

MILWAUKEE POLICE DEPARTMENT TRAINING BULLETIN

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OPEN CARRY OF FIREARMS

Training Bulletin 2009-01, concerning the issue of open carry of firearms in Wisconsin, is hereby rescinded in its entirety. This Training Bulletin serves as the Department's position of record to that publication.

On April 20, 2009, Wisconsin Attorney General J.B. Van Hollen issued an advisory memorandum on the issue of Open Carry of Firearms and Wisconsin's Disorderly Conduct Statute. While this advisory memorandum is influential, it does not carry the weight of Wisconsin Statutes or Court precedence. **The advisory memorandum is meant to specifically deal with the issue of whether a District Attorney should charge a person with disorderly conduct should they go openly armed in public.** In the Attorney General's memo, he states, "The Wisconsin Department of Justice (the Department) believes that the mere open carrying of a firearm by a person, absent additional facts and circumstances, should not result in a disorderly conduct charge from a prosecutor."

In support of this memorandum, Attorney General Van Hollen cites Wisconsin Constitution Article 1, § 25, which provides that, "[t]he people have the right to keep and bear arms for security, defense, hunting, recreation or other lawful purpose." Additionally, he discusses the Wisconsin Statute for Disorderly Conduct (§§ 947.01) and states, "The decision to charge a defendant with disorderly conduct necessarily depends on the totality of the circumstances. Reasonableness, not bright-line rules, should guide your decision."

Attorney General Van Hollen continues in his memorandum to discuss the issue of whether the open carrying of a firearm gives officers the authority to make an investigative or "Terry" stop to investigate possible criminal activity, including disorderly conduct. His answer is, "An officer may stop and briefly detain a person for investigative

purposes if he has 'reasonable suspicion' based on articulable facts of criminal activity." Citing *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000); *United States v. Sokolow*, 490 U.S. 1, 7 (1989); *Terry v. Ohio*, 392 U.S. 1, 30 (1968). He adds "Even though open carry enjoys constitutional protection, it may still give rise to reasonable suspicion when considered in totality," and "The existence of reasonable suspicion depends on the totality of the circumstances, including the information known to the officer and any reasonable inferences to be drawn at the time of the stop."

Therefore, in light of this advisory memorandum, absent any other facts or circumstances, a person may legally carry an unconcealed firearm in the state of Wisconsin without being in violation of the Disorderly Conduct Statute (§§ 947.01). **This does not mean that officers are restricted from their responsibility to stop, investigate, and determine whether a person carrying an open firearm is doing so legally.** The circumstances of the situation may or may not rise to the level of disorderly conduct based on articulable facts that you as a law enforcement officer will need to document in any arrest you make for disorderly conduct. Additionally, I would like to remind officers that there are numerous Wisconsin statutes that are not affected by this advisory memorandum, including:

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| 941.235 | Carrying Firearm in a Public Building |
| 941.237 | Carrying Handgun Where Alcohol Beverages May be Sold and Consumed |
| 941.29 | Possession of a Firearm (by felon, etc.) |
| 948.60 | Possession of Dangerous Weapon by a Person Under 18 |
| 167.31(2)(b) | Uncased Transport of Firearm in Vehicle |

948.605 Gun Free School Zones¹

While conducting field interviews, officers are reminded of the following:

1. It must occur in a public place.
2. The officer must identify himself/herself as a law enforcement officer.
3. The officer must reasonably suspect that the person is committing, has committed or is about to commit a crime. This quantum is not the same as probable cause to arrest; it is less than that, but more than "mere suspicion."
4. The officer may demand the person's name and address and explanation of his/her conduct. However, if the person refuses to identify him/herself or answer questions, and there is no further information or facts which could lead the officer to "probable cause," the officer must allow the person to go on his/her way. Refusal to answer an officer's questions in itself is not "obstructing an officer."
5. The temporary detention for questioning must be in the vicinity of the initial stop. It may, for example, be out of the rain, but not at the station house six miles away.
6. The questioning may only be for a reasonable length of time. This will vary in different circumstances, but will include enough time to call in an identity check.

