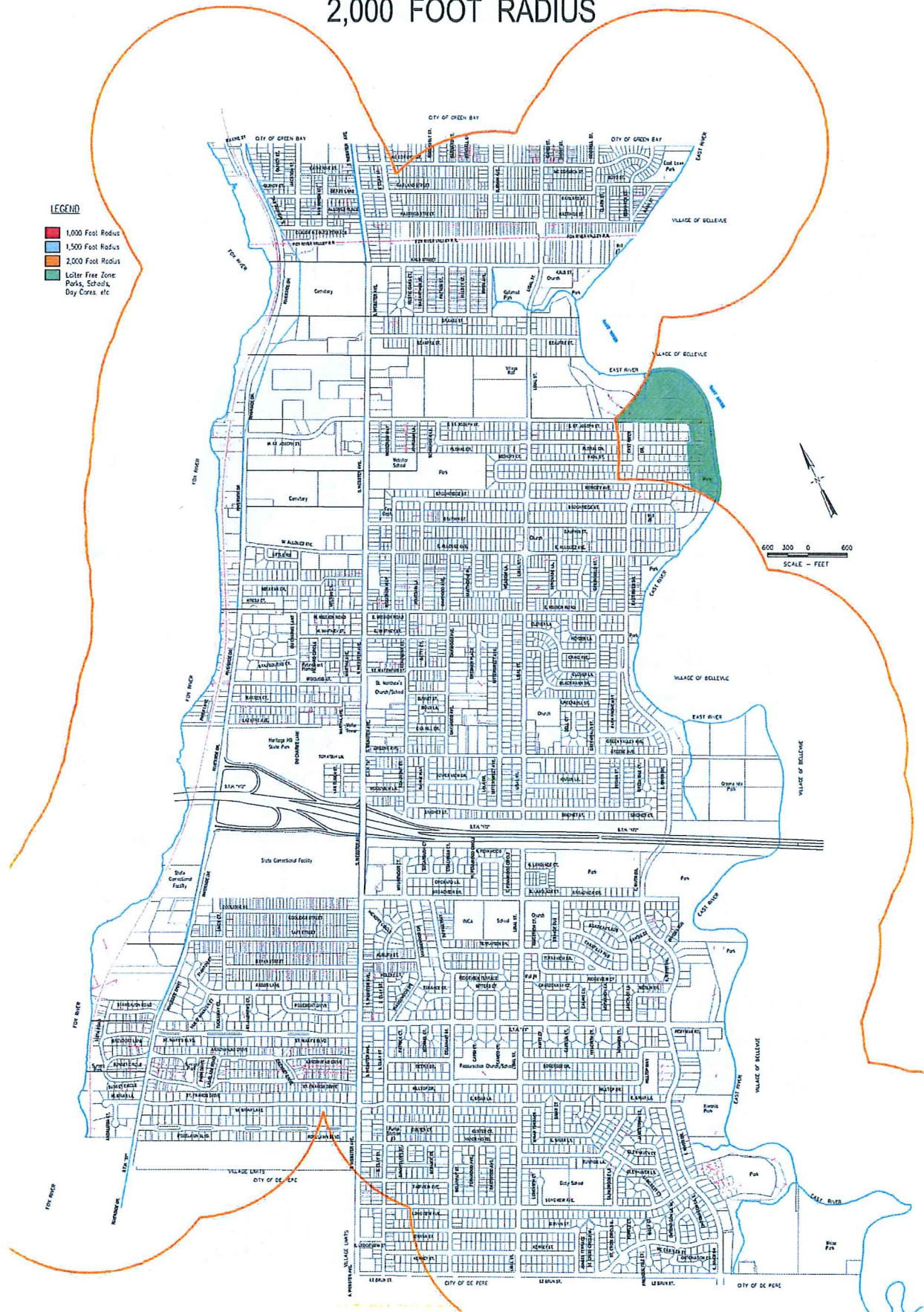
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Debra M. Baenen, Village Clerk

