

**ORDINANCE NO. 040824-02**

**An Ordinance Creating Chapter 42, Article V, Sections 42-151 to  
Sections 42-160 of the Municipal Code of the  
Village of Fontana-on-Geneva Lake, Walworth County, Wisconsin,  
Relating to Residency Restrictions for Sex Offenders**

Whereas, the Wisconsin State legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release in the community; and

Whereas, Ch. 980 of the Wis. Stats provides for the civil commitment of sexually violent persons. The purpose of the statute is to protect the public, to treat convicted sex offenders who are at a high risk to reoffend, to reduce the likelihood that they will engage in such conduct in the future, and following such commitment sec. 980.08 Wis. Stats. provides under certain conditions for the supervised release of such persons into the community; and

Whereas, the United States Supreme Court has recognized that the risk of recidivism posed by sexual offenders is “frightening and high” and “when convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault,” *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140 155 L.Ed. 2d 164 (2003) and *McKune v. Lile*, 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed. 2d 47 (2002) citing U.S. 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 1983*, page 6 (1997); and

Whereas, the Wisconsin Court of Appeals upheld an ordinance restricting a sex offender’s residence within 1,000 feet of multiple community gathering places where children may be present, which is not preempted by state law and the ordinance does not violate the Double Jeopardy or Ex post Facto Clauses of the United States and Wisconsin Constitutions. *City of South Milwaukee v. Kester*, 2012 AP 724, (Ct. App. March 13, 2013), citing *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140 155 L.Ed. 2d 164 (2003), *Doe v. Miller*, 405 F.3d 700, 719 (8th Cir. 2005), and *Fox v. City of Racine*, 225 Wis. 542, 545-46, 275 N.W. 513 (1937); and

Whereas, Sec. 61.34(1) Wis. Stats. authorizes the Village Board of the Village of Fontana-on-Geneva Lake to enact legislation for the health, safety and welfare of the public; and

Whereas, the Wisconsin General Charter Law as provided for in Sec. 61.34(5) Wis. Stats. is to be liberally construed in favor of the rights, powers and privileges of villages to promote the general welfare, peace, good order and prosperity of such villages and the inhabitants thereof.

NOW THEREFORE, the Village Board of the Village of Fontana-on-Geneva Lake does ordain as follows:

SECTION 1: Chapter 42, Article V, Section 42-151 through Section 42-160, of the Municipal Code of the Village of Fontana-on-Geneva Lake, Wisconsin, is hereby created to read as follows:

**CHAPTER 42, Article V:**

**SEX OFFENDERS RESIDING WITHIN 1,000 FEET OF SCHOOLS, DAYCARE CENTERS, PARKS AND OTHER SPECIFIED FACILITIES AND USES PROHIBITED; CHILD SAFETY ZONES**

42-151	Purpose.
42-152	Definitions.
42-153	Residency restrictions.
42-154	Residency restriction exceptions.
42-155	Original domicile restriction.
42-156	Child safety zones.
42-157	Child safety zone exceptions.
42-158	Penalty.
42-159	Appeal for Exemption.
42-160	Severability.

**SEC. 42-151 PURPOSE.** The Village Board finds that repeat sexual offenders who use physical violence and sexual offenders who prey on children, are sexual offenders who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses: and most sexual 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 sexual offender victimization to society at large, while incalculable, clearly exorbitant.

It is not the intent of the Village Board to punish sex offenders, but rather to serve the Village's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the Village of Fontana-on-Geneva Lake by creating areas around locations where children regularly congregate in concentrated numbers, wherein, certain sexual offenders are prohibited from establishing temporary or permanent residence.

Due to the high rate of recidivism for sexual offenders, and because reducing both opportunity and temptation would help minimize the risk of re-offense, there is a compelling need to protect children where they congregate or play in public places.

**SEC. 42-152 DEFINITIONS.** As used in this Chapter and unless the context otherwise requires:

(a) "Child" means a person under the age of eighteen (18) years.

(b) A "sexually violent offense" shall have the meaning as set forth in §980.01(6), Wis. Stats. as amended from time to time.