If the person stopped is in possession of an openly carried firearm, the firearm shall be taken from the person and secured until the field interview has concluded. It must be emphasized that the purpose of doing so is for officer safety and not

¹ A school zone is defined as "in or on the grounds of a school" or "within 1,000 feet from the grounds of a school". For purposes of defining school grounds or premises, it shall mean "any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration" (Source: WI Stat. § 948.61 (1)(c))
Officers should be aware of the proximity of school zones if they encounter an open carry situation.

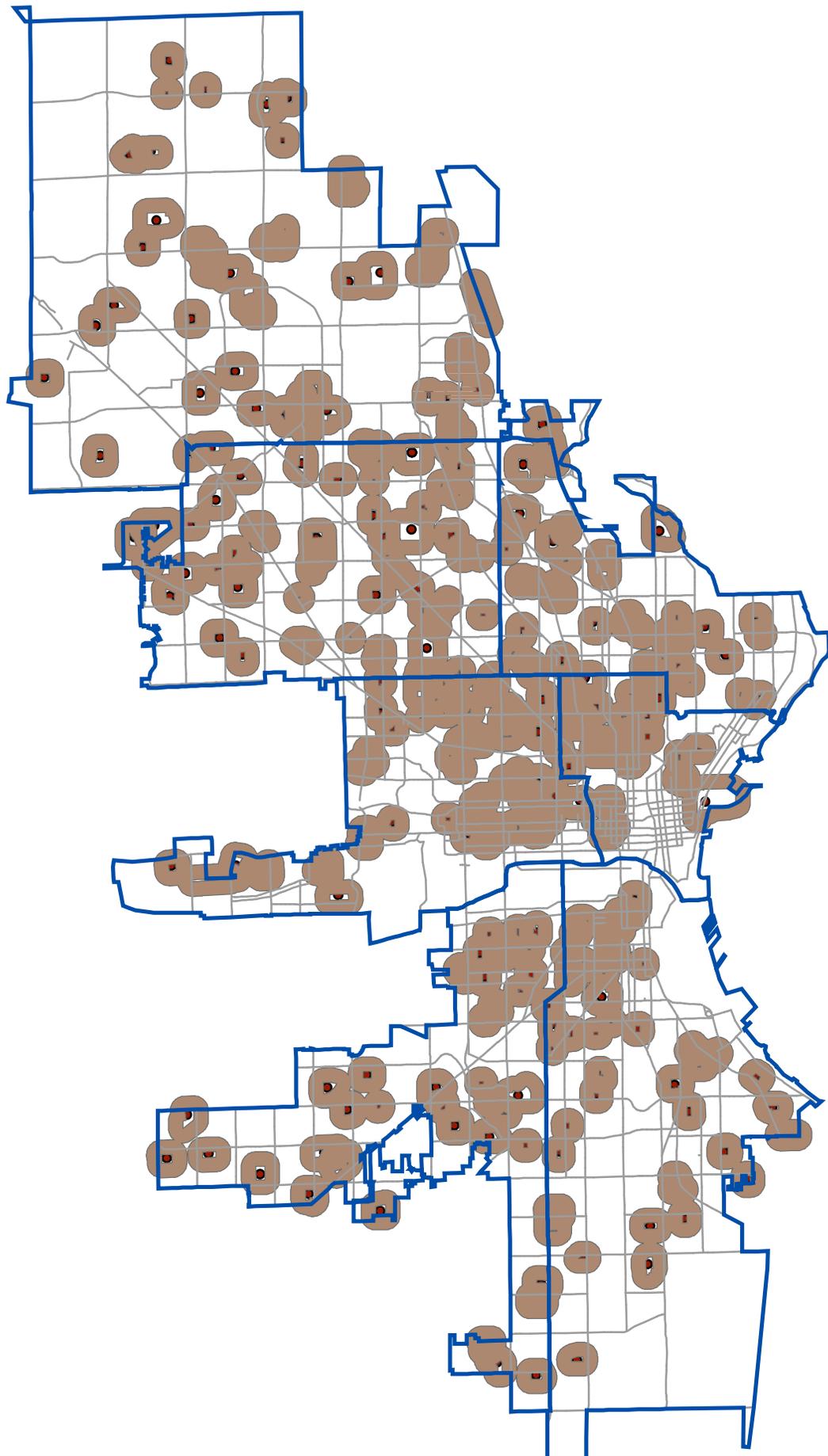
based upon a presumption that the possession was unlawful. Upon completion of the questioning, the firearm must be returned if its possession is legal unless, upon probable cause, you decide to arrest. If you find contraband, it shall be seized and may constitute grounds for valid arrest. Once there is an arrest, a complete search incident to the arrest shall be made.

