

Draft for Discussion Purposes 3-27-15

ORDINANCE NO. 2015-_____

AN ORDINANCE TO AMEND ARTICLE III ENTITLED SEX OFFENDER RESTRICTIONS WITHIN CHAPTER 30 - MISCELLANEOUS OFFENSES OF THE TOWN OF YORKVILLE CODE OF ORDINANCES

The Town Board of the Town of Yorkville, Racine County, Wisconsin, do ordain as follows:

1. That Article III entitled Sex Offender Restrictions under Chapter 30 of the Code of Ordinances for the Town of Yorkville relating to Sex Offenders be, and hereby is, amended to read as follows:

“Article III. Sex Offender Restrictions

Sec. 30-130. Residency restrictions for sexual offenders.

- (a) *Findings and intent.* The town 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 town board to punish sex offenders, but rather to serve the town's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the town 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 reoffense, there is a compelling need to protect children where they congregate or play in public places.

- (b) *Definitions.* The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except when the context clearly indicates a different meaning:
- (1) *Child* or *Children* means person(s) under the age of eighteen (18) years for purposes of this Ordinance.
 - (2) *Crime Against Children* shall mean 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 or adjudication, respectively: § 940.22(2) Sexual Exploitation by Therapist; §

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940.30 False Imprisonment where victim was a minor and not the offender's child; § 940.31 Kidnapping where victim was a 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.

- (3) *Designated Offender* means any person who (1) has been convicted of a Crime Against Children; (2) has been adjudicated delinquent for a Crime Against Children; (3) is or was required to register under Section 301.45, Wisconsin Statutes, for any sexual offense; or (4) 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.
- (4) *Juvenile* means a person under the age of eighteen (18) years.
- (5) *Permanent Residence* means a place where the Designated Offender lodges or resides for fourteen (14) or more consecutive days.
- (6) *Temporary Residence* means 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 Residence; 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.
- (7) *Protected Location* means any Athletic Fields, Day Care Center, Library, Park, Place of Worship, Playground, **Recreational Trail**, School Property, and Swimming Pool, or any other place designated in the Map adopted by the Town under Section 30-130(c)(3) as a place where children are known to congregate. The defined terms included in the definition of Protected Location are:

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- a. *Athletic Fields* means fields used by Children for organized sporting activities. This definition includes all public athletic fields and private athletic fields if they are open to the public.
- b. *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).
- c. *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.
- d. *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.
- e. *Place of Worship* means a church, synagogue, mosque, temple or any other building where congregations gather for prayer.
- f. *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, and seesaws.
- g. *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.
- h. *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.

NOTE FOR DISCUSSION:

- i. *Recreational Trail* means a trail where children walk, ride bicycles, or ride horses, whether publicly or privately owned.

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(c) *Child Safety Zones.*

- (1) *Restrictions.* 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 or temporary residence within 1,000 feet of any Protected Location. No Designated Offender may establish a Permanent Residence or Temporary Residence within a one thousand (1,000) foot radius of an existing Permanent Residence or Temporary Residence of another Designated Offender.
- (2) *Determination of Minimum Distance Separation.* For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the nearest outer property line of the Permanent Residence or Temporary Residence of a Designated Offender to the nearest outer property line of a Protected Location.
- (3) *Maps.* A map depicting the above Protected Locations and the resulting residency restriction distances known as Child Safety Zones shall be adopted by Resolution of the Town Board, and which map may be amended from time-to-time, is on file in the Office of the Town Clerk for public inspection. This Map is a tool that the Town 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.
- (4) *Original Domicile Restriction.* In addition to and notwithstanding the foregoing prohibitions, but subject to subsection (d) below, no Designated Offender shall be permitted to reside in the Town of Yorkville, unless such person was legally domiciled in the Town of Yorkville at the time of the offense resulting in the person's most recent conviction or delinquency adjudication for an offense under the definition of a Designated Offender.
- (5) *Notification.* A Designated Offender must notify the Town Clerk a minimum of twenty-eight (28) days prior to establishing either a Permanent Residence or Temporary Residence within the Town of Yorkville.