(c) "Sex offender" shall mean: Any person who is required to register under Wis. Stats. Sec. 301.45 for any offense against a child, or any person who has been convicted of, or found not guilty by reason of mental disease or defect and placed on lifetime supervision under Wis. Stats. Sec. 971.17(1j), for the following offenses:

- (1) §940.225(1) First Degree Sexual Assault;
- (2) §940.225(2) Second Degree Sexual Assault;
- (3) §940.225(3) Third Degree Sexual Assault;
- (4) §940.295(3) Abuse and Neglect of Patients and Residents – victim was minor and not the offender's child;
- (5) §940.22(2) Sexual Exploitation by Therapist;
- (6) §940.30 False Imprisonment-victim was minor and not the offender's child;
- (7) §940.31 Kidnapping-victim was minor and not the offender's child;
- (8) §944.01 Rape (prior statute);
- (9) §944.10 Sexual Intercourse with a Child (prior statute);
- (10) §944.06 Incest;
- (11) §944.11 Indecent Behavior with a Child (prior statute);
- (12) §944.12 Enticing Child for Immoral Purposes (prior statute);
- (13) §948.02(1) and (2) First and Second Degree Sexual Assault of a Child;
- (14) §948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child
- (15) §948.05 Sexual Exploitation of a Child;
- (16) §948.051 Trafficking of a Child;
- (17) §948.055 Causing a Child to View or Listen to Sexual Activity;
- (18) §948.06 Incest with a Child;
- (19) §948.07 Child Enticement;
- (20) §948.075 Use of a Computer to Facilitate a Child Sex Crime;
- (21) §948.08 Soliciting a Child for Prostitution;
- (22) §948.081 Patronizing a Child;
- (23) §948.085 Sexual Assault of a Child Placed in Substitute Care;
- (24) §948.095 Sexual Assault of a Student by School Instructional Staff;
- (25) §948.10 Exposing Genitals, Pubic Area, or Intimate Parts;
- (26) §948.11(2)(a) or (am) Exposing Child to Harmful Material-felony section;
- (27) §948.12 Possession of Child Pornography;
- (28) §948.13 Convicted Child Sex Offender Working with Children;
- (29) §948.30 Abduction of Another's Child;
- (30) §971.17 Not Guilty by Reason of Mental Disease-of an included offense;  
and
- (31) §975.06 Sex Crimes Law Commitment

(d) "Permanent residence" shall mean a place where a person abides, lodges or resides for fourteen (14) or more consecutive days.

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

(f) "Domicile" shall mean an individual's fixed and permanent home where the individual intends to remain permanently and indefinitely and to which whenever absent the individual intends to return, except that no individual may have more than one domicile at any time. Domicile is not a residence for any special or temporary purpose.

**SEC. 42-153 RESIDENCY RESTRICTION.** In absence of a Circuit Court Order specifically exempting a sexual offender from the residency restriction in this subsection, a sexual offender shall not establish a permanent or temporary residence within 1,000 feet of the real property comprising any of the following:

- (a) Any facility for children (which means a public or private school, a group home, as defined in §48.02 (7), Wis. Stats., a residential care center for children and youth, as defined in §48.02 (15d), Wis. Stats., a shelter care facility, as defined in §48.02 (17), Wis. Stats., a foster home, as defined in §48.02 (6), Wis. Stats., a day care center licensed under §48.65, Wis. Stats., a day care program established under §120.13 (14), Wis. Stats., a day care provider certified under §48.651, Wis. Stats., or a youth center, as defined in §961.01 (22), Wis. Stats.; and/or
- (b) Any facility used for:
  - (1) a public park or park facility;
  - (2) a public swimming pool;
  - (3) a public library;
  - (4) a recreational trail;
  - (5) a public playground;
  - (6) a school for children;
  - (7) athletic field or playground used by children;
  - (8) a movie theatre;
  - (9) a daycare center;
  - (10) a ski and/or sledding hill open to the public;
  - (11) any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
  - (12) a public or private golf course or range;
  - (13) a public or private beach; and
  - (14) aquatic facilities open to the public.

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 maintained on an official map in the Office of the Village Clerk for public inspection. The Village Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones. These shall be designated on the map as child safety zones.

**SEC. 42-154 RESIDENCY RESTRICTION EXCEPTIONS.** A sex offender residing within a prohibited area as described in above Sec. 42-153 does not commit a violation of this Chapter if any of the following apply:

- (a) The person established a permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stats. Sec. 301.45, before the effective day of this section.
- (b) The person was under seventeen (17) years of age and is not required to register under Wis. Stats. Sec. 301.45 or 301.46.
- (c) The person is required to serve a sentence at a jail, juvenile facility or other correctional institution or facility.
- (d) The person is a minor or ward under guardianship.

