

TITLE 16

Zoning and the Village Board of Appeals

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CHAPTER 1

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
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SEC. 16-1-1 ADOPTION OF RACINE COUNTY ZONING.

- (a) Pursuant to Sections 66.0213(2)(a) and 66.0216(8)(a), Wis. Stats., Chapter 20 of the Racine County Code of Ordinances (“Ch. 20 of the RCCO”), as such was in effect at the time of the Village’s incorporation, shall continue in force in the Village, to the extent not inconsistent with Wis. Stats. Ch. 61 and except as otherwise altered by the Village Code of Ordinances as provided in subsection 16-1-1(c) below and within Title 16 generally. Any amendments to Ch. 20 of the RCCO by Racine County shall not apply to the Village unless such changes are specifically adopted by the Village as required by Wisconsin Statutes. To the extent any provision of this Title or any other ordinance of the Village conflicts with a provision of Ch. 20 of RCCO, the more restrictive provision shall apply.

- (1) **Sign(s) Required to Provide Notice to Public.** The property owner and/or agent requesting to rezone a parcel, applying for a conditional use permit and/or petitioning for a planned unit development on one or more parcels shall erect the following sign(s) as applicable, a minimum of ten (10) business days prior to the posted public hearing date:
- a. One minimum 24 inches wide by 18 inches high weather resistant sign along each public street frontage of the subject. The sign(s) shall be clearly visible and legible to the adjacent public street and located within ten feet of the public right-of-way.
 - b. The sign or signs shall be provided by the Village at the time of filing the application to rezone a parcel, the application for a conditional use permit and/or the petition for a planned unit development
 - c. The sign or signs shall be returned to the Village by the applicant at the conclusion of the application/petition process.

The message on the sign shall determined by the Village but shall generally identify:

1. That a zoning change is being requested.
 2. The Village Zoning Administrator’s phone number.
 3. The Village of Caledonia will be identified.
- (2) **Fee and Deposit.** A nonrefundable sign fee will be required to be paid at the time of application and/or petition. A check for the required sign deposit will be required to be submitted at the time of application and/or petition. The check for the deposit will be returned to the applicant/petitioner when the sign is returned by the applicant/petitioner after the public hearing. All signs shall be returned to the Village within ten (10) days after the rezoning hearing. If a sign is not returned within the required time period or if the sign is returned damaged (except for normal wear and tear), the Village shall have the option to cash the check to apply toward the cost to purchase a new sign. The amount of the fee and the amount of the deposit shall be set by Resolution of the Village Board from time-to-time.
- (3) **Hearings.** The requirements of Section 20-144 of the Racine County Code of Ordinances is amended as follows and modifies the publication and notice requirements for hearing:

- (a) The Village Plan Commission shall hold a public hearing upon each proposed change or amendment, giving notice of the time and place of such hearing including a description of the property affected by any change or amendment by publication in the Village recognized newspaper of a class 2 notice, under Ch. 985 of the Wisconsin Statutes and indicating that a map may be obtained from the Village Clerk. A copy of each such notice shall be sent to the clerk of contiguous municipalities as required by Sec. 62.23, Wis. Stat. The Village Plan Commission shall make a recommendation on the change or amendment to grant as requested, modify or deny to the Village Board on each proposed change or amendment after the public hearing is held and prior to action by the Village Board.
- (b) Written notice of the public hearing to be held on a proposed shoreland or shoreland-wetland amendment shall be sent to the Wisconsin Department of Natural Resources (“DNR”) district office at least ten (10) days prior to the hearing. A copy of the Village Board’s decision on each proposed amendment shall be forwarded to the DNR district office within ten (10) days after the decision is issued.
- (c) When it is determined by the Village Plan Commission, in consultation with the Zoning Administrator and/or Village Attorney, that there is a material defect in the rezoning petition, or when the Plan Commission determines that insufficient/inadequate notice was provided for a public hearing, the Plan Commission reserves the right to require a new public hearing. Such determination must be made within ninety (90) days of the initial hearing. Costs for the second hearing are the responsibility of the petitioner.
- (4) **Board Action.** The requirements of Section 20-145 of the Racine County Code of Ordinances is amended as follows and modifies the Village Board approval process:
 - (a) Following a hearing under subsection (3) above and after careful consideration of the Zoning Administrator and Village Plan Commission recommendations, the Village Board shall vote on the passage of the proposed change or amendment.
 - (b) Repealed.
 - (c) **Sex Offender Residency Uses.**
 - (1) **Findings of Fact.**
 - (a) The Board finds that sex offender residency uses require special zoning in order to protect and preserve the health, safety, and welfare of the Village residents and the children living or congregating within its borders and the Board places a high priority on maintaining public safety through highly skilled and trained law enforcement as well as dependency upon laws that deter and punish criminal behavior.
 - (b) Based on its review of the Wisconsin Statutes which provide for the punishment, treatment and supervision of persons convicted or otherwise

