

Chapter 149

SEX OFFENDERS

GENERAL REFERENCES

Adult uses — See Ch. 59.

Parks and recreation areas — See Ch. 132.

Curfew — See Ch. 84.

§ 149-1. Legislative authority.

This chapter is adopted pursuant to the Municipal Home Rule Law, which enables local governments to adopt local laws relating to their property, affairs, or government, so long as the local laws are not inconsistent with the New York State Constitution or any general law of New York State. The New York State Municipal Home Rule Law also authorizes local governments to adopt local laws regulating the protection, order, conduct, safety, health and welfare of the persons within the local municipality.

§ 149-2. Purpose.

- A. The purpose of this chapter is to promote the health, safety, and welfare of the community (including the preservation and protection of the persons, property, minors, and children of the Village of Palmyra) and to protect peace and good order in the Village, by regulating and controlling residency, presence, and activities of certain sex offenders in the Village of Palmyra and by providing enforcement in furtherance thereof.
- B. The State of New York and the Federal Government regulate certain activities of sex offenders, but such regulations do not preclude further legislation by municipalities. Thus, the Village of Palmyra is seeking to further define local laws in relationship to individuals who have been categorized as Level Two sex offenders and Level Three sex offenders. Level Two and Level Three registered sex offenders, some of whom have committed criminal sexual offenses against minors, reside in the Village. Under the Corrections Law, Level Two sex offenders have been determined to pose a moderate risk of repeat offense and Level Three sex offenders have been determined to pose a high risk of repeat offense. In order to protect the minor inhabitants of the Village from such sex offenders, and the peace and good order therein, the Village Board of the Village of Palmyra finds and determines that it is necessary, and in the best interest of the residents of the Village of Palmyra, to establish residency, proximity and activity restrictions for all Level Two and Level Three registered sex offenders who reside in the Village of Palmyra or who are otherwise actually present in the Village of Palmyra at any time.

§ 149-3. Conflict with state or federal laws.

In the event of any conflict between federal law, New York State Law and this chapter, federal law shall be deemed primary, state law secondary, and this chapter tertiary, but

only to the extent this chapter is impermissibly inconsistent with such federal or state laws. Unless expressly preempted, any provisions of this chapter that are more restrictive or stringent than any applicable federal or state law shall be and remain enforceable until and unless declared unenforceable, unconstitutional, or impermissible by a court or other tribunal of competent jurisdiction.

§ 149-4. Word usage; definitions.

- A. Terms and words used herein shall be construed in the singular or plural as the context admits or requires.
- B. As used in this chapter, the following terms shall have the meanings indicated:

CHILD or MINOR — Person less than 18 years of age.

COMMUNITY RECREATIONAL FACILITY — A place, area, structure, or other property or facility owned or operated by a governmental entity or nonprofit organization used by persons in the community to carry out recreational activities, including, but not limited to, outdoor and indoor facilities such as tennis courts, swimming pools, soccer fields, baseball fields, playgrounds, and/or similar facilities.

DAY-CARE FACILITY — Any property licensed by New York State (or any county, governmental or municipal subdivision thereof) for the provision of child or adult day care, including without limitation, Head Start, pre-school and after-school services or facilities, and all playgrounds adjacent thereto.

FACILITY FOR MINORS — Any facility or institution regularly used for the training, entertainment, recreation, care or treatment of minors, including, but not limited to day-care facilities and summer or other day or overnight camps and campgrounds.

HOUSE OF WORSHIP — Any properties owned by any New York State-registered charitable organization or religious corporation used or utilized for prayer, meditation, celebratory or mass services, and/or communion with nature or any one or more deities, including but not limited to churches, synagogues, temples, shrines, and the like.

LEVEL THREE SEX OFFENDER —

- (1) A person who is designated as a Level Three sex offender pursuant to Article 6-C of the Correction Law of the State of New York; or
- (2) A person classified as a Level Three sex offender by the Board of Examiners of Sex Offenders; or
- (3) Any person adjudicated as a Level Three sex offender by any court of the State of New York; or
- (4) Any person listed as a Level Three sex offender on the New York State Registry of Sex Offenders, or its equivalent.

LEVEL TWO SEX OFFENDERS —

- (1) A person who is designated as a Level Two sex offender pursuant to Article

6-C of the Correction Law of the State of New York; or

- (2) A person classified as a Level Two sex offender by the Board of Examiners of Sex Offenders; or
- (3) Any person adjudicated as a Level Two sex offender by any court of the State of New York; or
- (4) Any person listed as a Level Two sex offender on the New York State Registry of Sex Offenders, or its equivalent. All nonresidents of the State of New York that are required to register as a sex offender in their jurisdiction of residence or domicile shall also be deemed "Level Two sex offenders" under this chapter, unless reclassified in another class by the State of New York.

