

ORDINANCE NO. 2022-01-02-D _____
ORDINANCE PERTAINING TO RESIDENCY RESTRICTIONS OF SEX OFFENDERS

THE COMMON COUNCIL OF THE CITY OF TOMAH, MONROE COUNTY, WISCONSIN,
DO ORDAIN AS FOLLOWS:

SECTION ONE. CHAPTER 29 of the Code of City Ordinances is hereby created to read as follows:

Chapter 29 – RESIDENCY RESTRICTIONS OF SEX OFFENDERS

Sec. 29-1 Findings and intent.

A. Whereas the common council has the power, through Section 62.11(5), Wisconsin Statutes, to enact legislation promoting the health, safety, and welfare of the public.

B. Whereas the common council has reviewed the holdings and findings of the following court cases *Vill. Of Menomonee Falls v. Ferguson*, 334 Wis.2d 131 (Wis. Ct. App. 2011); *City of S. Milwaukee v. Kester*, 347 Wis.2d 334 (Wis. Ct. App. 2013); *Smith v. Doe*, 123 S. Ct. 1140 (2003); *McKunc v. Lile*, 122 S. Ct. 2017 (2002); *Hoffman v. Vill. of Pleasant Prairie*, 249 F. Supp. 3d 951 (E.D. Wis. 2017); *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018); *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005); *Evenstad v. City of West St. Paul*, 306 F. Supp. 3d 1086 (D. Minn. 2018).

C. Whereas, based upon a 2003 study by the U.S. Department of Justice, Bureau of Justice Statistics, titled *Recidivism of Sex Offenders Released from Prison in 1994*, sex offenders released from prison were four times more likely to be rearrested for a sex crime as compared to non-sex offenders released from prison. Of those individuals included in the study, forty (40) percent of new sex crimes committed by those sex offenders released from prison had occurred within the first twelve (12) months of release. Further, child molesters who were released from prison were at least six times more likely to be rearrested for another sex crime against a child as compared to a non-sex offender released from prison.

D. Whereas the common council has conducted a review of other reports and studies related to creating and implementing specific desistance factors to reduce recidivism of sex offenders. The studies and reports that have been reviewed include the following: *Tatar, J. & Jones, M. (August 2016). Recidivism after Release from Prison, State of Wisconsin Department of Corrections*; *Steiner, B., Makarios, M.D., & Travis, L.F. (2015). Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism. Crime and Delinquency, 61(3), 375-401*; *Kyle, D. (2016). Examining Sexual Offenses through a Sociological Lens: A Socio-Cultural Exploration of Casual and Desistance Theories, European Journal of Probation, 8(3), 170-184*; *Horney, J., Osgood, W., & Marshall, I.H. (1995). Criminal Careers in the Short-Term: Intra-Individual Variability in Crime and Its Relation to Local Life Circumstances. American Sociological Review, 60(5), 655-673*; *Mann, R.E., de Vries Robbe, M., Maruna, S., & Thornston, D. (2015). An Exploration of Protective Factors Supporting Desistance from Sexual Offending. Sexual Abuse; A Journal of Research and Treatment, 27 (1), 16-33.*

E. Whereas the common council acknowledges that literature on sex offender recidivism, sex offender desistance, and sex offender residency restrictions contains studies which report varying effectiveness of certain strategies. The common council intends to use these strategies and studies to best create a regulatory framework which protects the children of the City of Tomah (hereafter “city”) yet allows for a constructive and safe assimilation of designated sex offenders into the community.

F. The common council finds that the risk of recidivism decreases over time from the date of the last conviction, especially in circumstances where offenders have community connections, goals, and employment. The common council is also aware that absent a domicile clause, the city would have open doors for nonresident sex offender residency when other communities have closed doors, inviting a substantial increase in child sex offender placements, thereby increasing potential negative impacts on the health, safety, welfare, and additional cost to the city and its residents. Studies show increased recidivism rates for offenders who frequently move or do not have established community networks. These studies support maintaining a domicile clause thereby limiting designated offenders with no ties to the community and increasing the likelihood that a designated offender implements appropriate and existing community support while allowing the community to remain intelligently attentive, aware, and provide adequate and appropriate intervention if needed.