Ayes: \_\_\_\_\_

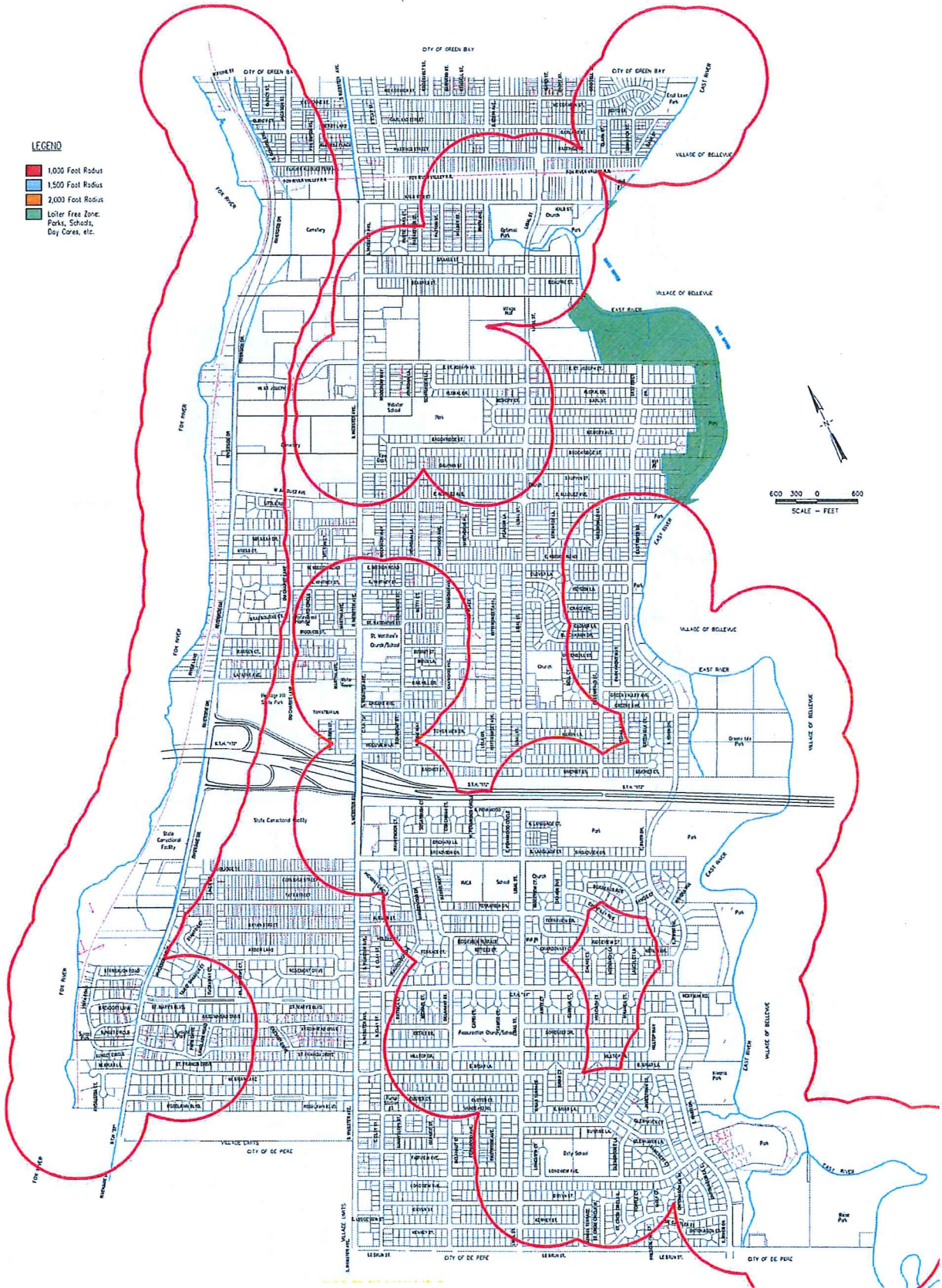
Nays: \_\_\_\_\_

DATE OF PUBLICATION: \_\_\_\_\_

# VILLAGE OF ALLOUEZ RESIDENCY RESTRICTION ZONE MAP - JULY 2014 2,000 FOOT RADIUS

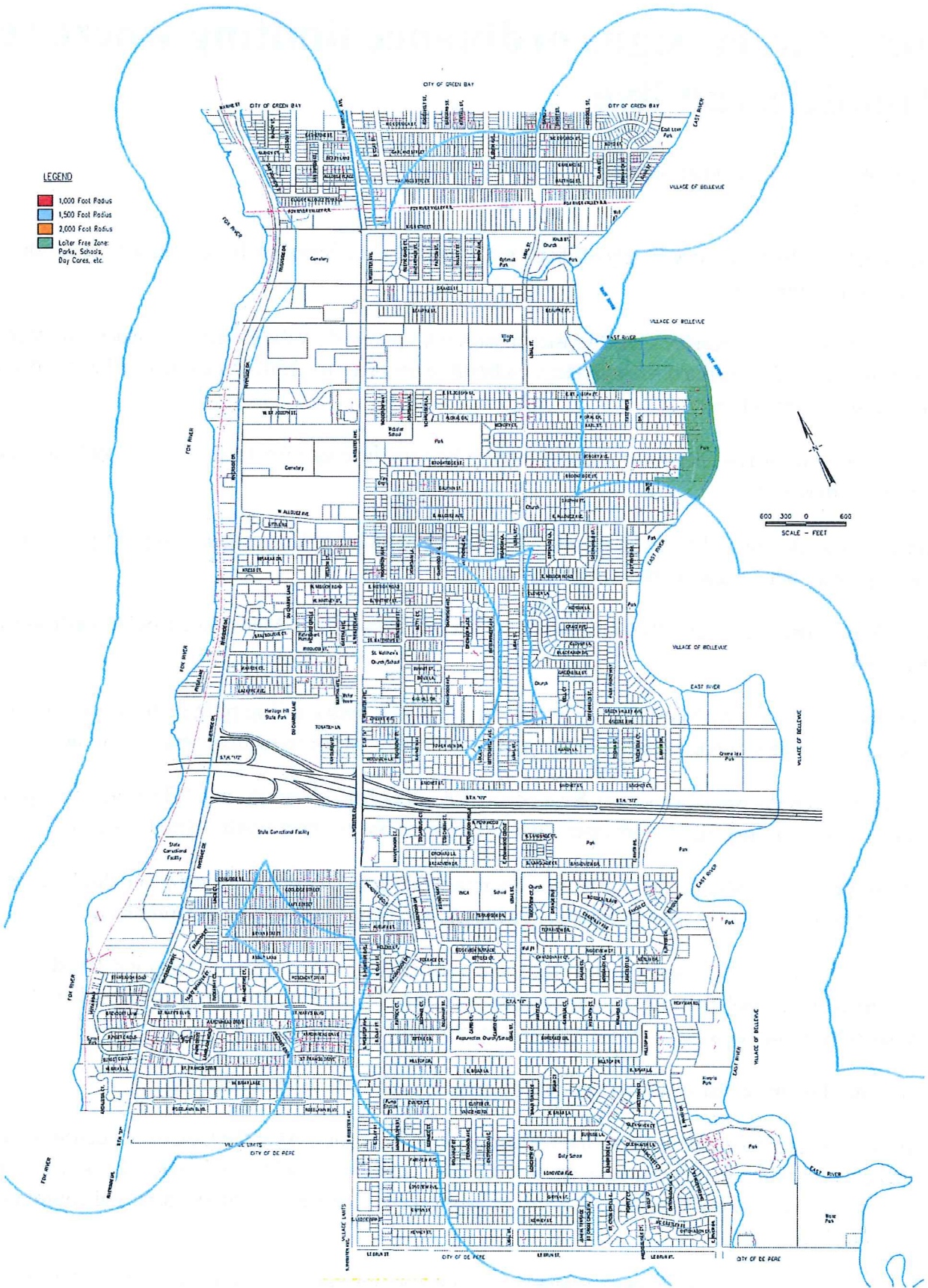


# VILLAGE OF ALLOUEZ RESIDENCY RESTRICTION ZONE MAP - JULY 2014 1,000 FOOT RADIUS





# VILLAGE OF ALLOUEZ RESIDENCY RESTRICTION ZONE MAP - JULY 2014 1,500 FOOT RADIUS



# Tom Barrett signs ordinance limiting where sex offenders can live

By Don Walker of the Journal Sentinel  
July 28, 2014

Milwaukee's city limits are now largely off-limits to designated sex offenders who are required to register with the state for serious offenses.

Mayor Tom Barrett on Monday signed legislation narrowly approved by the Common Council last week that restricts residency for convicted sex offenders. Milwaukee becomes the 15th municipality in the county out of 19 that have such a restriction.

Hales Corners, River Hills, Shorewood and Whitefish Bay are the only communities that do not have residency restriction ordinances.

In an interview, Barrett said it was clear to him the state Department of Corrections was placing more offenders in the city "while other municipalities keep them out."

City officials estimate that least 80% or more of the sex offenders living in Milwaukee County reside in the City of Milwaukee.

Barrett said he spoke with Police Chief Edward Flynn about his decision. Top police officials had raised concerns that the new ordinance would make it more difficult for police to monitor serious sex offenders.