PERMIT — A date-and-time-specific written authorization stating that a sex offender may be in, enter upon, pass through, or approach any specifically identified prohibited area, which authorization may be issued and signed by any sex offender's probation officer or parole officer, the Village Clerk of the Village of Palmyra pursuant to a resolution of the Village Board, or any Judge or Justice of the Unified Court System of the State of New York.

PROHIBITED AREA — As to Level Two sex offender or Level Three sex offender, any school grounds, special education facility, house of worship, day-care facility, community recreational facility, museum facility, library facility, or any other facility for minors while any person under 18 years of age is present.

RESIDENCE — The place where a person sleeps, and may include more than one location, and may be mobile or transitory.

SCHOOL GROUNDS — Any area in, under, over, on, or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private nursery school, kindergarten, preschool facility, Head Start teaching or day-care facility, elementary school, parochial school, intermediate school, junior high school, vocational school, special education center or facility, Board of Cooperative Education Services facility, or high school. "School grounds" shall also include all lands and areas within 500 feet of any area, structure or property described in the immediately preceding sentence. "School grounds" shall also include any school buses or other school vehicles, school bus stops and their immediate vicinity, any area where any school bus (or other school vehicle) loads or unloads any minors, and all school crosswalks and their immediate vicinities.

SPECIAL EDUCATIONAL FACILITY —

- (1) Any location and/or facility where any physically or mentally handicapped or impaired persons work, are trained, cared for and/or educated; or
- (2) Any home, residential center, or nonresidential center used for the detention, supervision, education, and/or training of any persons under age 21 who have been voluntarily or involuntarily adjudicated or otherwise declared or determined to be a juvenile delinquent or person in need of supervision.

VILLAGE — The Village of Palmyra, as located in Wayne County, New York.

§ 149-5. Restrictions applicable to certain sex offenders.

- A. Level Two sex offenders and Level Three sex offenders are hereby prohibited from residing within 500 feet of the boundary lines of each and any of the following: school grounds, a house of worship, a community recreational facility, a day-care facility, a special education facility, a museum, a library, and any other facility for minors, unless granted a permit pursuant to the requirements of this chapter.
- B. Level Two sex offenders and Level Three sex offenders are hereby prohibited from being physically present within 500 feet of the boundary lines of each and any of the following: school grounds, a house of worship, a community recreational facility, a day-care facility, a special education facility, a museum, a library, and any other facility for minors, unless granted a permit pursuant to the requirements of this chapter.
- C. Level Two sex offenders and Level Three sex offenders are hereby prohibited from observing, photographing, or recording in any manner the movements of vehicles, persons or minors at any of the following: school grounds, a house of worship, a community recreational facility, a day-care facility, a special education facility, a museum, a library and any other facility for minors.
- D. Each Level Two sex offender and Level Three sex offender must provide each school ground, house of worship, community recreational facility, day-care facility, special education facility, museum, library, and each other facility for minors with a copy of their permit prior to being present in any prohibited area.

§ 149-6. Permits.

- A. Permits may only be obtained from the sex offender's probation officer or parole officer, the Village Clerk of the Village of Palmyra pursuant to a resolution of the Village Board, or any Judge or Justice of the Unified Court System of the State of New York.
- B. Each permit must be issued for a specific time period, not to exceed one year, and shall be of no further force or effect after expiration of the time specified. Permit renewal may be issued on the same terms and conditions as on the original permit. Where practical to so state, each permit shall only be granted for specified times, dates, events, and locations. For example, a permit that recites that it is granted for the purpose of allowing the delivery of a dependent child to a school upon each school-day morning shall be a sufficient specification of times, dates, events, and locations.
- C. Permits may only be granted when reasonably necessary or when reasonably tailored to allow the exercise of activities authorized by the laws of the State of New York or of the United States, or activities that are otherwise protected by the Constitution of the State of New York or the Constitution of the United States.
- D. Permits allow presence in prohibited areas only for so long as is reasonably necessary to accomplish the purpose for which the permit is granted, and do not permit presence at any other times, or for any other reasons.
- E. It shall be presumptively reasonable for a sex offender to seek a permit in the

following circumstances:

- (1) To attend any educational facility in which he or she is lawfully enrolled as a student and otherwise entitled to attend classes at such facility;
- (2) To pick up or drop off any dependent minor family member or dependent at any educational facility where no other reasonable transportation options are available;
- (3) To allow a sex offender to vote, petition government for a redress of grievances, or engage in other lawful constitutionally protected activities that are guaranteed by the Constitution of the United States, or the State of New York, or for which rights are codified or memorialized by the statutes or regulation of the State of New York and/or the United States.