responsible for crimes against children, including their release into the community including Chapter 980 of the Wisconsin Statutes which provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically, at §980.08, Wis. Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community; a 1998 report by the U.S. Department of Justice report that found that sex offenders are the least likely to be cured and the most likely to reoffend and prey on the most innocent members of our society; and more than two-thirds of the victims of rape and sexual assault are under the age of 18 and sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon; and various case law addressing residency restrictions and sex offender recidivism including the recent decision in the Milwaukee County Circuit Court case, City of Franklin v. Steven Hanke, Case No. 07-CV-9978 dated July 2, 2008, the Board finds that sex offenders have very high recidivism rates.

- (c) The Board intends to control the residency of sex offenders in furtherance of the protection of the safety of its citizens and for the proposition that municipalities be responsible for, as well as to, their own citizens, the requirement that no sexually violent person may be placed on supervised release in a residence in the Village of Caledonia unless that individual is from the Village of Caledonia; and such residency can be controlled by zoning regulations pertaining to the definition of "family", generally in application to the administration and regulation of single-family, two-family and multi-family residential zoning districts; and the more specific regulation of Chapter 980 Stats., supervised release and certain crimes against children sex offender uses, will serve to protect the health, safety and welfare of the Community, protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of surrounding neighborhoods and areas.
 - (d) In order to minimize and control the residency of sex offenders, it is the board's intent to prevent the concentration of sex offender residency within certain zoning districts and within a certain distance of specified locations and zoning districts around which children congregate.
- (2) **Purpose and Intent.** This ordinance is a regulatory measure aimed at protecting the health and safety of children in the Village from the risk that convicted sex offenders may reoffend in locations close to their residences. The Village finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault. Given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of reoffense, 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, day-care centers and other places children frequent. The Village finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.

- (3) **Definitions.** For purposes of this section, the following definitions shall be used. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word “shall” is mandatory and directory.

(a) **Sex Offender Residency Use.** An occupancy use of a dwelling unit or a residential use unit pursuant to a plan of the Department of Health and Family Services, a Court order, or as may otherwise result from or be provided for under Chapter 980 of the Wisconsin Statutes, which occupancy use is the supervised release of a sexually violent person (a person having committed a sexually violent offense as those terms are defined in § 980.01(6), Wis. Stats.) and/or a “crimes against children sex offender use” as herein defined, or a residential use with or without supervision, by a person now, then or previously a sexually violent person and/or a crimes against children sex offender including 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. A “crimes against children sex offender use” is an occupancy use by an individual, 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, any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or the federal government, having like elements necessary for conviction, respectively:

§944.225(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 Student by School Instructional Staff;
§948.11(2)(a) or (am) Exposing 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-of an included offense;
and
§975.06 Sex Crimes Law Commitment.

- (b) **Family.** A family may consist of a person living alone or any of the following groups living together in a dwelling unit and sharing common living, sleeping, cooking and eating facilities:
1. Any number of people related by blood, marriage, adoption, guardianship or other duly authorized custodial relationships;
 2. Four unrelated people; or
 3. Two unrelated people and any children related to either of them.

