

**ORDINANCE REPEALING AND
RECREATING CHAPTER 9.34 -
SEXUAL OFFENDER RESIDENCY
RESTRICTIONS**

Presented: January 16, 2017

Adopted: January 16, 2017

Ordinance No.: #715

ORDINANCE

The Common Council of the City of Sun Prairie, Dane County, Wisconsin, hereby ordains as follows:

SECTION 1. That Chapter 9.34 is hereby repealed and recreated as follows: (Additions are noted by underline, deletions are noted by ~~overstrike~~.)

9.34.010 - Sexual offender residency restrictions.

1. Recitals.

a. Whereas, after review of existing case law and sex offender restriction ordinances from other Cities and maps of locations where children are known to congregate, the City adopted Sex Offender Residency Restrictions by ordinance on October 7, 2008.

b. Whereas, upon recent review of an order and published opinion in the case of Hoffman, et al. v. Village of Pleasant Prairie, Case No. 16-CF-697-JES from the United States District Court, Eastern District of Wisconsin, the City recommended review of this ordinance in light of this most recent court decision and determined that additional revisions should be made to the ordinance.

c. Whereas, on December 19, 2017, the Sun Prairie Committee of the Whole held a meeting open to the public and reviewed and discussed the ordinance as well as the following written materials:

1. "Recidivism of Adult Sexual Offenders." U. S. Department of Justice, July 2015, SOMAPI (Sex Offender Management Assessment and Planning Initiative); and

"An Overview of Sex Offender Management." July 2002, U.S. Department of Justice, SCOM Center for Sex Offender Management; and

3. "There Goes the Neighborhood? Estimate of the Impact of Crime Risk on Property Values from Megan's Laws." May 2006, National Bureau of Economic Research; and

4. Order and Opinion of the Honorable J.P. Stadtmueller of the United States District Court, Eastern District of Wisconsin, Hoffman, et al. v. Village of Pleasant Prairie, Case No. 16-CF-697-JPS.

5. Official map showing prohibited locations as defined by this chapter.

A. Findings and intent.

1. Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators 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.

2. It is the intent of this ordinance to serve the City's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from loitering or establishing temporary or permanent residence.

3. This Chapter is a regulatory measure aimed at protecting the health and safety of children in the City from the risk that convicted sex offenders may reoffend in locations close to their residences. The City 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 City 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 City by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism.

4. It is not the intent of the City 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 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 re-offense, there is a compelling need to protect children where they congregate or play in public places.

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:

"Child" or "Children" means a person under the age of ~~sixteen (16)~~ eighteen (18) for purposes of this chapter.

"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.

"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; and (3) is or was required to register under Section 301.45, Wisconsin Statutes, for any sexual offense against a child or any person who is required to register under Section 301.45, Wisconsin Statutes, and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Section 301.46(2) and (2m), Wisconsin Statutes.~~

"Loitering" means, whether in a group, crowd, or as an individual, to stand idly about, loaf, prowl, congregate, wander, stand, linger aimlessly, proceed slowly or with many stops, to delay or dawdle.

"Minor" means a person under the age of seventeen (17).

"Permanent residence" means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.

"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)(3)(b) of this Chapter as a place where children are known to congregate. The defined terms included in the definition of Protected Location are:

1. "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.

"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).

3. "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.

4. "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.

5. "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.

6. "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 facility named Prairie Athletic Club.

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

8. "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.

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

"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, Loitering and Other Activities, Prohibitions; Penalties; Exceptions.

1. Prohibited Location of Residence. It is unlawful for any designated offender to establish a permanent residence or temporary residence within ~~one thousand five hundred (1,500)~~ five hundred (500) feet of any school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the city as a place where children are known to congregate protected location.

