

City of Waukesha, Wisconsin

Ordinance No. _____-17

**An Ordinance Amending Section 11.41 of the Waukesha Municipal Code,
Regarding Sex Offender Residence Restrictions**

Whereas the Common Council of the City of Waukesha had created Section 11.41 of the Waukesha Municipal Code in 2007, by Ordinance 76-07, to protect the safety and welfare of its citizens by creating zones around places where children regularly gather in which sex offenders are prohibited from establishing residence, and

Whereas the United States District Court for the Eastern District of Wisconsin issued an Order on April 17, 2017, in the case titled *Hoffman v. Village of Pleasant Prairie*, which contained holdings that directly impact the terms of Municipal Code §11.41 and make it necessary to amend the terms of §11.41 to comply with the District Court's holdings.

Now, therefore, the Common Council of the City of Waukesha do ordain as follows:

Section 1. Section 11.41 of the Waukesha Municipal Code is amended to read in its entirety as follows:

11.41 Residence 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 a serious threat to public safety. Sex Offenders are extremely likely to use physical violence when they offend. Many Sex Offenders commit multiple offenses, have 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.

Because reducing both opportunity and temptation will minimize the risk of re-offense for those Sex Offenders who will re-commit sex offenses against children, there is a compelling need to separate Sex Offenders from places where children congregate or play in public places.

It is the intent of the Common Council to protect the safety and welfare of its citizens by creating zones around places where children regularly gather, in which certain Sex Offenders are prohibited from establishing Residence. It is not the intent of the Common Council to impose additional punishment on Sex Offenders.

(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 750 feet of any private or public school, recreational trail, playground, park having a children's playground, park having athletic facilities used by persons younger than 18 years of age, 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)** 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.
- (d)** Section means this Municipal Code §11.41.
- (e)** 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).
 - (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 circuit court having competent jurisdiction.
- (b)** The Sex Offender established the Residence within 750 feet of a private or public school, recreational trail, playground, park having a children's playground, park having athletic facilities used by persons younger than 18 years of age, 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 12, 2007, and has continuously maintained that Residence since then. Interruptions of Residence for the following reasons shall not be deemed to disqualify continuous maintenance of Residence:
 - (i)** Incarceration in a Wisconsin correctional facility.
 - (ii)** Participation in programs as required by the Wisconsin Department of Corrections.

- (iii) Participation in activities as required by the federal or state government, or a federal or state court.
 - (iv) Interruptions of no longer than 180 days, for any reason.
 - (c) The person is excepted from sex-offender registration pursuant to Wis. Stats. §301.45(1m).
 - (d) The private or public school, recreational trail, playground, park having a children's playground, park having athletic facilities used by persons younger than 18 years of age, 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)
 - (e) 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.
 - (f) The Sex Offender is a minor or ward under guardianship and is residing with his or her parent or guardian.
- (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.
- (5) **Measurement of Distances.** The boundaries of the Child Safety Zone shall be determined by measuring from the outer property boundary of private or public schools, recreational trails, playgrounds, parks having a children's playground, parks having athletic facilities used by persons younger than 18 years of age, child care centers, or group homes, as defined in subsection (2)(b), along the shortest line to the outer property boundary of a Sex Offender's Residence. If any portion of a property is within a Child Safety Zone, then the entire property shall be deemed within the Child Safety Zone. (Am. #6-08) (Renum. #6-11)
- (6) **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.
- (7) **Penalty.** (Renum. #6-11) (Am. #6-11) A person who violates provisions of subsection (3) 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.
- (8) **Severability.** It is the express intent of the Common Council that the provisions of this Section are severable, and that if any part of this Section is held invalid by a court having competent jurisdiction, then that invalid part shall be severed and the remainder shall remain in effect and enforceable. (Renum. #6-11)

Section 2. This Ordinance shall be effective immediately upon its publication.

Passed the _____ day of June, 2017.

Shawn N. Reilly, Mayor

Attest: Gina L. Kozlik, City Clerk

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