A family does not include:

1. Any society club, fraternity, sorority, association, lodge, combine, federation or other like organization;
2. Two or more individuals whose association to each other is temporary and/or seasonal in nature; or
3. More than one person determined to be a sexually violent person under Chapter 980, Wisconsin Statutes and/or a Crimes Against Children Sex Offender Use as defined within this Ordinance or determined to be a 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.

- (c) **Prohibited Location.** Any School Property, Day Care Center, Library, Park, Recreational Trail, Playground, Athletic Fields used by children. Place of Worship, Swimming Pool, the Village's East Side Community Center, or any other place designated in the Map adopted by the Village under Sec. 16-1-1(c)(5)(c) as a place where children are known to congregate. The defined terms included in the definition of Protected Location are:
1. "School Property" means any public school as defined by Wis. Stat. § 115.01(1); a private school as defined by Wis. Stat. § 115.001(3); a charter school as defined by Wis. Stat. § 115.001(1); a specialty school, including, but not limited to, a Montessori school, a gymnastics academy, dance academy, or music school.

2. "Day Care Center" means a facility that has been licensed under Wis. Stat. § 48.65 to provide care and supervision of children and includes "before- and after-school daycare," which has the meaning as defined by Wis. Stat. § 120.125(1).
 3. "Library" means any library that is held open for use by the public where such library includes a collection of material specifically intended for use by children.
 4. "Park" means any area held open for use by the public for active or passive leisure purposes, including, but not limited to, any park, recreation area or beach. "Park" shall also mean any privately owned neighborhood parks and open spaces where children congregate such as those owned by a homeowners association of a subdivision.
 5. "Playground" means any public outdoor area set aside for recreation and play and includes any area with playground equipment including, but not limited to, swings, slides, sandboxes, seesaws.
 6. "Place of Worship" means a church, synagogue, mosque, temple or any other building where congregations gather for prayer.
 7. "Swimming Pool" means where children swim or wade in a pool or other aquatic facility held open for use by the public or where no lifeguard is on duty and children are known to congregate.
 8. "Recreational Trail" means a trail where children walk, ride bicycles, or ride horses, whether publicly or privately owned.
- (d) **Permanent Residence.** A place where the Designated Offender lodges or resides for fourteen (14) or more consecutive days.
 - (e) **Temporary Residence.** Either (a) 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, (b) a place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's Permanent Residence.
 - (f) **Child or Children.** A person(s) under the age of eighteen (18) years for purposes of this Ordinance.
 - (g) **Juvenile.** A person under the age of eighteen (18) years.
- (4) **Uses.** A Sex Offender Residency Use, whether a Permanent Residence or Temporary Residence, shall be permitted in all zoning districts if such use meets the definition of a Family and the requirements of this section are met except that such use is prohibited in the P-1 Institutional Park District, P-2 Recreational Park District, and C-1 Resource Conservation District, and no foster family home, community living arrangement, housing for farm laborers or multiple-family residential housing for older persons shall include a Sex Offender Residency Use in any district.
 - (5) **Requirements for uses under this Section.**
 - (a) Use Distance Restriction.