While each situation is different, officers must take into consideration a variety of factors, such as the location of the incident, the type of weapon carried, manner in which the weapon is being carried, personal knowledge of the person carrying the weapon, etc. Additionally, officers should remember that use of **tactically sound approach considerations** should be used with any armed subject, as the contact may lead to intervention options. The use of professional communication skills should be used at all times and officers shall not get into a philosophical debate with citizens over this very polarizing subject. If citizens are calling and are disturbed by someone carrying a firearm, probable cause **may or may not** exist to make an arrest for disorderly conduct or order-in of the subject. When probable cause exists, officers should make the decision to arrest or order-in the subject based upon the totality of the circumstances for each incident.

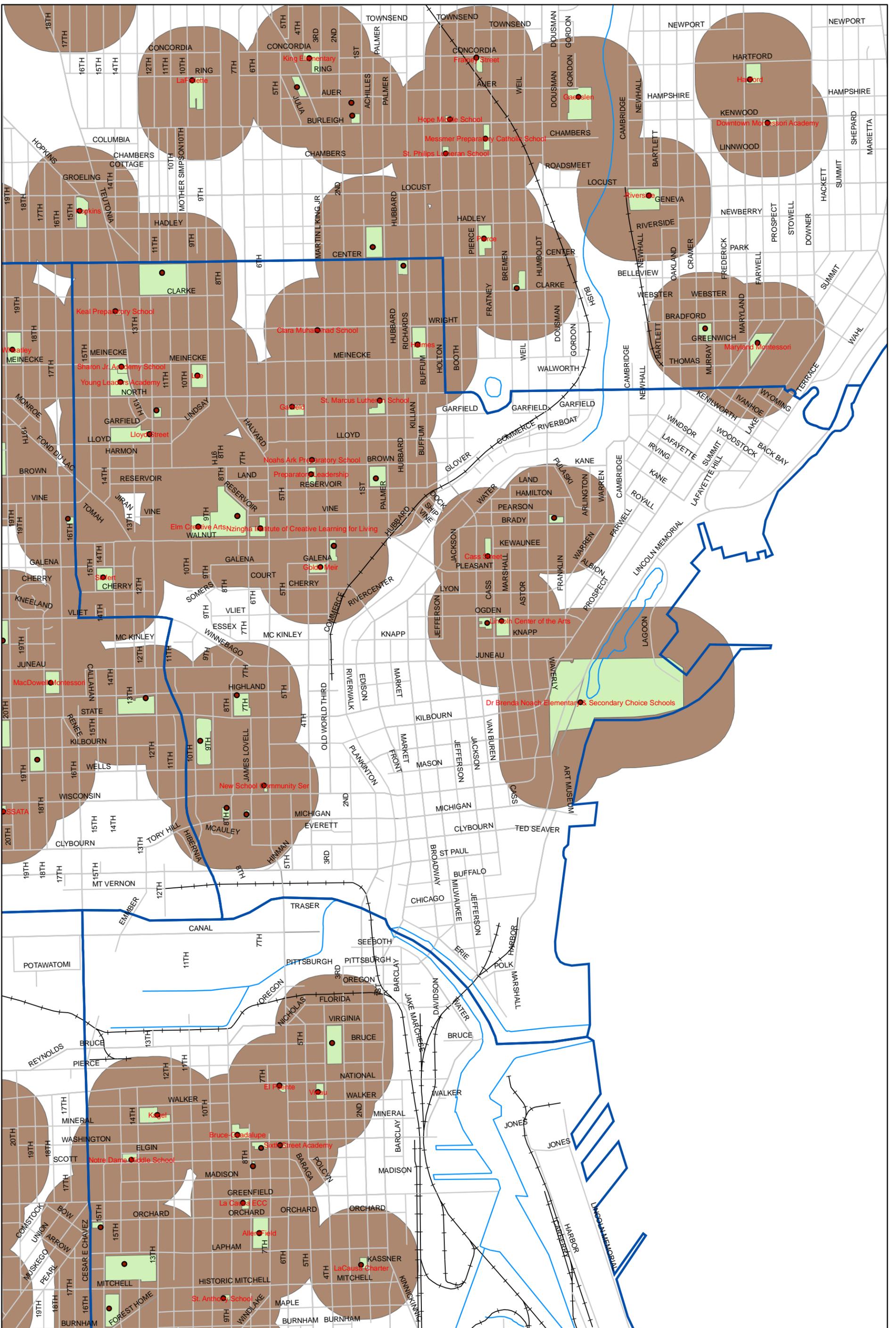
In summary, establish control of the situation, keeping your safety and the safety of our citizens always at the forefront of how we as officers conduct business. Enforce the laws that are clearly defined in state statutes, including the proper use of field interviews.