G. The common council further acknowledges difficulties and risks associated with designated offenders who are left homeless if reasonable efforts and considerations are not made to enable said individuals to secure proper housing, as long as the need to protect the health, safety and welfare of the public is prioritized.

H. Accordingly, the common council has created this regulatory measure designed to protect the health and safety of the children in the city against the threat posed by certain designated sex offenders. Sex offenders who prey on children represent a substantial danger to victims, target a particularly vulnerable group within the community who are less able to articulate or report abuse, and create a significant impact on law enforcement time and community resources to investigate abuses and mitigate risks. This chapter is also intended to demonstrate the city’s resolute goal of protecting children in areas of potential vulnerability and impart the community’s confidence by demonstrating safe, productive, and law-abiding behavior while residing within the city. It is the intent of the common council that this regulatory scheme is civil and nonpunitive to serve the city’s compelling interest to promote, protect, and improve the health, safety, and welfare of all citizens of the city.

29-2 Definitions.

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

- A. “Child” means a person under the age of sixteen (16) years old.
- B. “Court mandated supervision” means a term of extended supervision, probation, community supervision, or similar programming as imposed on a criminal or juvenile offender by a court or probation agent.

C. "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.

D. "Domicile" ("domiciled") means the true, fixed, and permanent residence of the offender, and to which, whenever absent, the individual intends to return, except that no individual may have more than one domicile at any time. The domicile address shall not be a post office box or similar depository.

E. "Hospital" has the meaning given in Section 50.33(2)(a), Wisconsin Statutes.

F. "Residence" means the place where an offender sleeps, which may include more than one location, and may be mobile or transitory.

G. "Treatment facility" has the meaning given in Section 51.01(19), Wisconsin Statutes.

H. "Park" means a park, reservation, playground, recreation center or any other area in the city, owned or used by the city, and devoted to active or passive recreation, or any area specifically designated as a park by the city.

29-3 Residency restriction.

A designated offender shall not establish a residence in any location on a parcel of land, which, in whole or in part meets the following conditions:

- A. Is within one thousand five hundred (1,500) feet of the real property comprising any of the following uses:
 - 1. Public or private schools including but not limited to school grounds as defined in Section 895.523(1)(g), Wisconsin Statutes, and such grounds of a "private school" as defined in Section 115.001(3)(r), Wisconsin Statutes.
 - 2. A public library operated pursuant to Chapter 43, Wisconsin Statutes.
 - 3. The Boys and Girls Club located on West Milwaukee Street, Tomah, WI 54660, and any future address that the Boys and Girls Club may move to, or operate, in the future.
- B. Is within five hundred (500) feet of the real property comprising any of the following uses:
 - 1. Any facility for children other than a school, which means a group home as defined in Section 48.02(7), Wisconsin Statutes, a residential care center for children and youth, as defined in Section 48.02(15)(d), Wisconsin Statutes, a

shelter care facility as defined in Section 48.02(17), Wisconsin Statutes, a day care center licensed under Section 48.65, Wisconsin Statutes, a day care program established under Section 120.13(14), Wisconsin Statutes, a day care provider certified under Section 48.651, Wisconsin Statutes, a child care center as defined in Section 49.136(1)(ad), Wisconsin Statutes, and/or a child care facility as defined in Section 980.01(1)(g), Wisconsin Statutes.

2. A public park. Recreational trails shall not constitute a public park except where the recreational trail is wholly within the confines of a public park.
3. A public swimming pool. Provided, however, this shall not prohibit a temporary residency placement by the Department of Corrections during the months October through April when the pool is not open to the public.

C. The distance shall be measured from the closest boundary line of the real property supporting the residence of a designated offender 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 shall be created annually. Such map shall be the official map for purposes of this section until the new annual map is created and filed annually. The official map shall be on file in the office of the city clerk for public inspection.

