

ORDINANCE NO. 2017-01

AN ORDINANCE TO AMEND ARTICLE III OF CHAPTER 30 OF THE CODE OF ORDINANCES FOR THE TOWN OF YORKVILLE RELATING TO SEX OFFENDER RESTRICTIONS

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

1. That the Article III of Chapter 30 be, and hereby is, amended to read as follows:

“Article III. Sex Offender Restrictions

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

(a) Recitals.

(1) Whereas, after reviewing and discussing examples of sex offender residency restriction ordinances from several other Towns and Villages, including maps of prohibited locations for the residency of sex offenders corresponding to such ordinances, the locations of places where children are known to congregate in the Town and a power point presentation on Sex Offender Residency Restrictions, at four public meetings, the Town Board adopted the first version of this ordinance on November 14, 2011.

(2) Whereas, on June 9, 2014, the Town made a minor amendment to the ordinance to change the reference from law enforcement officer to code enforcement officer.

(3) Whereas, upon request by residents of the Town, the Town Board again reviewed additional materials related to the sex offender residency restrictions in this ordinance including information from the Racine County Sheriff's Department and the Wisconsin Department of Corrections on the Sex Offender regulations and the notification process, similar ordinances from municipalities in Southeastern Wisconsin, and locations where children congregate in the Town. The Town Board adopted revisions to this ordinance again on May 11, 2015 to address the concerns raised by its residents, including concerns about recidivism and the burden upon the Town from having too many sex offenders locate in the Town if they cannot locate in other municipalities, after having significant discussions at six public meetings and receiving input from members of the public, Sandy Cornell, a Sex Offender Registration Specialist

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from the Wisconsin Department of Corrections and Captain Daniel Adams of the Racine County Sheriff's Office

(4) Whereas, after receipt and review of an Order in the case of Hoffman, et al. v. Village of Pleasant Prairie, Case No. 16-CF-697-JPS from the United States District Court, Eastern District of Wisconsin, the Town Board determined that it would again review this ordinance in light of this most recent court decision and determined that additional revisions should be made to the ordinance.

(5) Whereas, on June 26, 2017, the Town held a public hearing on this ordinance after publication of a Notice of Public Hearing two times each in the Westine Report and the Racine Journal Times, both newspapers of general circulation within the Town.

(ba) Findings and intent. This Article III is a regulatory measure aimed at protecting the health and safety of children in the Town from the risk that convicted sex offenders may reoffend in locations close to their residences. The town board finds and declares 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 and the health of children. 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 and the community where they reside, while incalculable, clearly exorbitant. It is further believed that such persons present an alarmingly high risk of re-offending once released. As such, the Town hereby establishes regulations which restrict certain offenders from residing or congregating in areas that are at or near where there is a high concentration of children in order to provide better protection for children in the Town by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism.

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.

(cb) 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:

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- (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; § 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.

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- (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:
- 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. *Private Places* means a property owned by a private person or entity but open to the public to provide a service and where children regularly congregate, whether supervised or unsupervised. For example and to show the intent of this definition: the restaurant and facility named Apple Holler, 5006 S. Sylvania Avenue in the Town of Yorkville.
 - h. *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

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school, including, but not limited to, a Montessori school, a gymnastics academy, dance academy, or music school.

- i. *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.
- j. *Recreational Trail* means a trail where children regularly walk, ride bicycles, or ride horses, and that is dedicated to the public for recreational purposes.

~~(d)~~ *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. This one thousand (1,000) foot area is referred to herein as the “Child Safety Zone(s)”.
- (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.~~

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(45) *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.

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

- (1) The person established a Permanent Residence or Temporary Residence and reported and registered the residence ~~pursuant if required to under to~~ Wis. Stat. § 301.45, before the effective day of this ~~section~~ ordinance, that being December 3, 2011, the day after the date of publication of the adopted ordinance.
- (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 if required under 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 Crime Against Children in juvenile court and placed with a guardian or meets the definition of a Designated Offender 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;
 - d. The person had not attained the age of 19 at the time of the offense, was determined by the court to meet the criteria under Wis. Stat. § 301.45(1m)(a) and is not required to register pursuant to Wis. Stats. § 301.45 or § 301.46.
 - e. The residence is also the primary residence of the designated sex offender's parents or spouse, provided that such person

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established the residence at least one year before the designated sex offender established residence at the location.

f. The person has been released from sex offender registration requirements pursuant to Wis. Stats. § 301.45(5) or (5m).

