

Summary of Proposed Changes

This Ordinance amends Section 46-43 to clarify the measurement of the 100-foot radius around Child Safety Zones and creates Section 46-45 that limits the location of a transitional living facility to within a specified distance of Child Safety Zones and limits placement of registered sex offenders to those individuals that resided in the City at the time of their conviction.

ORDINANCE NO. 18-006

ORDINANCE RELATIVE TO MISCELLANEOUS OFFENSES

SECTION I

The following section shall be amended as follows:

Chapter 46, Article II, Offenses Against Public Safety and Peace

Sec. 46-43. – Child Safety Zones.

- (e) *Restriction on loitering.* No designated offender shall loiter within a 100-foot radius of 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 or property in the vicinity. The distance shall be measured from the location of the offender to the closest boundary line of the real property that supports or upon which there exists a child safety zone.

All other sections shall remain as previously adopted.

SECTION II

The following section shall be repealed and recreated as follows:

Section 46-45. – Residency Restrictions for Sex Offenders.

(a) *Findings and Intent.*

- (1) The common council finds that sex offenders who prey on children are sex predators who present an extreme threat to the public safety. Many sex offenders commit numerous offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society, while incalculable, clearly exorbitant.
- (2) The common council finds the risk of recidivism increases if the sex offender recently offended and if the sex offender does not have a strong social network, including community and familial ties. The common council is aware of many studies and reports concerning recidivism of sex offenders and the effectiveness of sex offender residency restrictions, as well as court decisions regarding residency restrictions. The common council acknowledges that literature on the subject includes some studies that support the practice of sex offender residency restrictions and others that are critical of the practice. The common council also recognizes its obligation to provide a location for sex offenders to successfully re-integrate into the community.

- (3) The common council is also aware that absent a domicile clause, the city would have open doors for non-resident sex offender residency when other communities have closed doors, inviting a substantial increase in child sex offender placements, with the related adverse impacts on the health, safety and welfare of the city and its residents.
- (4) It is the intent of this section to enact a regulatory scheme that is civil and non-punitive in order to serve the city's compelling interest to promote, protect, and improve the health, safety and welfare of the citizens of the city. As such, the city hereby establishes regulations which restrict certain offenders from residing 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 city by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism.
- (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 a person under the age of eighteen (18) for purposes of this chapter.
- (2) "Designated offender" means any person who is required to register under Section 301.45, Wisconsin Statutes, for any offense against a child. This definition does not include a person who is released under Section 980.08, Wisconsin Statutes, so long as the person is subject to supervised release under Chapter 980, Wisconsin Statutes, the person is residing where he or she is ordered to reside under Section 980.08, Wisconsin Statutes, and the individual is in compliance with all court orders issued under Chapter 980, Wisconsin Statutes.
- (3) "Minor" means a person under the age of seventeen (17) .
- (4) "Permanent residence" means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.
- (5) "Protected location" means any athletic fields, day care center, library, park, private places, playground, recreational trail, school property, and swimming pool, or any other place designated in the map adopted by the city under Section (c)(2)(b) of this section 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 Section 48.65, Wisconsin Statutes, to provide care and supervision of children and includes "before- and after-school daycare," which has the meaning as defined by Section 120.125(1), Wisconsin Statutes.
 - 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, splash pad, skate park 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. "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.
 - f. "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.
 - g. "School property" means any public school as defined by Section 115.01(1), Wisconsin Statutes; a private school as defined by Section 115.001(3), Wisconsin Statutes; a charter school as defined by Section 115.001(1), Wisconsin Statutes; 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.
 - i. "Recreational trail" means a trail where children regularly walk, ride bicycles, or ride horses, and that is dedicated to the public for recreational purposes.
- (6) "Temporary residence" means 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 address or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

(c) Sexual Offender and Sexual Predator Residency Prohibitions; Penalties; Exceptions.