If questions, problems or citizen complaints arise, notify a field supervisor to assist.

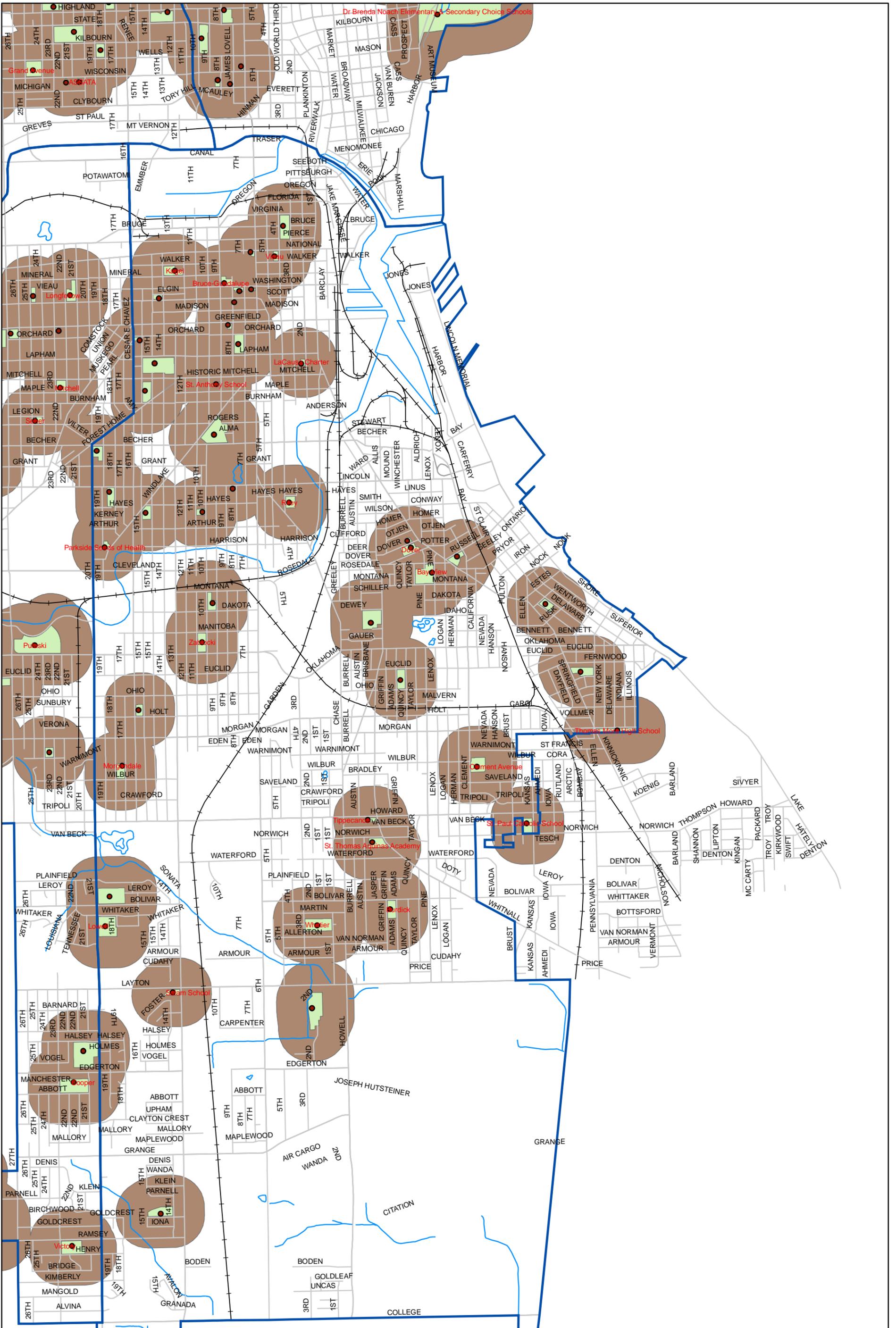
Be advised that school zone maps (citywide and by district) have been attached to this bulletin. These maps display approximate school zones and are meant to assist officers in determining what areas of the city are off limits to firearms. Officers should not rely solely upon these maps for making a determination of whether a person is in violation of WI Stat. 948.605.



