

## Chapter 188. Peace and Good Order

### § 188-17. Sex offenders.

#### A. Findings and intent.

- (1) The Wisconsin legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community. Indeed, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons. The purpose of this section is to protect the public, to reduce the likelihood that convicted sex offenders will engage in such conduct in the future.
- (2) The United States Supreme Court has recognized that the risk of recidivism posed by sex offenders is high, and when convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2003) and *McKune v. Lile*, 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002), citing United States Department of Justice Bureau of Justice Statistics, *Sex Offenses and Offenders*, 27 (1997) U.S. Department of Justice Bureau of Justice Statistics *Recidivism of Prisoners Released in 1983* (1997).
- (3) The Common Council has reviewed research on sex offenders, including the findings of a number of states across the United States, including, but not limited to Florida, Georgia, Alabama, Iowa and California as they pertain to laws adopted and which relate to imposing restrictions on sex offenders with respect to residency; and in addition, the United States Court of Appeals for the 8th Circuit Decision on *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005) providing, in part, "The record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward or fear of, or a bare desire to harm a politically unpopular group (citations omitted). Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the risk of reoffense. 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 reoffense 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 (citations 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."
- (4) The Common Council finds that the negative consequences of failing to regulate the movement of sex offenders is a hazard to children and the community. Thus, the Common Council has a duty and need to regulate where sex offenders reside and loiter within the City once they are reintegrated into the community. This section is a regulatory measure aimed at protecting the health and safety of the children in the City of New Berlin from the

risk that convicted sex offenders may reoffend in locations close to their residences. It is the intent of this section not to impose a criminal penalty 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 and sexual predators are prohibited from establishing residence or loitering; and by regulating certain activities that may be used by sexual offenders to prey on children.

- (5) 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 rearrested 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 reoffense, 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 and other child safety locations as defined hereunder.
- (6) The Common Council notes that § 61.34, Wis. Stats., authorizes the Common Council to enact legislation for the health, safety and welfare of the public. In addition, § 61.34(5), Wis. Stats., notes that the powers, rights and privileges accorded villages under said chapter are to be liberally construed in order to promote the general welfare, peace, good order and prosperity of the City.
- (7) This section will not apply to sexually violent persons, as defined in § 980.01(7), Wis. Stats., because these persons are controlled under the regulations of § 980, Wis. Stats.

B. Definitions. As used in this chapter and unless the context otherwise requires, the following terms shall have the meanings indicated:

**CHILD**

A person under the age of 18.

**CHILD SAFETY LOCATION**

The site upon which any of the following are located:

- (1) A public park, parkway, parkland, park facility;
- (2) The Community Center;
- (3) The Hickory Grove Center;
- (4) A public library;
- (5) A recreational trail;
- (6) A public playground;
- (7) A school for children;
- (8) Athletic fields used by children;
- (9) A day-care center;
- (10) A tutoring facility;
- (11) Any specialized school for children, including, but not limited to, a gymnastics

academy, dance academy or music school;

(12) Any facility for children (which means a public or private school or 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 § 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

(13) For-profit children's play facilities.

#### **CHILD SAFETY ZONE**

Any place within the City that is physically located within 500 feet of any child safety location.

[Amended 6-28-2017 by Ord. No. 2589]<sup>[1]</sup>

#### **DESIGNATED OFFENDER**

Any person who is required to register under § 301.45, Wis. Stats., for any sexual offense against a child or any person who is required to register under § 301.45, Wis. Stats., and who has been designated special bulletin notification (SBN) sex offender pursuant to § 301.46(2) and (2m), Wis. Stats.

[Added 6-28-2017 by Ord. No. 2589]

#### **MINOR**

A person under the age of 17.

[Added 6-28-2017 by Ord. No. 2589]

#### **PERMANENT RESIDENCE**

A place where a person abides, lodges or resides for 14 or more consecutive days.

[Added 6-28-2017 by Ord. No. 2589]

#### **TEMPORARY RESIDENCE**

A place where a person abides, lodges or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or place where the person routinely abides, lodges or resides for a period of 14 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

[Added 6-28-2017 by Ord. No. 2589]

#### **SEXUALLY VIOLENT OFFENSE**

Shall have the meaning as set forth in § 980.01(6), Wis. Stats., as amended from time to time.

[1] *Editor's Note: The former definitions of "crime against children," "residence," and "sex offender," which immediately followed this definition, were repealed 6-28-2017 by Ord. No. 2589.*

C. Residency restrictions.

[Amended 6-28-2017 by Ord. No. 2589]

(1) Child safety zone restriction. Subject to the definitions in § **188-17B**, above, and the exceptions set forth in § **188-17D**, below, it is unlawful for a designated offender to establish a permanent residence or a temporary residence within a child safety zone or any other place designated by the City as a place where children are known to congregate.