- (1) *Prohibited Location of Residence.* It is unlawful for any designated offender to establish a permanent residence or temporary residence within five hundred (500) feet of any protected location.
- (2) *Measurement of Distance.*
 - a. For 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 protected location.
 - b. The city clerk shall maintain an official map showing prohibited locations as defined by this chapter. The 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.
- (3) *Original Domicile Residency Restriction.* A designated offender shall not establish a residence within the city, unless the person was domiciled in the city at the time of the offense resulting in the person's most recent conviction for committing the offense that is within the definition of a designated offender.
- (4) *Penalties.* A person who violates this section shall be punished by a forfeiture not exceeding five hundred dollars (\$500.00). Each day a person violates this chapter constitutes a separate violation. The city may also seek equitable relief.
- (5) *Exceptions.* A designated offender residing within a prohibited area as described in subsection (c)(1), or within the city as specified in subsection (c)(3), does not commit a violation of this section if any of the following applies:
 - a. The person established the permanent residence and reported and registered the residence pursuant to Section 301.45, Wisconsin Statutes, before the effective date of this chapter.
 - b. The person is a minor and is not required to register under Section 301.45 or 301.46, Wisconsin Statutes.
 - c. The protected location within five hundred (500) feet of the person's permanent residence was opened after the person established the permanent residence and reported and registered the residence pursuant to Section 301.45, Wisconsin Statutes.
 - d. The residence is also the primary residence of the person's child, grandparent, guardian, parent, sibling, spouse or domestic partner provided that such child, grandparent, guardian, parent, sibling, spouse or domestic partner established the

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

- e. In such cases involving a juvenile placed in accordance with this exception, when the juvenile turns eighteen (18) years of age, the juvenile would be allowed to continue to reside at the already established residence.
 - f. The residence is a mental health facility or a jail, juvenile facility, prison or other correctional institution where the person is required to serve a sentence..
 - g. The residence is a hospital or treatment facility.
 - h. The person is a designated offender that has been adjudicated a sexually violent person pursuant to Chapter 980, Wisconsin Statutes, if the designated offender is subject to supervised release under Chapter 980, Wisconsin Statutes, the designated offender is residing where he or she is ordered to reside under Section 980.08, Wisconsin Statutes, and the sex offender is in compliance with all court orders issued under Chapter 980, Wisconsin Statutes.
- (6) *Special Exceptions.* A designated offender who is prohibited from residing within a prohibited area as described in subsection (c)(1), or within the city as specified in subsection (c)(3), may request a special exception to such residency prohibition by filing a written request with the City Clerk. The request shall include a justification for the special exception and must include evidence of why the regulations of this ordinance should not strictly apply to the designated offender. Such evidence may include written recommendations from the offender's probation/parole agent or sex offender registry specialist.

The special exception request shall be reviewed by the Portage Police Department, who shall provide a recommendation as soon as practical but no later than 45 days from receipt of the special exemption request. The special exception request and recommendation from the Portage Police Department should also include a recommendation, if possible, from an individual or organization with experience and credentialing in the treatment and placement of sexual offenders and shall be considered by the Legislative and Regulatory Committee at its next regularly scheduled meeting. At the meeting, the Committee shall review all written materials and shall provide the designated offender with an opportunity to make a statement to the Committee in support of the special exception request. The Portage Police Department may be present to answer questions from the Committee concerning the special exception request and the Police Department's recommendation on the special exception request.

- (a) The Legislative and Regulatory Committee shall consider the following criteria in reaching a decision on whether to grant a special exception, the following criteria includes, but is not limited to:

1. The designated offender's history, including all convictions, read-ins, juvenile adjudications, behavior admitted by offender, and documented behavior from professional sources. This shall include analysis of the use of weapons, degree of force, degree of contact, age/vulnerability of victim(s), duration of sexual offense history, total number of sexual offense victims, non-sexual felony criminal convictions, responsibility for sexual offense and response to offense-related programming or treatment.

The designated offender's stability, including residential support, employment, and historical and proposed living arrangements.

- (b) The Legislative and Regulatory Committee may convene a portion of the meeting in closed session, under Wis. Stat. 19.85(1)(f), if it is determined that specific information discussed during the meeting would be likely to have a substantial adverse effect upon the reputation of the designated offender, victims or other individuals.

Such decision on the special exception request by the Legislative and Regulatory Committee shall be final.

The remaining sections shall be renumbered and remain as previously adopted.

Passed this 27th day of September, 2018.

Rick Dodd, Mayor

Attest:

Marie A. Moe, WCPC, MMC, City Clerk

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Second reading: 09/27/18

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Legislative and Regulatory Committee

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