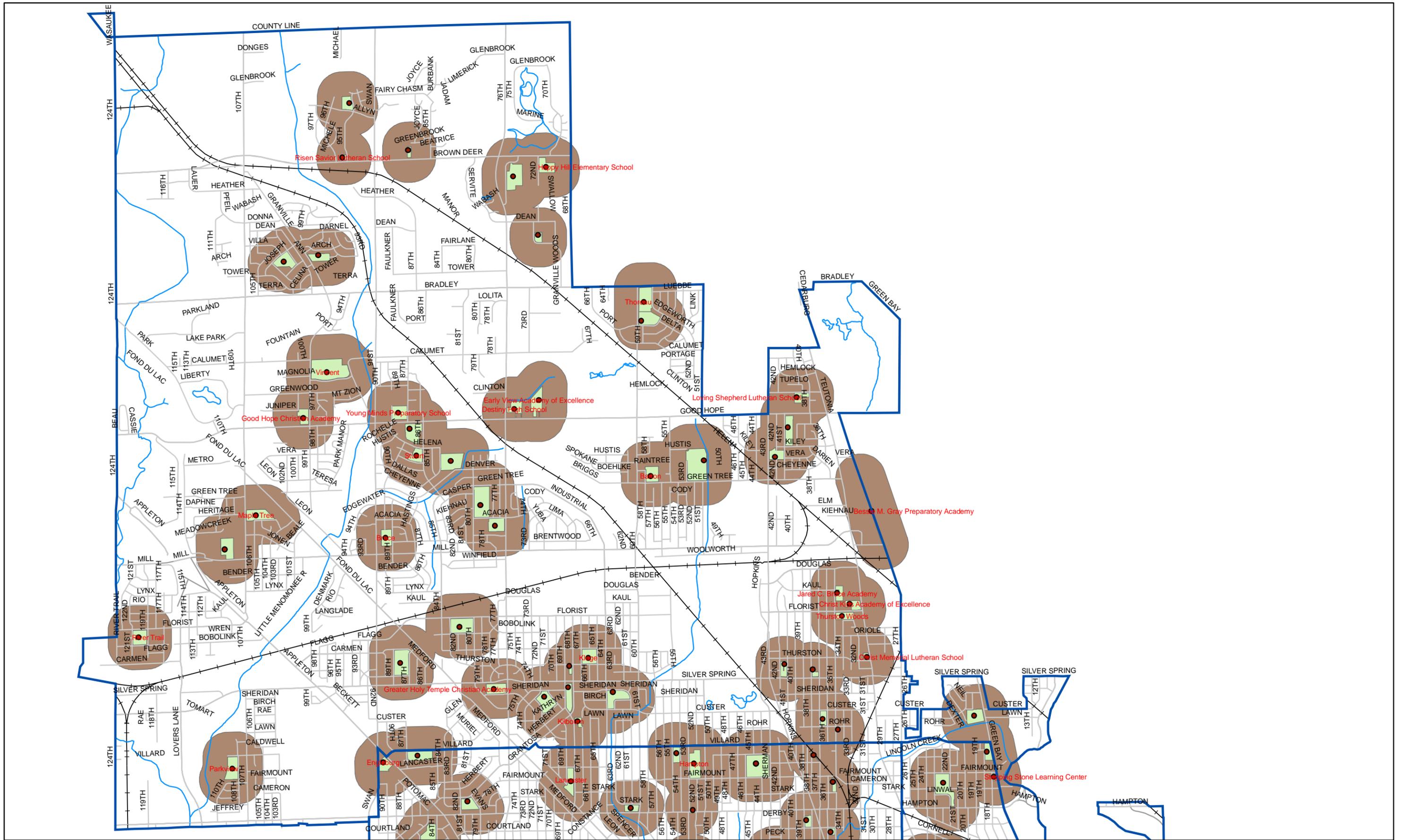
Estimated 1000ft Buffer of Schools- 2006