(d) *Residency restriction exceptions.* A Designated Offender residing within a Child Safety Zone as described in subsection (c)(3) does not commit a violation of this section if any of the following apply:

- (1) The person established a Permanent Residence or Temporary Residence and reported and registered the residence pursuant to Wis. Stat. § 301.45, before the effective day of this section.

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- (2) The person was under 17 years of age and is not required to register under Wis. Stat. § 301.45 or 301.46.
- (3) The Prohibited Location within 1,000 feet of the Designated Offender's Permanent Residence or Temporary Residence was opened after the person established the Permanent Residence or Temporary Residence and reported and registered the residence pursuant to Wis. Stat. § 301.45.
- (4) The person is required to serve a sentence at a jail, juvenile facility or other correctional institution or facility located within a Child Safety Zone.
- (5) The person is:
 - a. A Juvenile who was adjudicated delinquent of (or found guilty of) a sex offender offense in juvenile court and placed with a guardian;
 - b. A Juvenile placed with a guardian; or
 - c. A ward under guardianship and placed in accordance with the guardianship orders.

In such cases involving a Juvenile placed in accordance with this exception, when the Juvenile turns 18 years of age, the Juvenile would be allowed to continue to reside at the already established residence.

- (e) *Property Owners Prohibited From Renting Real Property To Certain Sexual Offenders and Sexual Predators.* It shall be unlawful for any property owner to lease or rent any place, structure, mobile home, trailer or any part thereof, with the knowledge that it will be used as a Permanent Residence or Temporary Residence by any Designated Offender prohibited from establishing a Permanent Residence or Temporary Residence therein pursuant to this Ordinance, if such place, structure, or mobile home, trailer or any part thereof, is located within a Child Safety Zone as defined in Subsection (c)(3) or if the residency is not in compliance with the original domicile restriction under Subsection (c)(4).
- (f) *Public Nuisance.* Any violation of this Chapter shall be deemed a public nuisance affecting peace and safety and the Town may proceed under Section 22-118 of the Code of Ordinances and/or Chapter 823 of the Wisconsin Statutes to abate the nuisance.
- (g) *Injunction for Violation of Residency Restrictions.* If a Designated Offender establishes a Permanent Residence or Temporary Residence in violation of subsection (c) above, the Code Enforcement Officer may refer the matter to the Town Attorney. The referral shall include a written determination by the Code Enforcement Officer that, upon all of the facts and circumstances and the purpose and intent of this Ordinance, such violation interferes substantially with the comfortable enjoyment of life, health, and safety of

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another or others. Upon such referral, the Town Attorney shall bring an action in the name of the Town in Circuit Court to permanently enjoin such residency as a public nuisance after review and approval by the Town Board.

- (h) *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.

Sec. 30-131. Loitering restrictions for sex offenders.

- (a) *Loitering.*

- (1) *Offense.* It shall be unlawful for any Designated Offender as defined in subsection 30-130(b)(3), to loiter or prowl within 200 feet of a Protected Location as defined under Sec. 30-130(b)(7) of this Code or other location where children regularly congregate; in a place, at a time, or a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a code enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the actor or other circumstances makes it impractical, a code enforcement officer shall, prior to any citation for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself, or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the code enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by the code enforcement officer at the time, would have dispelled the alarm.
- (2) *Exceptions.* The prohibitions set forth in subsection (a) 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.

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Sec. 30-132. Penalty.

- (a) A person who violates provisions of subsection 30-130 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 Town may also seek equitable relief to gain compliance.
- (b) Any person violating subsection 30-131 shall forfeit not less than \$500.00 and no more than \$1,000.00 for each violation. "

2. That this ordinance shall become effective upon adoption and publication as provided by law.

Adopted by the Town Board of the Town of Yorkville, Racine County, Wisconsin, this _____ day of April, 2015.

TOWN OF YORKVILLE

By: _____
Peter L. Hansen
Town Chairman

Attest: _____
Michael McKinney
Clerk-Treasurer