Prohibited Activity.

a. Loitering. It is unlawful for any designated offender to loiter within ~~one thousand five hundred (1,500)~~ five hundred feet of any school, licensed day care center, park, trail, playground, place of worship or any other place designated by the city as a place where children are known to congregate protected location.

b. Holiday Parties. It is unlawful for any designated offender to participate in a holiday event involving children under eighteen (18) years of age, such as but not limited to distributing candy or other items to children on Halloween, wearing a Santa Claus costume or wearing an Easter Bunny costume or any costume resembling a character known to be popular among children. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this paragraph. Participation is to be defined as actively taking part in the event.

3 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 school, licensed day care center, park, trail, playground, private places, or any other place designated by the city where children are known to congregate 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.

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 2.a. does not commit a violation of this section if any of the following ~~apply~~ applies:

a. The person established the permanent residence ~~or temporary 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 school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the city as a place where children are known to congregate protected location within ~~one thousand five hundred (1,500)~~ five hundred (500) feet of the person's permanent residence was opened after the person established the permanent residence ~~or temporary 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 ~~parents, grandparents, siblings, spouse, or children~~ domestic partner provided that such ~~parent, grandparent, sibling, spouse or child~~ domestic partner established the residence at least ~~two years~~ 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 person is a Designated Offender that has been adjudicated a sexually violent person pursuant to Wisconsin Statutes Chapter 980 if the Designated Offender is subject to supervised release under Wisconsin Statutes Chapter 980, the Designated Offender is residing where he or she is ordered to reside under Wis. Stat. §980.08, and the Sex Offender is in compliance with all court orders issued under Wisconsin Statutes Chapter 980.

D. Property Owners Prohibited from Renting Real Property to Certain Sexual Offenders and Sexual Predators; Penalties.

1. It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to this ordinance, if such place, structure, or part thereof, trailer or other conveyance, is within ~~one thousand five hundred (1,500)~~ five hundred (500) feet of any school, ~~licensed day care center, park, trail, playground, place of worship, or any other place designated by the city as a place where children are known to congregate~~ protected location.

2. A property owner's failure to comply with provision of this section shall constitute a violation of this section, and shall subject the property owner to the penalties provided in subsection 4.

E. Appeal.

~~1. Sun Prairie Common Council. The above requirements may be waived upon approval of the mayor and the Sun Prairie Common Council through appeal by the affected party. Such appeal shall be made to the city clerk's office, who shall forward the request to the mayor and common council president, which shall receive reports from the police department on such appeal. The mayor and common council shall convene and consider the public interest as well as the affected party's presentation and concerns. After deliberation, the mayor and common council shall forward its decision in writing to the police department for their information and action. A written copy of the decision shall be provided to the affected party.~~

1. A designated offender may seek an exemption from this Chapter 9.34 by appealing to the sex offender residency board (the "Appeals Board").

The Appeals Board shall consist of three citizens and one alternate. For the initial appointments to the Appeals Board, the Mayor shall appoint three members to staggered terms of one, two or three years, subject to confirmation by the City Council 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 Mayor 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 City Council. 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 City 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 City's website at least seven days prior to the hearing date.

4. 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, emailed, and written statements from any person at the hearing or received in advance of 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.
- 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 Sun Prairie Police Department and City Clerk and to the applicant. The decision of the Appeals Board may be appealed to the Dane County Circuit Court by any aggrieved party within 30 days of receipt of the final decision. The review shall be a review by certiorari and the Circuit Court may affirm or reverse the final decision, or remand to the decision maker for further proceedings consistent with the Court's decision.

F. Severability. The provisions of this chapter 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 provisions of this chapter or the application to any person or circumstance is held invalid, the reminder of the chapter or the application of such other provisions to other persons or circumstances shall not be affected.

SECTION 2. Effective Date. This Ordinance shall become effective upon passage and publication as provided by law.

APPROVED: _____
Paul T. Esser, Mayor

Date Approved: January 16, 2017

Date Signed: January ____, 2017

This is to certify that the foregoing Ordinance was adopted by the Common Council of the City of Sun Prairie at a meeting held on the 16th day of January, 2017, and was submitted for signatures on the 17th day of January, 2017.

Elena Hilby, City Clerk