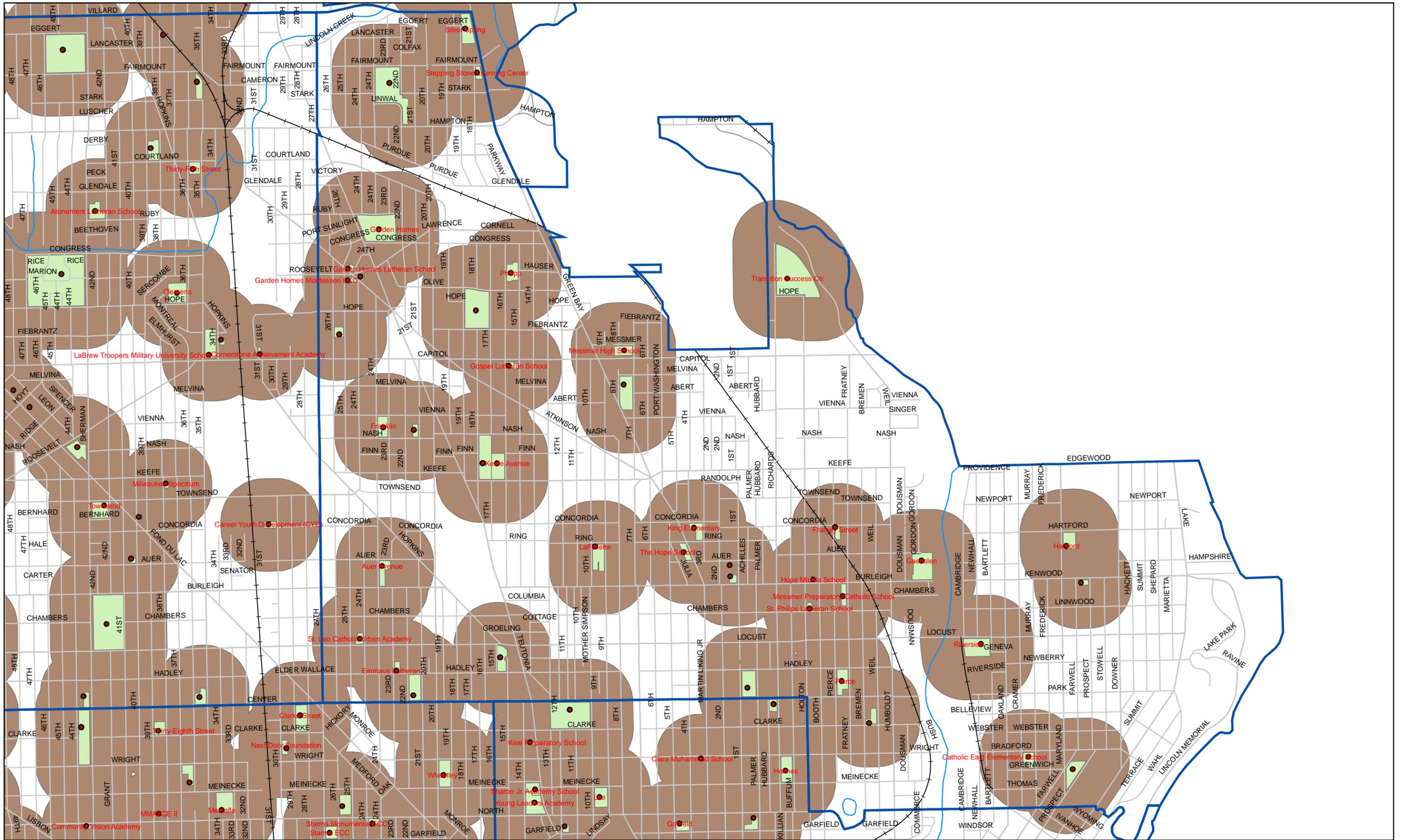
Estimated 1000ft Buffer of Schools- 2006 (Roughly 3 Blocks)