29-4 Original domicile residency restriction.

In addition to any other restrictions imposed by this chapter, a designated offender shall not be permitted to establish a residence in the city unless that person was domiciled in the City at the time of the most recent offense which causes the person to be a designated offender.

29-5 Residency restriction exceptions.

A designated offender does not violate Sections 29-3 or 29-4 if any of the following apply:

- A. The designated offender has established a residence prior to the effective date of this ordinance codified on January 18, 2022, and has continuously maintained said residence since that effective date, which is within one thousand five hundred (1,500) feet of any of the prohibitions of 29-3(A) of this chapter or five hundred (500) feet of any of the prohibitions of 29-3(B) of this chapter.
- B. The designated offender has established a residence within one thousand five hundred (1,500) feet of the location(s) restricted in Section 29-3(A) or within five hundred (500) feet of the location(s) restricted in Section 29-3(B) prior to that restricted location existing.
- C. The designated offender is a minor or ward under guardianship.
- D. The designated offender's most recent offense, which falls under Section 29-2(C), occurred more than ten years ago and it has been at least ten years since the designated

offender has completed any period of incarceration or court mandated supervision for any offense.

E. The residence is a hospital or treatment facility.

29-6 Protected area bordering the City of Tomah.

If a municipality or township that is adjoining the city contains a facility that meets the criteria set forth in Section 29-3(A) and is within one thousand five hundred (1,500) feet of the city's border or meets the criteria set forth in 29-3(B) and is within five hundred (500) feet of the city's border, the prohibited area around that facility will be measured by using the least restrictive residence restriction ordinance between the city and that of the adjoining municipality or township where the facility is located.

29-7 Property owner liability.

No property owner may allow a designated offender to reside on his or her property while in violation of this chapter unless the designated offender has been granted an exemption under Section 29-9.

29-8 Violations.

Any person who violates any provision in this chapter shall be subject to a forfeiture of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each violation, together with the costs of prosecution. Each day a violation continues shall constitute a separate offense. In default of payment thereof, the person shall be imprisoned in the house of correction until such forfeiture and costs are paid, but not more than the number of days set forth in Section 800.095(1)(b)(1), Wisconsin Statutes. Additionally, the city attorney may bring an action in the name of the city in the Circuit Court for Monroe County to permanently enjoin such residency as a public nuisance. Further, the city may undertake all other legal and equitable remedies to prevent or remove a violation of this chapter.

29-9 Appeal.

A designated offender may request an exemption from this chapter.

A. Procedure. A designated offender may request an exemption from this chapter by submitting a written request for exemption, including any pertinent rationale for an exemption, to the Tomah Police Department prior to establishing a residence that would be in violation of this chapter or within thirty (30) days after notification that the designated offender is in violation of this chapter. The chief of police or his/her designee shall conduct a review of the request for an exemption using any pertinent information and the criteria set forth in subsection (C) of this section. The chief of police or his/her designee shall approve, approve an exemption subject to necessary conditions (hereafter "conditional exemption"), or deny the request. The chief of police or his/her designee

shall issue the decision within thirty (30) days of receiving the request for exemption and shall provide a written copy of that decision to the designated offender, city clerk, and the city attorney's office. Any request for an exemption which has not been approved, approved for a conditional exemption, or denied by the chief or his/her designee within thirty (30) days of the request shall be deemed to be denied for the purpose of this chapter.

B. The decision by the chief of police or his/her designee may be appealed by the designated offender within thirty (30) days by submitting a written appeal to the administrative appeals review board (hereafter "the board") via the city clerk's office. The board shall hold a hearing on each appeal, during which the board may review any pertinent information and may accept oral and written statements from any person. The board shall be established by the Mayor of Tomah and shall have either three or five members consisting of some combination of common council members and citizens of the City of Tomah.