**SEC. 42-155 ORIGINAL DOMICILE RESTRICTION.** In addition to and notwithstanding the residency restrictions set forth herein, and subject to Sec. 42-154 above, no sex offender shall be permitted to reside in the Village of Fontana-on-Geneva Lake, unless such person was domiciled in the Village of Fontana-on-Geneva Lake at the time of the offense resulting in the person's most recent conviction, commitment or placement as a sex offender as set forth in Sec. 42-154 above.

**SEC. 42-156 CHILD SAFETY ZONES.** No person shall enter or be present upon any real property upon which there exists any facility used for, or which supports a use of:

- (1) a public park, parkland, park facility;
- (2) a public swimming pool;
- (3) a public library;
- (4) a recreational trail;
- (5) a public playground;
- (6) a school for children;
- (7) athletic field used by children;
- (8) a movie theatre;
- (9) a daycare center;
- (10) a ski and/or sledding hill open to the public;
- (11) any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;

- (12) a public or private golf course or range;
- (13) a public or private beach;
- (14) aquatic facilities open to the public; and
- (15) any facilities for children (which means a public or private school, a group home, as defined in §48.02 (7), Wis. Stats., a residential care center for children and youth, as defined in §48.02 (15d), Wis. Stats., a shelter care facility, as defined in §48.02 (17), Wis. Stats., a foster home, as defined in §48.02 (6), Wis. Stats., a treatment foster home, as defined in §48.02 (17q), Wis. Stats., a day care center licensed under §120.13 (14), Wis. Stats., a day care provider certified under §48.651, Wis. Stats., or a youth center, as defined in §961.01 (22), Wis. Stats.).

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 Village Clerk and be available for public inspection.

EXCEPTIONS. The prohibitions set forth herein shall not apply where the actor was with his or her parent or other adult person having his or her care, custody or control; or the actor was exercising First Amendment rights protected by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.

**SEC. 42-157 CHILD SAFETY ZONE EXCEPTIONS.** A person does not commit a violation of Sec. 42-156 above 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 Sec. 42-156 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; and
  - (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 Sec. 42-156 also supports a use lawfully attended by a person's natural or adopted child(ren), 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, of the attendance by the person.

- (a) The property supporting an enumerated use under Sec. 42-156 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.
- (b) The property supporting an enumerated use under Sec. 42-156 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.

#### **SEC. 42-158 PENALTY.**

- (a) A person who violates provisions of Sec. 42-153 and 42-154 above shall be subject to a forfeiture of not less than \$500.00 and no more than \$1,000.00 for each violation. Each day a violation continues shall constitute a separate offense. The Village may also seek equitable relief, including an injunction to gain compliance.
- (b) Any person violating Sec. 42-156 of this Section shall forfeit not less than \$1,000.00 and no more than \$2,000.00 for each violation.
- (c) In addition, if a person violates Sec. 42-153 above, by establishing a residence or occupying a residential premises within 1,000 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 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 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 Village in the Circuit Court for Walworth County to permanently enjoin such residency as a public nuisance.

**SEC. 42-159 APPEAL FOR EXEMPTION.** A person may seek an exemption from this ordinance by appealing to the Village of Fontana-on-Geneva Lake Village Board (“The Board”). The Board shall approve of an official appeal form. A person shall completely fill in the official form and submit it to the Village Clerk, who shall forward it to the Board. 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. The Board shall base its decision on whether the offender has shown remorse, has rehabilitated, could re-offend, and any other factor related to the Village’s interest in promoting, protecting and improving the public health, safety, and welfare of the community.

The Board shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional, or limited to a certain address, or a certain period of time. A written copy of the decision shall be provided to the offender.

**SEC. 42-160 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 or the application to any person or circumstance is held invalid, the remainder of the ordinance or the application of such other provisions to other persons or circumstances shall not be affected.

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

**SECTION 2: EFFECTIVE DATE:** This Ordinance shall take effect and be in force and effect from and after its passage and publication.

Dated this 8<sup>th</sup> day of April, 2024.