(6) 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.

(fe) *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 (d)e(3) ~~or if the residency is not in compliance with the original domicile restriction under Subsection (c)(4).~~

(gf) *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.

(hg) *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 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.

(ih) *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.

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(j) Appeal for an exemption.

- (1) A designated offender may seek an exemption from this Sec. 30-130 by appealing to the sex offender residency board (the "Appeals Board").
- (2) The Appeals Board shall consist of three citizens and one alternate. For the initial appointments to the Appeals Board, the Town Board Chairman shall appoint three members to staggered terms of one, two or three years, subject to confirmation by the Town Board and one alternate for a term of three years. After the initial appointment of members to a term of one, two and three years respectively, the Town Board Chairman shall annually, between the last Monday of April and the first Monday of May, appoint one member for a term of three years and one alternate for a term of three years every third year, subject to confirmation by the Town Board. At the first meeting held of the Appeals Board after the first Monday of May of each year, the members of the Appeals Board shall vote by majority vote to select a chair for its meetings and appeals that come before it
- (3) The Appeals Board shall approve of an official appeal form. An offender shall complete this official form and submit it to the Town Clerk, who shall forward it to the Appeals Board. Notice in the form of an agenda shall be posted and/or published as required by law and provided to the Appeals Board, the property owner if not the applicant, and published on the Town's website at least seven days prior to the hearing date.
- (4) The Town elects not to be bound by Wis. Stat. Ch. 68 with respect to administrative procedure in the appeals process. The Appeals Board shall hold a hearing on each appeal to conduct an individual risk assessment in each case, during which the Appeals Board may review any pertinent information and may accept oral and written statements from any person. The Appeals Board shall consider the public interest as well as the applicant's presentation and concerns, giving the applicant a reasonable opportunity to be heard. The Appeals Board shall also consider any oral and written statements from any person at the hearing. The Appeals Board shall consider the specific facts and circumstances of each applicant and determine whether the applicant presents a threat to public safety if he or she resides at that proposed location. The Appeals Board shall consider factors which may include, but are not limited to, the following:
 - a. Circumstances surrounding the offense.
 - b. Relationship of offender and victim.
 - c. Presence or use of force.
 - d. Presence of enticement.
 - e. Need to protect victim or similarly situated individuals.
 - f. Current dangerousness of the offender.

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- g. Proximity in time from original offense.
- h. Any criminal offenses or rule violations committed since original offense.
- i. Time out of incarceration.
- j. Current supervision status by the Department of Corrections.
- k. Counseling and treatment history.
- l. Credibility of offender.
- m. Remorse.
- n. Proximity of proposed residence to a child safety zone.
- o. Support network of offender near proposed residence
- p. Alternative options for housing.

(5) The Appeals Board shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or be conditional to a certain address or period of time. In the case of an approval or denial, the Appeals Board shall provide a written copy of the decision containing the reasons therein for its decision to the Code Enforcement Officer assigned to the Town and to the applicant. The decision of the Appeals Board may be appealed to the Racine County Circuit Court by any aggrieved party.

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(~~cb~~)(3), to loiter or prowl within 200 feet of a Protected Location as defined under Sec. 30-130(~~cb~~)(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

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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 (1a) shall not apply where:

a. -The actor was a juvenile or ward 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.

b. The actor is on the property for a legitimate purpose, including but not limited to visits for employment, education, or health purposes, and the property owner has given prior written permission for the offender to be present on the property during such times and dates.

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.

Sec. 30-133 to 30-134. Reserved.”

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

3. Adopted by the Town Board of the Town of Yorkville, Racine County, Wisconsin, this _____ day of _____, 2017.

TOWN OF YORKVILLE

By: _____

Peter L. Hansen
Town Chairman

Attest: _____

Michael McKinney
Clerk-Treasurer