§ 149-7. Emergencies and lawful travel; limited permit exemptions.

Level Two sex offenders and Level Three sex offenders may lawfully enter into or upon prohibited areas:

- A. For bona fide medical emergencies that require immediate attention, so long as they remove themselves immediately when such emergency subsides or emergency medical care is provided;
- B. To engage in lawful business at a federal, state, or local court or governmental agency, so long as they remove themselves promptly when such business is concluded; or
- C. To travel upon a public highway for lawful reasons and without any pretext or planned stops within any prohibited area.

§ 149-8. Residency restrictions.

- A. No Level Two or Level Three sex offender shall establish a residence within a radius of 500 feet, measured from the nearest property line, of any land utilized as a day-care center, park, playground, school, house of worship, community recreational facility, special education facility, museum, library, or any other facility for the care or education of minors.
- B. The provisions of this section shall not apply:
 - (1) To a Level Two sex offender or Level Three sex offender who:
 - (a) Has acquired an ownership interest in a residence prior to the effective date of this chapter; or
 - (b) Has established a residence prior to the effective date of this chapter pursuant to the terms of a written lease; provided, however, said Level Two or Level Three sex offender shall not renew or otherwise extend said lease beyond the term in effect on the date on which this chapter became effective; or
 - (2) If, after the effective date of this chapter a day-care center, park, playground,

school, community recreational facility, special education facility, museum, library, and any other facility for the care or education of minors is established within a radius of 500 feet, measured from the nearest property line thereof, from the residence of the Level Two sex offender or Level Three sex offender then existing; or

- (3) If the Level Two sex offender or Level Three sex offender is required to reside at a location fixed by order of a court of competent jurisdiction, or by any federal, state or county agency having jurisdiction over the residence location or activities of the registered sex offender.

§ 149-9. Notice.

- A. Notice in writing of the adoption and filing of this chapter shall be mailed by certified or registered mail, return receipt requested, to each Level Two sex offender and Level Three sex offender now or in the future residing within the Village of Palmyra. Said notice shall be either mailed certified or registered mail, return receipt requested, and by regular mail to the last-known mailing address of the Level Two sex offender and Level Three sex offender or delivered by any police officer or peace officer to the sex offender or other party required to be notified.
- B. Any Level Two sex offender or Level Three sex offender who resides at a location prohibited by this chapter shall, upon written notice from the Village Clerk of the Village of Palmyra, discontinue such residency within 30 days following the receipt of such notice. Such written notice may be served upon the registered sex offender by registered or certified mail, return receipt requested, or by personal service.

§ 149-10. Enforcement.

- A. All of New York State law generally applicable to misdemeanors shall apply to any criminal misdemeanor proceeding brought under this section, and except that each and any misdemeanor identified herein shall be deemed an unclassified misdemeanor.
- B. Any person that violates any of the provisions of this chapter shall be:
 - (1) Guilty of an unclassified misdemeanor and subject to a criminal fine of not more than \$1,000 and/or a period of incarceration not to exceed 60 days; or
 - (2) Subject to a civil penalty of not more than \$2,500 to be recovered by the Village in a civil action. Each day that a violation of this chapter occurs or continues shall be deemed a separate criminal or civil violation of this chapter.
- C. Each and all remedies and rights provided under this chapter shall be cumulative. The Village's pursuit of any one right or remedy does not effect a waiver or an election of remedies, and the Village may thereafter pursue or continue to pursue any other right or remedy it may have. The Village may also maintain actions or proceedings in the name of the Village in a court of competent jurisdiction to:
 - (1) Compel compliance with or restrain by injunction the violation of any provision or requirement of this chapter; and/or

- (2) To evict or seek forcible removal of any person in violation of this chapter.
- D. A presumption of evidence and/or law shall apply to all proceedings brought under this chapter such that any individual whose name is listed in the New York State Sex Offender Registry, or its equivalent, as a Level Two sex offender or a Level Three sex offender, is, for purposes of this chapter a Level Two sex offender or a Level Three sex offender, as applicable.

§ 149-11. Limitation of liability.

The Village shall not be liable or responsible for any injury to any civil or other right, injuries to persons, or injury or damage to property, due to the Village's actions, or failures to act, under or pursuant to this chapter, unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Village, except that the Village maintains all immunities from liability as set forth or referenced in section 168-i of the Correction Law of the State of New York, as it now exists or may be hereafter amended.

