

ORDINANCE NO. 14-07

AN ORDINANCE CREATING Chapter 21, Sections 1- 9, OF THE GENERAL ORDINANCES OF THE CITY OF ELKHORN, WALWORTH COUNTY, WISCONSIN RELATING TO SEXUAL OFFENDER RESIDENCY RESTRICTIONS

WHEREAS, the Wisconsin State Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community; and

WHEREAS, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically, at Sec. 980.08, Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

WHEREAS, the City of Elkhorn Common Council places a high priority on maintaining public safety through highly skilled and trained law enforcement as well as dependency upon laws that deter and punish criminal behavior; and

WHEREAS, sex offenders have very high recidivism rates, and according to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend and prey on the most innocent members of our society, and more than two-thirds of the victims of rape and sexual assault are under the age of 18 and sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon; and

WHEREAS, the City of Elkhorn Common Council having also reviewed the decision of the United States Court of Appeals for the 8th Circuit, in *Doe v. Miller*, 405 F.3d 700 (8th Circuit 2005), which provides in part: "The record does not support a conclusion that the Iowa General Assembly and the 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 the opportunity and temptation is important to minimizing the risk of re-offense. 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 re-offense 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, the City of Elkhorn Common Council has considered those submissions and presentations made to the State of Wisconsin Legislative Council Special Committee on Placement of Sex Offenders at the State Capitol in Madison, Wisconsin at its meeting on November 30, 2006; and

WHEREAS, the Common Council having considered the community's responsibility to provide residency for sexual offenders, but also restrictions on that residence to further protect children, and upon all of the records, files, reports and proceedings pertaining to the subject matter, and all of the prior actions and experience of the City of Elkhorn in protecting the community from sexually violent persons, finds this ordinance will serve to protect the health, safety and welfare of the community.

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

SECTION 1: Chapter 21 of the Municipal Code of the City of Elkhorn, Wisconsin, is hereby created to read as follows:

"Chapter 21

SEX OFFENDER RESIDING WITHIN 2,000 FEET OF SCHOOLS, DAYCARE CENTERS, PARKS AND OTHER SPECIFIED FACILITIES AND USES PROHIBITED; CHILD SAFETY ZONES

- Chapter 21-1. Purpose.
- Chapter 21-2. Definitions.
- Chapter 21-3. Residency restrictions.
- Chapter 21-4. Residency restriction exceptions.
- Chapter 21-5. Original domicile restriction.
- Chapter 21-6 Child safety zones.
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- Chapter 21-8 Violations.
- Chapter 21-9 Appeal for Exemption
- Chapter 21-10 Severability

Chapter 21-1. Purpose

This chapter is a regulatory measure aimed at protecting the health and safety of children in Elkhorn from the risk that convicted sex offenders may reoffend in locations close to their residences. The City finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault. Given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools, day-care centers and other places

children frequent. The City finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.
Chapter 21-2. Definitions

As used in this Chapter and unless the context otherwise requires:

- A. A "sexually violent offense" shall have the meaning as set forth in §980.01(6), Wis. Stats. as amended from time to time.

- B. A "crime against children" shall mean any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or the federal government, having like elements necessary for conviction, respectively:
 - (1) §940.225(1) First Degree Sexual Assault;
 - (2) §940.225(2) Second Degree Sexual Assault;
 - (3) §940.225(3) Third Degree Sexual Assault;
 - (4) §940.22(2) Sexual Exploitation by Therapist;
 - (5) §940.30 False Imprisonment-victim was minor and not the offender's child;
 - (6) §940.31 Kidnapping-victim was minor and not the offender's child;
 - (7) §944.01 Rape (prior statute);
 - (8) §944.10 Sexual Intercourse with a Child (prior statute);
 - (9) §944.06 Incest;
 - (10) §944.11 Indecent Behavior with a Child (prior statute);
 - (11) §944.12 Enticing Child for Immoral Purposes (prior statute);
 - (12) §948.02(1) and (2) First and Second Degree Sexual Assault of a Child;
 - (13) §948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child;
 - (14) §948.05 Sexual Exploitation of a Child;
 - (15) §948.055 Causing a Child to View or Listen to Sexual Activity;
 - (16) §948.06 Incest with a Child;
 - (17) §948.07 Child Enticement;
 - (18) §948.075 Use of a Computer to Facilitate a Child Sex Crime;
 - (19) §948.08 Soliciting a Child for Prostitution;
 - (20) §948.095 Sexual Assault of a Student by School Instructional Staff;
 - (21) §948.11(2)(a) or (am) Exposing Child to Harmful Material-felony section;
 - (22) §948.12 Possession of Child Pornography;
 - (23) §948.30 Abduction of Another's Child;
 - (24) §971.17 Not Guilty by Reason of Mental Disease-of an included offense;
 - and
 - (25) §975.06 Sex Crimes Law Commitment

- C. "Person" means a person who has been convicted of or has been found delinquent of or has been found not guilty by reason of disease or mental defect of a sexually violent offense and/ or a crime against children.

- D. "Residence" ("reside") means the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

Chapter 21-3. Residency Restriction

A person shall not reside within two thousand feet of the real property comprising any of the following:

- A. Any facility for children (which means a public or private school, a group home, as defined in §48.02 (7), Wis. Stats., a residential care center for children and youth, as defined in §48.02 (15d), Wis. Stats., a shelter care facility, as defined in §48.02 (17), Wis. Stats., a foster home, as defined in §48.02 (6), Wis. Stats., a day care center licensed under §48.65, Wis. Stats., a day care program established under §120.13 (14), Wis. Stats., a day care provider certified under §48.651, Wis. Stats., or a youth center, as defined in §961.01 (22), Wis. Stats.; and/or
- B. Any facility used for:
- (1) a public park or park facility;
 - (2) a public swimming pool;
 - (3) a public library;
 - (4) a recreational trail;
 - (5) a public playground;
 - (6) a school for children;
 - (7) athletic field used by children;
 - (8) a movie theatre;
 - (9) a daycare center;
 - (10) a ski hill open to the public;
 - (11) any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
 - (12) a public or private golf course or range; and
 - (13) aquatic facilities open to the public.