(2) Measurement of distance. For purposes of determining the minimum distance separation, the restriction shall be measured by following a straight line from the outer property line of

the permanent residence or temporary residence to the nearest outer property line of a school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the City where children are known to congregate. The City Clerk shall maintain an official map showing prohibited locations as defined by this section. 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.

D. Residency restriction exemptions.

[Amended 6-28-2017 by Ord. No. 2589]

(1) A designated offender residing within a prohibited area, as described above, does not commit a violation of this section if any of the following apply:

(a) The person established the permanent residence or temporary residence and reported and registered the residence pursuant to § 301.45, Wis. Stats., before the effective date of this section.

(b) The person is a minor and is not required to register under § 301.45 or § 301.46, Wis. Stats.

(c) The school, licensed daycare center, park, trail, playground, place of worship or any other place designated by the City as a place where children are known to congregate within 500 feet of the person's permanent or temporary residence was opened after the person established the permanent residence or temporary residence and registered the residence pursuant to § 301.45, Wis. Stats.

E. Renting real property. No person shall let or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that it will be used as a permanent or temporary residence by a person prohibited from establishing such permanent or temporary residence pursuant to this section if such place, structure or part thereof, or trailer or other locale is located within a prohibited child safety zone as described hereunder.

[Amended 6-28-2017 by Ord. No. 2589]

F. Holiday events and public gatherings:

[Amended 6-28-2017 by Ord. No. 2589]

(1) It is unlawful for a designated offender to actively take part in any public holiday event involving children where the distributing of candy or other items to children takes place, including but not limited to holiday parades or similar gatherings, Halloween trick-or-treating, wearing a seasonable costume in a public place, or wearing any other costume reasonably expected to attract children in a public place, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a designated offender.

(2) Exception. This section does not apply to any event in which the designated offender is the parent or guardian of the child(ren) involved, and the designated offender's child(ren) are the only child(ren) present.

G. Loitering.

[Amended 6-28-2017 by Ord. No. 2589]

(1) It shall be unlawful for any designated offender as defined in Subsection **B**, above, to loiter or prowl within 500 feet of any school or school property, recreational trail, playground or park, any specialized school for children, including, but not limited to, gymnastics academy, martial arts academy, dance academy, music school, public beach or public library in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of children in the vicinity.

- (2) Unless flight by an actor or other circumstances makes it impractical, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by law enforcement at the time, would have dispelled the alarm.
- (3) An offender does not commit a violation of loitering in a child safety zone as stated 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 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 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 return, of the attendance by the person.
  - (c) The property supporting an enumerated use also supports a polling location in a local, state or federal election, subject to the following conditions:
    - [1] The person is eligible to vote; and
    - [2] The designated polling place for the person is an enumerated use; and
    - [3] The person enters the polling place property and 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; and
    - [4] The property supporting an enumerated use 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.

H. Child safety zone map. The City Clerk's Office shall maintain an official map showing the child

safety zones within the City. The City Clerk's Office shall update the map at least annually to reflect any changes in the location of child safety zones. The map is to be displayed in the office of the City Clerk. In the event of a conflict, the terms of this section shall control. In no event shall a failure to update the map in compliance with this section preclude the persecution or conviction of any sex offender under this section.

I. Violations and penalties. If a person violates Subsection **C**, above, by establishing a residence or occupying residential premises within 500 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 section such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health or safety of another or others, shall bring an action in the name of the City in the Circuit Court for Waukesha County to permanently enjoin such residency as a public nuisance. If a person violates Subsections **C** and **G**, in addition to the aforesaid injunctive relief, such person shall be subject to the general penalty provisions set forth under § **1-18** of the Municipal Code. Each day a violation continues 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 section.  
[Amended 6-28-2017 by Ord. No. 2589]

J. Sex Offender Residency Appeal Board.  
[Added 6-28-2017 by Ord. No. 2589]

- (1) The above requirements of this section may be waived upon approval of the Sex Offender Residency Appeal Board through an appeal made by the affected party. Such appeal shall be made to the City Clerk's office, who shall forward the request to the Sex Offender Residency Appeal Board, which shall receive reports from the Police Department as to the criminal background of the applicant and the nature and circumstances of the underlying offense requiring the registration under § 301.45 or § 301.46, Wis. Stats. The Board shall convene and shall hear from the applicant, as well as the Police Department or others who would be affected by this decision. The Board shall consider the amount of time which has passed since the original offense was committed; whether there has been evidence of any reoffense; whether the applicant is employed and the duration of that employment; whether the applicant has shown remorse; whether there has been evidence of rehabilitation; and finally, any factors that would suggest a likelihood of reoffense.
- (2) The Sex Offender Residency Appeal Board shall consist of five City residents appointed by the Mayor of the City and ratified by the Common Council. The members of the Sex Offender Residency Appeal Board shall serve in staggered, three-year terms with the initial Board having two members with three-year terms; two members with two-year terms; and a single member with a one-year term. The Chief of Police will act as a resource to the Appeals Board and will attend its meetings.