C. The chief of police or his/her designee and/or the board shall base their decision upon any factors related to the city's interest in promoting, protecting, and improving the health, safety, and welfare of the community, including, but not limited to:

1. The nature of the predicate offense causing the appellant to be a designated offender.
2. Police reports related to the predicate offense if available.
3. Proximity of the requested residence to the victim.
4. The age of the offense, offender, and victim.
5. Recommendation of the probation or parole officer, if one exists.
6. Recommendation of the police department.
7. Recommendation of any treatment practitioner.
8. Proposals for safety measures and assurances by the designated offender.
9. Conditions to be placed on any exception or variance from the requirements of this chapter.
10. Support systems in place by the designated offender.
11. Who the designated offender will be or is living with at the prohibited location.
12. Statements of the surrounding community or victim.
13. Treatment, sobriety, or rehabilitative measures taken by the designated offender.

14. The designated offender's current employment or social activities.
15. The designated offender's criminal history.
16. Whether the designated offender meets any of the exceptions listed in Section 29-5.

D. The board shall issue a decision by a majority vote. The board may decide to deny an exemption, issue an exemption, or issue a conditional exemption. A written copy of the decision shall be provided to the designated offender in person or by first-class mail at the designated offender's last-known address. A designated offender must consent to the terms of the conditional exemption for the conditional exemption to be valid and must demonstrate acceptance of the terms of the conditional exemption by signing and dating a copy of the board's decision and conditions. The designated offender must provide a copy of the signed conditional exemption to the city clerk's office and the City of Tomah Police Department. The designated offender will have fourteen (14) days from the date the written conditional exemption is issued to accept and return a signed copy to the appropriate locations, or the conditional exemption will be deemed as void and the appeal denied by the board. A designated offender need not sign an exemption that has been denied by the board or an exemption approved without any necessary conditions by the board.

E. A conditional exemption may include, but is not limited to, the following terms:

1. Curfew restrictions.
2. Cohabitant restrictions or requirements.
3. Sobriety restrictions.
4. Conduct restrictions.
5. Residency restrictions.

F. If an exemption or conditional exemption is granted by the chief of police or his/her designee or the board that exemption will only apply to the specific designated offender who had applied for the exemption at the requested residence and shall not be transferable to any other or to any other location.

G. An exemption expires when the designated offender who was granted said exemption changes his/her domicile and/or changes his or her residence, whether within the city or outside the city.

H. An exemption or conditional exemption issued by the chief of police or his/her designee or the board may be revoked by the chief of police or his/her designee if the designated offender is found to have violated the conditions or there is probable cause to believe the designated offender has committed (an) additional act(s), which had occurred either before or after the exemption or conditional exemption was issued, that would cause a person to be classified as a designated offender. The chief of police or his/her designee shall provide written notice to the designated offender that the exemption or conditional exemption has been revoked. This notice shall be deemed properly delivered if sent by either first class mail to the designated offender's last known address or if

delivered in person to the designated offender's last known address. If the designated offender cannot be located, the notice shall be deemed to be properly delivered if a copy is left at the designated offender's address which had been exempted in the presence of some competent member of the family at least fourteen (14) years of age or a competent adult currently residing there. If notice cannot be so served, it may be served by publishing a Class I notice. The revocation of an exemption may be appealed to the board pursuant to the above procedure.

I. For the purposes of this chapter, pursuant to Section 68.16, Wisconsin Statutes, the City of Tomah is specifically electing not to be governed by Chapter 68, Wisconsin Statutes.

J. If the board denies the request for exemption or upholds a revocation of exemption or conditional exemption, the designated offender may appeal the decision within thirty (30) days to the circuit court.

K. Severability. If any part of this section is found to be unconstitutional or otherwise invalid, the validity of the remaining parts shall not be affected.

SECTION TWO: All ordinances in conflict with the foregoing are hereby repealed.

SECTION THREE: This ordinance shall take effect upon passage and publication.

Michael Murray, Mayor

ATTEST:

Rebecca Weyer, Clerk

READ: 01/18/2022

PASSED: 01/18/2022

PUBLISHED: 01/31/2022