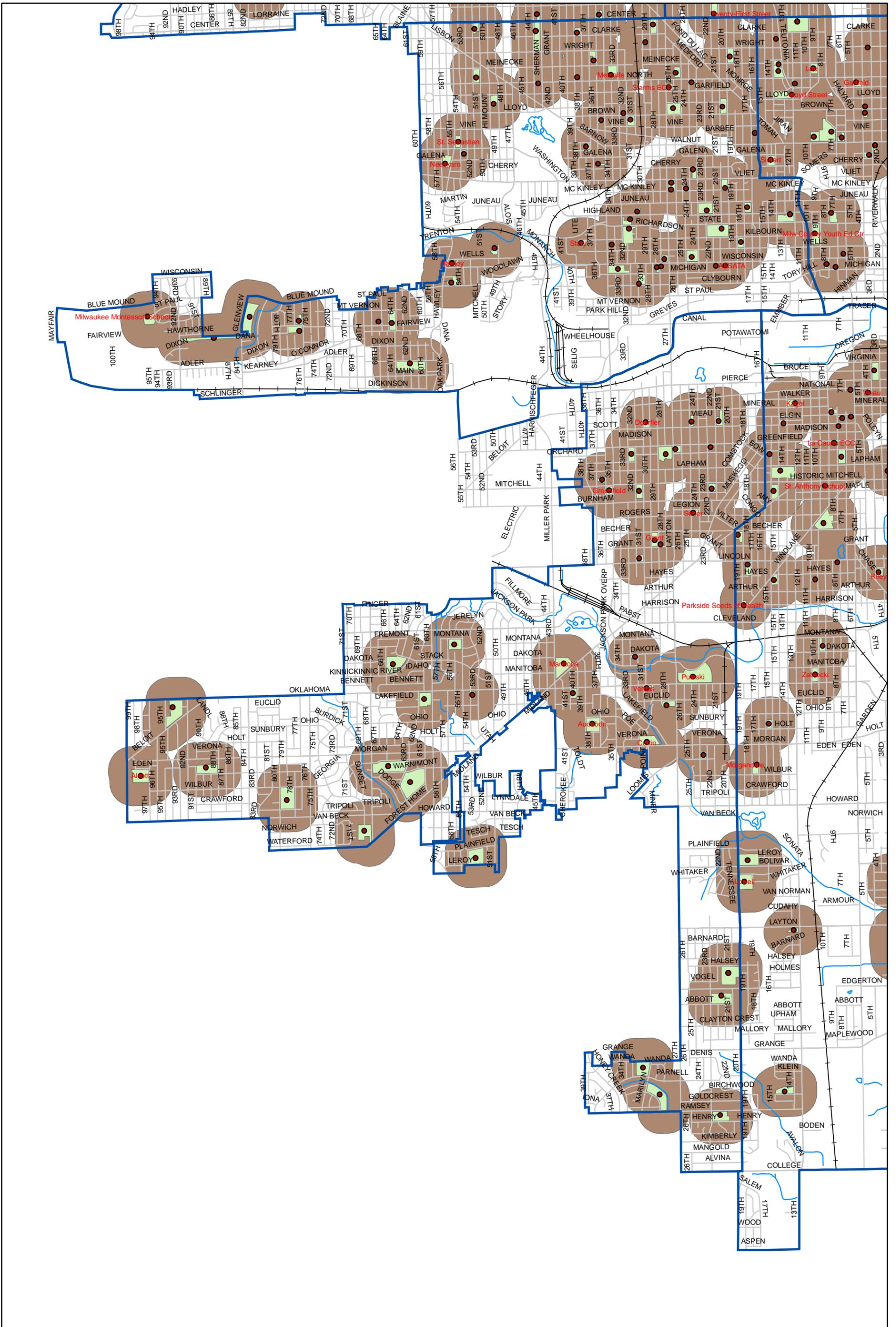
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