

Chapter 11
Orderly Conduct

11.41 – Residency Restrictions for Sexual Offenders

(Cr. #76-07)

SECTION I. Section 11.41 of the City of Waukesha Municipal Code is hereby created to read:

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,

Whereas, according to the US Department of Justice, Bureau of Justice Statistics, in 2001 there were approximately three hundred eighty-six thousand (386,000) convicted sex offenders registered in forty-nine (49) states and the District of Columbia, and

Whereas, according to a 1997 report prepared by the US Department of Justice titled “Sex Offenses and Offenders”, nearly two-thirds of victims of convicted rape and sexual assault offenders serving time in state prison were under the age of eighteen (18); the median age of victims of imprisoned sexual assault offenders was less than thirteen (13) years; the median age for rape victims was about twenty-two (22) years; an estimated twenty-four percent (24%) of those serving time for rape and nineteen percent (19%) of those serving time for sexual assault had been on probation or parole at the time of the offense, 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 Common Council has reviewed the findings of a number of states across the United States, including but not limited to Florida, Georgia, Alabama, Iowa and California, as they pertain to laws adopted which relate to impose restrictions on sex offenders with respect to residency, and

Whereas, the Common Council has reviewed the decision of the United States Court of Appeals for the 8th Circuit in *Doe v. Miller*, 405 F.3d 700, 716 (8th Circuit 2005), providing in part: “the record does not support a conclusion that the Iowa General Assembly and the

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Governor acted based merely on negative attitudes toward, fear of, or a bare desire to harm a politically unpopular group. [Citation omitted] Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the risk of reoffense. Even experts in the field could not predict with confidence whether a particular sex offender will reoffend, whether an offender convicted of an offense against a teenager will be among those who “cross over” to offend against a younger child, or the degree to which regular proximity to a place where children are located enhances the risk of reoffense against children. One expert in the district court opined that it is just “common sense” that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense. [Citation omitted] The policymakers of Iowa are entitled to employ such “common sense,” and we are not persuaded that the means selected to pursue the State’s legitimate interest are without rational basis.” and

Whereas, Sec. 62.11(5) Wis. Stats. authorizes the Common Council of the City of Waukesha to enact legislation for the health, safety and welfare of the public, and

Whereas, the General Charter Law as provided for in Sec. 62.04 Wis. Stats. is to be liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of such cities and the inhabitants thereof, and

NOW THEREFORE, the Common Council of the City of Waukesha do ordain as follows:

11.41 RESIDENCY RESTRICTIONS FOR SEXUAL OFFENDERS

(1) FINDINGS AND INTENT. The Common Council 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 Common Council to punish sex offenders, but rather to serve the City’s compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City of Waukesha 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.

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(2) DEFINITIONS.

For purposes of this section:

- (a) “Child” means a person under the age of eighteen (18) years.
- (b) “Sex offender” shall mean:
 - (i) any person who is required to register under Sec. 301.45 Wis. Stats. for any offense against a child or any person who is required to register under Sec. 301.45 Wis. Stats. and who is subject to the Special Bulletin Notification process set forth in Sec. 301.46(2) and (2m) Wis. Stats.;
 - (ii) any person subject to the sex crimes commitment provisions of Sec. 975.06 Wis. Stats.
 - (iii) any person found not guilty by reason of disease or mental defect placed on lifetime supervision under Sec. 971.17 (1j).
- (c) “Permanent residence” shall mean a place where a person abides, lodges or resides for fourteen (14) or more consecutive days.
- (d) “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.

(3) RESIDENCY RESTRICTION

- (a) (Am. #6-08) (Am. #19-11) 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 seven hundred fifty (750) feet of any private or public school, recreational trail, playground or park where children regularly gather; licensed day care center as defined in Sec. 48.65 Wis. Stats. or group home as defined in Sec. 48.02(7).
- (b) Map of restricted locations. The city clerk shall maintain an official map showing prohibited locations as defined by this section. The city 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.

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(4) **RESIDENCY RESTRICTION EXCEPTIONS.** A sex offender residing within a prohibited area as described in (3)(a) does not commit a violation of this section if any of the following apply:

- (a) The person established a permanent residence or temporary residence and reported and registered the residence pursuant to Sec. 301.45 Wis. Stats., before the effective day of this section.
- (b) The person was under seventeen (17) years of age and is not required to register under Sec. 301.45 or 301.46, Wis. Stats.
- (c) (Am. #6-08) The school, recreational trail, playground, park, or licensed day care center, or group home, where children regularly gather within seven hundred fifty (750) feet of the person'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 Sec. 301.45 Wis. Stats.
- (d) The person is required to serve a sentence at a jail, juvenile facility or other correctional institution or facility.
- (e) The person is a minor or ward under guardianship.

(5) **ORIGINAL DOMICILE RESTRICTION** (Recr. # 6-11) In addition to the residency restrictions set forth herein and subject to (4) above, no sex offender shall be permitted to reside in the City of Waukesha unless such person was domiciled in the City of Waukesha at the time of the most recent offense resulting in the person's most recent conviction, commitment or placement as a sex offender as set forth in (2)(b)(i), (ii) and (iii) above. "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.

(6) **LOITERING.** (Ren. #6-11)

- (a) (Am. #6-08) It shall be unlawful for any sex offender as designated in (2)(b) above, to loiter or prowl at any school or school property; recreational trail, playground or park; within 200 feet of a licensed day care center or group home; 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 law enforcement officer, refuses to identify himself or herself or manifestly endeavors to conceal

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himself or herself or any object. Unless flight by the actor or other circumstances makes it impractical, a law enforcement officer shall prior to any arrest 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 law 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 law enforcement officer at the time, would have dispelled the alarm.

- (b) **EXCEPTIONS.** The prohibitions set forth in (a) above 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.

(7) (Am. #6-08) (Ren. #6-11) **MEASUREMENT OF DISTANCE.** For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a private or public school, recreational trail, playground or park where children regularly gather or licensed day care center or licensed group foster home.

(8) **PENALTY.** (Ren. #6-11) (Am. #6-11)

- (a) A person who violates provisions of sub. (3) and (5) 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 City may also seek equitable relief to gain compliance.
- (b) Any person violating sub. (6) of this section shall forfeit not less than \$1,000.00 and no more than \$2,000.00 for each violation.

(9) **SEVERABILITY.** (Ren. #6-11) The provisions of this ordinance shall be deemed severable and it is expressly declared that the Common Council 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.