1. A Sex Offender Residency Use, not placed pursuant to Department of Corrections (DOC) guidelines (whereby sex offenders are returned to their home community), shall not occur or be established within two thousand five hundred (2,500') feet of a Protected Location or a boundary line of a P-1 Institutional Park District, P-2 Recreational Park District, C-1 Resource Conservation District or the City of Racine H.F. Johnson Memorial Park.
 2. A Sex Offender Residency Use, placed in compliance with Department of Corrections (DOC) guidelines (whereby sex offenders are returned to their home community) shall not occur or be established within one thousand (1,000') feet of a Protected Location or a boundary line of a P-1 Institutional Park District, P-2 Recreational Park District, C-1 Resource Conservation District or the City of Racine H.F. Johnson Memorial Park.
 3. A Sex Offender Residency Use shall not occur or be established within a two thousand (2,000) feet radius of an existing Sex Offender Residency Use.
- (b) Determination of Minimum Distance Separation. For purposes of determining the minimum distance separation, the requirements under subsection (a) above shall be measured by following a straight line from the outer property line of the parcel of land comprising the Permanent Residence or Temporary Residence of a Sex Offender Residency Use to the nearest outer property line of a parcel of land containing a Protected Location or boundary line of prohibited zoning district or H.F. Johnson Memorial Park.
- (c) Maps. A map depicting the above enumerated uses and the resulting use distance restriction from Protected Locations, district and park boundaries 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. This Map is a tool that the Village chooses to utilize to provide notice to the public of the requirements of the Ordinance. In the event of a conflict between the Map and this Ordinance where a Protected Location is inadvertently omitted from the Map, the written provisions of this Ordinance shall control.
- (d) Original Domicile Restriction. In addition to and notwithstanding the foregoing prohibitions, but subject to subsection (e) below, no use that would fall within the definition of a Sex Offender Residency Use, and no individual who has been convicted of a sexually violent offense and/or a Crime Against Children as a sex offense as that term is defined under Sec. 301.45(1d)(b), Wis. Stats., shall be permitted to occur or reside, either permanent or temporarily, in the Village of Caledonia, unless such person was legally domiciled in the Village of Caledonia at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime against children.

- (e) **Exceptions.** A use occurring or a person residing within an area prohibited or restricted by this ordinance shall not be in violation of this Ordinance if any of the following apply:
1. The use occurred, was established, reported and registered pursuant to Section 301.45, Wisconsin Statutes, before the effective date of this Ordinance of December 11, 2008.
 2. The person conducting the use is a Juvenile and is not required to register under Sections 301.45 and 301.46, Wisconsin Statutes.
 3. The Protected Location situated within two thousand five hundred/one thousand (2,500'/1,000') feet of the person's Permanent Residence was opened or established after the person conducting the use established the Permanent Residence or Temporary Residence and reported and registered the residence pursuant to Section 301.45, Wisconsin Statutes.
 4. The residence is also the primary residence of the person's parents, spouse or juvenile children, provided that such parent, spouse or juvenile child established the residence at least two (2) years before the person established residence at the location.
- (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 Ordinance as a whole, or any part thereof, other than the part so declared to be invalid or repealed and the remaining terms and provisions shall remain in full force and effect.
- (7) **Penalties.** Any person who violates any provision of this Section shall, upon conviction thereof, be subject to a forfeiture not to exceed Five Hundred (\$500.00) Dollars, together with the costs of prosecution, and in default of payment thereof, shall be committed to the County Jail for a period not to exceed ninety (90) days. Each violation and each day such violation continues shall be considered a separate offense. Nothing contained herein shall prohibit the Village from seeking injunctive and other relief in a court of law to enforce its ordinances.

SEC. 16-1-2 TITLE.

These regulations shall officially be known, cited and referred to as the Zoning Code of the Village of Caledonia, Wisconsin.

SEC. 16-1-3 INTENT AND PURPOSE.

The intent and purpose of this Title is to promote the health, safety, morals, prosperity, aesthetics and general welfare of this Village and its residents. The additional sewer and water requirements, design standards, conditional use requirements and planned unit development requirements set forth in this Title are intended to ensure that residential, business, commercial, industrial, recreational and institutional developments are properly planned, designed, and located. They are also intended to ensure that buildings, site

designs, environmental features and social and economic activities are compatible with the Village Comprehensive Plan, as amended from time-to-time, the surrounding area and the overall community.

SEC. 16-1-4 DEFINITIONS.