"The individuals being placed in our city have committed state crimes," Barrett said. "They have been prosecuted by state prosecutors and tried before state judges. The state can no longer wash its hands of them."

In a letter Barrett sent Monday to Corrections Secretary Edward F. Wall, the mayor wrote that he signed the measure "due to inaction by state government and negligence by the Department of Corrections."

Under the ordinance, certain serious sex offenders cannot establish a permanent or temporary residence within 2,000 feet of any school, licensed day care center, park, recreational trail, playground or any other place designated by the city as a place where children are known to congregate.

The net affect of the ordinance is that most of Milwaukee is off-limits to sex offenders.

There was no immediate reaction from the Department of Corrections. After the Common Council voted, 8-6, to send the measure to Barrett, the state agency said in a statement it would "continue to take the necessary steps to help ensure public safety, which includes maintaining the Sex Offender Registry website and collaborating with local law enforcement."

The agency said offenders are responsible for locating their own housing.

"Agents will remain cognizant of the residency restriction ordinance, discuss the restrictions with registrants under DOC supervision, and direct them to comply with the ordinance," the agency said.

Ald. Tony Zielinski, the lead sponsor of the ordinance, thanked Barrett for signing it.

"I'm glad to see the mayor collaborated with the Common Council, given that the state has clearly demonstrated that our citizens are not a priority for them," Zielinski said.

Zielinski said the ordinance allows current sex offenders living in the city to stay, but said because of their transient nature he expects many of them to leave.

Barrett said the city's action should come as no surprise. He and Zielinski said that, in 2007, a sex offender residency restriction ordinance was considered but never became law.

In his letter to Wall, the mayor said the Department of Corrections "spoke about the need for statewide uniformity and assured the city that they would be working with the Legislature. It now appears that 'work' never occurred," in 2007 or since.

Barrett and Common Council President Michael Murphy have repeatedly urged Wall and Grace Roberts, who runs the state's sex offender program, to sign a letter asking Attorney General J.B. Van Hollen to take legal action against municipalities that enact residency restriction ordinances. Wall replied that he could not support such an effort.

"We believe our staff has demonstrated that in fact the City of Milwaukee is not receiving a disproportionate number of sexual offender placements when considering all factors," Wall wrote.

The ordinance also prohibits a designated offender from loitering in or prowling in a number of areas, including schools, day care centers, trails or playgrounds.

**Find this article at:**

<http://www.jsonline.com/news/milwaukee/tom-barrett-signs-ordinance-limiting-where-sex-offenders-can-live-b99319952z1-268964691.html>

Check the box to include the list of links referenced in the article.