The distance shall be measured from the closest boundary line of the real property supporting the residence of a person to the closest real property boundary line of the applicable above enumerated use(s). A map depicting the above enumerated uses and the resulting residency restriction distances, as amended from time to time, is on file in the Office of the City Clerk for public inspection.

Chapter 21-4. Residency restriction exceptions.

A person residing within two thousand feet of the real property comprising any of the uses enumerated in Chapter 21-3 above, does not commit a violation of this Chapter if any of the following apply:

- A. During a person's incarceration, if the person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
- B. The person has established a residence prior to the effective date of this Chapter which is within two thousand feet of any of the uses enumerated in Chapter 21-3 above, or such enumerated use is newly established after such effective date and it is located within such two thousand feet of a residence of a person which was established prior to the effective date of this Chapter.
- C. The person is a minor or ward under guardianship.

Chapter 21-5. Original domicile restriction.

In addition to and notwithstanding the foregoing, but subject to Chapter 21-4 above, no person and no individual who has been convicted of a sexually violent offense and/or a crime against children, shall be permitted to reside in the City of Elkhorn, unless such person was domiciled in the City of Elkhorn at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime against children.

Chapter 21-6. Child safety zones.

No person shall enter or be present upon any real property upon which there exists any facility used for or which supports a use of:

- (1) a public park, parkland, park facility;
- (2) a public swimming pool;
- (3) a public library;
- (4) a recreational trail;
- (5) a public playground;
- (6) a school for children;
- (7) athletic field used by children;
- (8) a movie theatre;
- (9) a daycare center;
- (10) a ski hill open to the public;
- (11) any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
- (12) a public or private golf course or range; and
- (13) aquatic facilities open to the public.
- (14) any facilities for children (which means a public or private school, a group home, as defined in §48.02 (7), Wis. Stats., a residential care center for children and youth, as defined in §48.02 (15d), Wis. Stats., a shelter care facility, as defined in §48.02 (17), Wis. Stats., a foster home, as defined in §48.02 (6), Wis. Stats., a treatment foster home, as defined in §48.02 (17q), Wis. Stats., a day care center licensed under §120.13 (14), Wis. Stats., a day care provider certified under §48.651, Wis. Stats., or a youth center, as defined in §961.01 (22), Wis. Stats.).

A map depicting the locations of the real property supporting the above enumerated uses, as amended from time to time, is on file in the Office of the City Clerk for public inspection.

Chapter 21-7. Child safety zone exceptions.

A person does not commit a violation of Chapter 21-6. above and the enumerated uses may allow such person on the property supporting such use if any of the following apply:

- A. The property supporting an enumerated use under Chapter 21-6. also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:
 - (1) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - (2) Written advance notice is made from the person to an individual in charge of the church and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the person; and
 - (3) The person shall not participate in any religious education programs which include individuals under the age of 18.

- B. The property supporting an enumerated use under Chapter 21-6. also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:
 - (1) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
 - (2) Written advance notice is made from the person to an individual in charge of the use upon the property and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in, of the attendance by the person.

- C. The property supporting an enumerated use under Chapter 21-6. also supports a polling location in a local, state or federal election, subject to the following conditions:
 - (1) The person is eligible to vote;
 - (2) The designated polling place for the person is an enumerated use; and

- (3) The person enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate; and the person vacates the property immediately after voting.
- D. The property supporting an enumerated use under Chapter 21-6. also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.

Chapter 21-8. Violations.

If a person violates Chapter 21-3, above, by establishing a residence or occupying residential premises within two thousand feet of those premises as described therein, without any exception(s) as also set forth above, the City Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the Purpose of this Chapter, such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others, shall bring an action in the name of the City in the Circuit Court for Walworth County to permanently enjoin such residency as a public nuisance. If a person violates Chapter 21-6. above, in addition to the aforesaid injunctive relief, such person shall be subject to the general penalty provisions set forth under Chapter 25.04 of the City of Elkhorn Municipal Code. Each day of violation shall constitute a separate offense. In addition, the City may undertake all other legal and equitable remedies to prevent or remove a violation of this Chapter.

Chapter 21-9. Appeal for Exemption.

A person may seek an exemption from this ordinance by appealing to the City of Elkhorn Committee of the Whole ("the Committee"). The Committee shall approve of an official appeal form. A person shall completely fill in the official form and submit it to the City Clerk, who shall forward it to the Committee. The Committee shall hold a hearing on each appeal, during which the Committee may review any pertinent information and may accept oral and written statements from any person. The Committee shall base its decision on whether the offender has shown remorse, has rehabilitated, could re-offend, and any other factor related to the City's interest in promoting, protecting and improving the health, safety, and welfare of the community. The Committee shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or limited to a certain address or time. A written copy of the decision shall be provided to the offender.

Chapter 21-10. Severability.

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect."

SECTION 2: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 3: This ordinance shall take effect and be in force from and after its passage and publication.

APPROVED AND ADOPTED this 20 day of October, 2014.


Brian Olson, Mayor

ATTEST:

Cairie Virrueta, City Clerk

1 st Reading	<u>10-6-14</u>
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