**VILLAGE BOARD OF THE VILLAGE OF FONTANA-ON-GENEVA LAKE**

By: Pat Kenny  
Pat Kenny, President

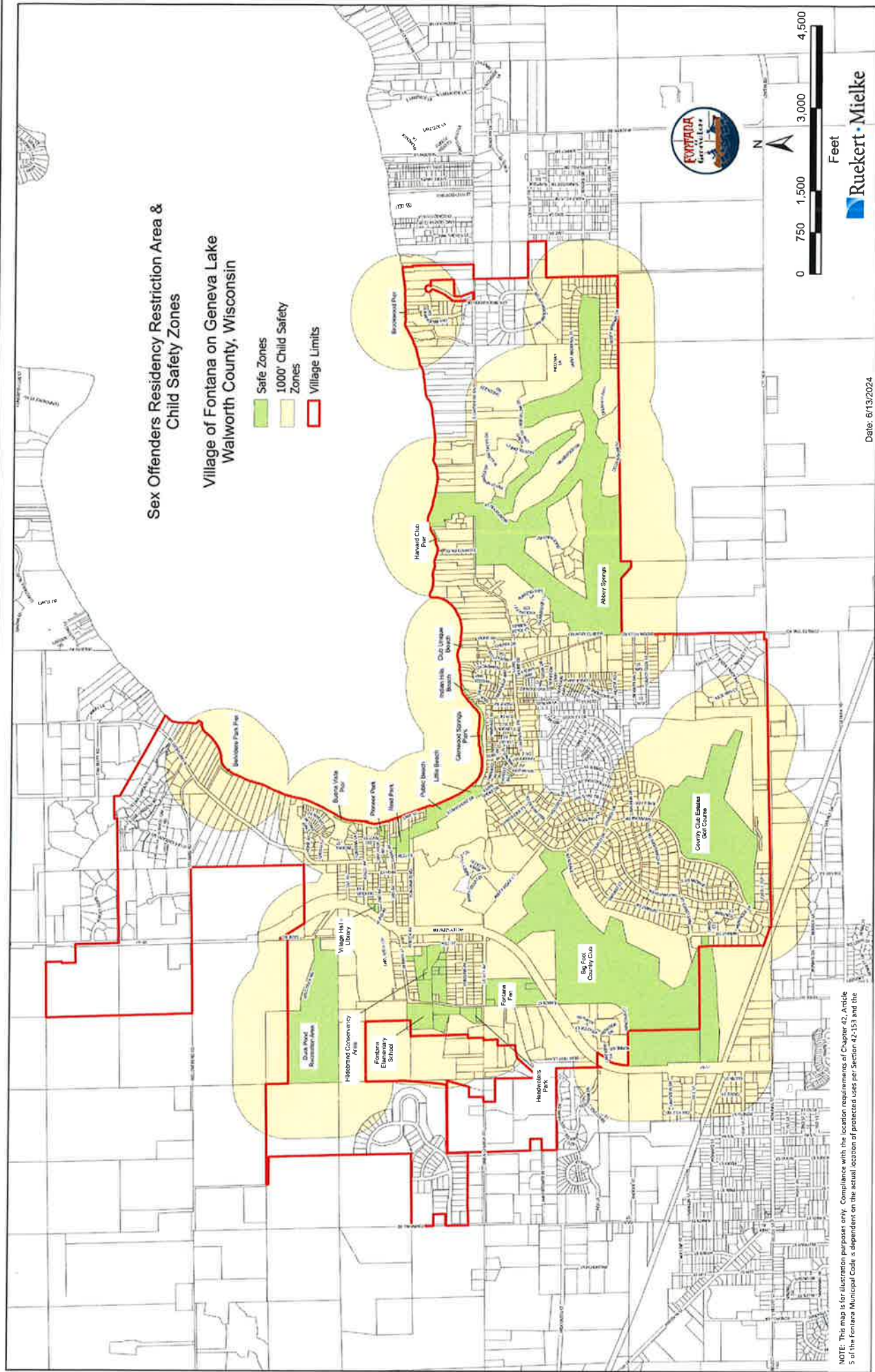
Attest: Julie K Olson  
Julie K Olson, Village Clerk



# Sex Offenders Residency Restriction Area & Child Safety Zones

## Village of Fontana on Geneva Lake Walworth County, Wisconsin

- Safe Zones
- 1000' Child Safety Zones
- Village Limits



NOTE: This map is for illustration purposes only. Compliance with the location requirements of Chapter 43, Article 5 of the Fontana Municipal Code is dependent on the actual location of prohibited uses per Section 43.153 and the

Date: 6/13/2024

Ruekert · Mielke