

11.41 Residency Restrictions for Sex Offenders. (Cr. #76-07)

- (1) **Findings and Intent.** The Common Council finds that repeat Sex Offenders who use physical violence, and Sex Offenders who prey on children, are persons who present an extreme threat to public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses. Most Sex Offenders commit many offenses, have many more victims than are reported, and are prosecuted for only a fraction of their crimes. This makes the cost of Sex Offender victimization to society great, and justifies efforts to protect the public from it.

Due to the high rate of recidivism for Sex Offenders, and because reducing both opportunity and temptation helps minimize the risk of re-offense, there is a compelling need to protect children where they congregate or play in public places.

It is not the intent of the Common Council to punish Sex Offenders, but rather to protect the safety and welfare of its citizens by creating zones around places where children regularly congregate where certain Sex Offenders are prohibited from establishing residence.

- (2) **Definitions.** For purposes of this section:

- (a) Child means a person under the age of 18 years.
- (b) Child Safety Zone means an area within 1500 feet of any private or public school, recreational trail, playground, park, child care center licensed pursuant to Wis. Stats. §48.65, or group home as defined in Wis. Stats. §48.02(7), within the City of Waukesha.
- (c) Domicile means an individual's single, fixed and permanent home where the individual intends to remain permanently and indefinitely, and to which, whenever absent, the individual intends to return. An individual's Domicile and Residence may be, but need not be, identical.
- (d) Residence means a place where a person resides or dwells, or is used by a person as the primary location for basic life functions such as sleeping or eating; whether short- or long-term but for an aggregate of 14 or more days in any one-year period; regardless of the person's Domicile.
- (e) Section means this Municipal Code §11.41.
- (f) Sex Offender, for purposes of this Section, means:
 - (i) Any person who is required to register under Wis. Stats. §301.45 for any offense against a Child.
 - (ii) Any person who is required to register under Wis. Stats. §301.45 and who is the subject of a Special Bulletin Notification issued pursuant to Wis. Stats. §301.46(2m).

Note: This includes offenders in an intensive-sanctions program, not just offenders against children.

- (iii) Any person committed to the state Department of Health Services for specialized treatment pursuant to Wis. Stats. §975.06.
- (iv) Any person placed on lifetime supervision by the state Department of Corrections pursuant to Wis. Stats. §939.615 or §971.17(1j).

(3) Residence Restriction, Exceptions. No Sex Offender shall establish or maintain a Residence within a Child Safety Zone, except under the following circumstances:

- (a) It is specifically ordered that the Sex Offender reside within a Child Safety Zone by a court having competent jurisdiction.
- (b) The Sex Offender established the Residence within 750 feet of a private or public school, recreational trail, playground or park where children regularly gather, licensed day care center as defined in Wis. Stats. §48.65, or group home as defined in Wis. Stats. §48.02(7), reported and registered the Residence pursuant to Wis. Stats. §301.45, before December 22, 2011, and has continuously maintained that Residence without interruption until [insert the effective date of this Section].
- (c) The Sex Offender established the Residence between 750 feet and 1500 feet of a private or public school, recreational trail, playground or park where children regularly gather, licensed day care center as defined in Wis. Stats. §48.65, or group home as defined in Wis. Stats. §48.02(7), reported and registered the Residence pursuant to Wis. Stats. §301.45, on or after December 22, 2011, and has continuously maintained that Residence without interruption until [insert the effective date of this Section].
- (d) The person is excepted from sex-offender registration pursuant to Wis. Stats. §301.45(1m).

Note: This exemption is for offenses involving consenting minors, the “Romeo and Juliet” exemption.

- (e) The private or public school, recreational trail, playground, park, child care center, or group home around which a Child Safety Zone exists first existed after the Sex Offender established Residence and reported and registered the Residence pursuant to Wis. Stats. §301.45. (Am. #6-08)
- (f) The Sex Offender’s Residence is within a jail, juvenile facility or other correctional facility at which the Sex Offender is serving a court-ordered sentence.
- (g) The Sex Offender is a minor or ward under guardianship.

(4) Sex Offenders Subject to Chapter 980. A Sex Offender that has been adjudicated a sexually violent person pursuant to Wisconsin Statutes Chapter 980 shall not be in violation of subsection (3) if the Sex Offender is subject to supervised release under Chapter 980, the Sex Offender is residing where he or she is ordered to reside under Wis. Stats. §980.08, and the Sex Offender is in compliance with all court orders issued under Chapter 980.

Note: Local laws are pre-empted by state law in the case of sexually-violent persons. State law provides a 1500-foot residency restriction for those persons.

(5) **Original Domicile Restriction.** No Sex Offender shall establish or maintain a Residence within the City of Waukesha unless the Sex Offender maintained Domicile in the City of Waukesha at the time of the most-recent Sex Offense resulting in conviction, commitment or placement as a Sex Offender as set forth in subsection (2)(f). (Recr. # 6-11)

(6) **Loitering Prohibition, Exception.** (Renum. #6-11)

(a) No Sex Offender shall loiter or prowl within a Child Safety Zone, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant alarm for the safety of persons 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 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. (Am. #6-08)

Note: This is identical to the general loitering ordinance, §11.05, except that it applies to Sex Offenders within Child Safety Zones.

(b) **Exception.** The prohibition in subsection (6)(a) shall not apply where the Sex Offender is a minor or ward accompanied by a parent or adult guardian having the Sex Offender's care, custody or control.

(7) **Measurement of Distances.** 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 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. (Am. #6-08) (Renum. #6-11)

(8) **Map of Child Safety Zone.** The City Clerk shall maintain an official map showing the Child Safety Zone defined in subsection (2)(b), and shall update the map at least annually to reflect any changes.

(9) **Penalty.** (Renum. #6-11) (Am. #6-11)

(a) A person who violates provisions of subsections (3) and (4) 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 subsection (6) of this section shall forfeit not less than \$1,000.00 and no more than \$2,000.00 for each violation.

(10) Severability. The provisions of this Section shall be deemed severable, and it is the expressed intent of the Common Council that the ordinance creating this Section would have been passed regardless of whether or not one or more provisions may be declared invalid. If any provision of this Section or the application of this Section to any person or under any circumstance is held invalid, the remainder of this Section shall be severed and remain in effect and enforceable. (Renum. #6-11)

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