The following definitions shall be observed and applied in Title 16, except when the context clearly indicates otherwise. Words used in the present tense shall include the future tense. Words used in the singular form shall include the plural form. Words used in the plural form shall include the singular form. The word “shall” is mandatory and the word “may” is permissive. The word “should” is intended to mean a guideline that is expected to be met by the applicants in a manner that is subject to interpretation and application by the professional staff of the Village (and/or an Architectural Review Board if one is created by ordinance) subject to recommendation by the Village Plan Commission and approval by the Village Board. In such cases, the Village staff (or Architectural Review Board), not the applicant, shall make specific recommendations regarding the acceptable interpretation of each guideline.

- (a) **High Impact Use.** Any use of property that meets any of the characteristics described under Sec. 16-5-2 of this Title.
- (b) **Moderate Impact Use.** Any use of a property that meets any of the characteristics described under Sec. 16-4-2 of this Title.
- (c) **Permitted Use.** A use of property that is specifically designated as permitted under a zoning district.

SEC. 16-1-5 VILLAGE BOARD OF APPEALS.

- (a) **Creation and membership.** There is hereby created for the Village a Board of Appeals. Notwithstanding the incorporation of County Zoning, the Board of Appeals shall operate in lieu of, the Racine County Board of Adjustment. The Board of Appeals shall consist of five members and two alternate member appointed by the President and subject to confirmation by the Village Board. Such appointments and members shall be governed by Wis. Stats. § 62.23(7)(e)2. The terms of the members shall be set by resolution and shall be staggered three-year periods, except that of those appointed, one shall serve for one year, two for two years, and two for three years. There shall be no compensation received by the members for their service on the Board.
- (b) **Jurisdiction.** The Board of Appeals shall have the following powers granted in Wis. Stats. § 62.23(7)(e)7:
 - (1) To hear and decide appeals from any order, requirement, decision, or determination made by the zoning administrator under this Title except for requirements for municipal sewer and water pursuant to Section 16-2-1.
 - (2) To hear and pass upon applications for special exceptions or variances from the terms of this Title except for requirements for municipal sewer and water pursuant to Section 16-2-1.
 - (3) To hear and decide all matters referred to it or upon which it is required to pass under this Title except for requirements for municipal sewer and water service pursuant to Section 16-2-1.

- (c) **Officers.** The Board of Appeals shall choose its own chairperson, vice chairperson, and secretary.
- (d) **Meetings and rules.** The Board of Appeals shall adopt rules and regulations for its own government, not inconsistent with law or with the provisions of this Title and of any other ordinance of the Village. Meetings of the Board of Appeals shall be held at the call of the chairperson and at such other times as the Board may determine. Such chairperson, or in his absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.
- (e) **Hearings; records; quorum; actions.** Hearings of the Board of Appeals shall be public. The secretary shall keep minutes of its proceedings, showing the action of the Board and vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. The presence of a majority of Board members, or of Board members and alternates, shall constitute a quorum.
- (f) **Assistance from other Village departments.** The Board of Appeals may call on other Village departments for assistance in the performance of its duties and it shall be the duty of such other departments to render such assistance to the Board as may be reasonably required.
- (g) **Powers and Procedures of review.** The Board of Appeals shall review any order requiring decision or determination made pursuant to the provisions of this Title except for the requirements for municipal sewer and water service pursuant to Section 16-2-1. The provisions of Sections 20-35 through 20-43 of the Racine County Code of Ordinances are incorporated herein by reference and are hereby made applicable to proceedings of the Board of Appeals except that the Board of Appeals shall not have the authority to grant conditional uses under Section 20-35(a)(7).
- (h) **Determinations.** The concurring vote of a majority of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass, or to effect any variation under this Title. The Board of Appeals shall make the reasoning underlying its decisions clear, either by issuing a written decision or by including adequate detail in the meeting minutes.
- (i) **Finality of decision.** All decisions and findings of the Board of Appeals on any application for a variance, after a public hearing, shall, in all instances, be the final administrative decision and shall be subject to judicial review. No application for a variance which has been denied by the Board may be resubmitted for a period of one year from the date of the order of denial, except under extraordinary circumstances or on the grounds of new evidence discoverable after the hearing or proof of substantially changed conditions found to be valid by the Board.