TOWNSHIP OF WATERFORD
RACINE COUNTY, WISCONSIN

ORDINANCE NO. 3-14-2011

AN ORDINANCE RELATING TO THE PROTECTION, PROMOTION AND IMPROVEMENT OF THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE BY CERTAIN RESTRICTIONS ON THE RESIDENCY AND WHEREABOUTS OF PERSONS CONVICTED OF SEXUALLY VIOLENT OFFENSES OR CRIMES AGAINST CHILDREN

THE TOWN BOARD, of the Township of Waterford, at its regular and duly-noticed monthly meeting, does hereby pass and adopt the following Ordinance relating to the protection and promotion of the public health, safety and general welfare through certain restrictions on the residency and whereabouts of persons convicted of sexually violent offenses or crimes against children.

Finding and Intent:

(a) The Town Board finds that repeat sex offenders, sex offenders who use physical violence, and sex offenders who prey on children are sex predators who present an extreme threat to the public safety. Sex offenders are extremely likely to use physical violence and to repeat their offenses; and most sex offenders commit many offenses, have many more victims that are never reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offenders' victimization of society at large, while incalculable, clearly exorbitant.

(b) It is not the intent of this Ordinance to impose a criminal penalty, but instead to serve the Town's compelling interest in promoting, protecting, and improving the health, safety, and general welfare of the citizens of the Town by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sex offenders and sex predators are prohibited from residing or loitering.

WHEREAS, pursuant to the Town Board's findings above and its compelling interest in promoting, protecting, and improving the health, safety, and general welfare of the citizens of the Town,

NOW THEREFORE, the Town Board of the Township of Waterford does hereby adopt and enact the following changes to the Town of Waterford Ordinances to be added to the Town of Waterford Ordinances as Section 5.24:

5.24 SEX OFFENDER RESIDENCY RESTRICTIONS

1. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

a. "Sexually violent offense" shall have the meaning set forth in Wis. Stat. § 980.01(6) as amended from time to time.

b. "Crime against children" shall mean any of the following offenses set forth by 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 Wis. Stat §§:

1. 940.22(2) Sexual Contact by Therapist;
2. 940.225(1) First Degree Sexual Assault;
3. 940.225(2) Second Degree Sexual Assault;
4. 940.225(3) Third Degree Sexual Assault;
5. 940.30 False Imprisonment (where the victim was a minor and not the offender's child);
6. 940.31 Kidnapping (where the victim was a minor and not the offender's child);
7. 944.01 Rape (prior statue);
8. 944.06 Incest;
9. 944.10 Sexual Intercourse with a Child (prior statute);
10. 944.11 Indecent Behavior with a Child (prior statute);
11. 944.12 Enticing Child for Immoral Purposes (prior statute);
12. 948.02(1) First Degree Sexual Assault of a Child;
13. 948.02(2) Second Degree Sexual Assault of a Child;
14. 948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child;
15. 948.05 Sexual Exploitation of a Child;
16. 948.055 Causing a Child to View or Listen to Sexual Activity;
17. 948.06 Incest with a Child;
18. 948.07 Child Enticement;
19. 948.075 Use of Computer to Facilitate a Child Sex Crime;
20. 948.08 Soliciting a Child for Prostitution;
21. 948.095 Sexual assault of a child by a school staff person or a person who works or volunteers with children;
22. 948.11(2)(a) or (am) Exposing a Child to Harmful Material, felony sections;
23. 948.12 Possession of Child Pornography;
24. 948.13 Convicted Child Sex Offender Working with Children;
25. 948.30 Abduction of Another's Child;
26. 971.17 Not Guilty by Reason of Mental Disease of any of the above offenses; and
27. 975.06 Sex Crimes Law Commitment.

c. "Offender" 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, any person who is required to register under Wis. Stat. § 301.45 for any sexual offense against a child and any person who is required to register under Wis. Stat. § 301.45 and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Wis. Stat. §§ 301.46(2) and (2m).

d. "Residence" (reside) means the place where an offender sleeps, or which qualifies as an offender's residence under the holdings of the Wisconsin Supreme Court, and which may include more than one location, and which may be mobile or transitory.

2. An offender shall not reside within two thousand (2,000) feet of the real property comprising any of the following, whether such property is located within or without the borders of the Township of Waterford.

a. Any facility for children including:

1. A public or private school;
2. A foster home as defined in Wis. Stat. § 48.02(6);
3. A group home as defined in Wis. Stat. § 48.02(7);
4. A residential care center for children or youth as defined in Wis. Stat. § 48.02(15d);
5. A shelter care facility as defined in Wis. Stat. § 48.02(17);
6. A treatment foster home as defined in Wis. Stat. § 48.02(17q);
7. A day care center licensed under Wis. Stat. § 48.65;
8. A day care provider certified under Wis. Stat. § 48.651; or
9. A child care program established under Wis. Stat. § 120.13(14)
10. A youth center as defined in Wis. Stat. § 961.01(22),

b. Any facility used as or for:

1. A public park, parkway, 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. An athletic field used by children;
8. A movie theatre;
9. A daycare center;
10. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy, or music school;
11. A public or private golf course or range; and
12. An aquatic facility open to the public.

c. Measurement of Distance. The distance shall be measured from the closest boundary line of the real property supporting the residence of an offender to the closest real property boundary line of the applicable above-enumerated use(s).

3. An offender residing within two thousand (2,000) feet of the real property comprising any of the uses enumerated in Section (2) above, does not commit a violation of this Ordinance if any of the following apply:

a. The offender is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution or facility. This exception ceases to apply upon the termination of the offender's sentence.

b. Prior to the effective date of this Ordinance, the offender has established his or her residence within two thousand (2,000) feet of any of the uses enumerated in Section 2 above. This exception shall not apply if an offender establishes a secondary residence which violates this Ordinance.

b. The offender has established a residence prior to the effective date of this Ordinance which is within two thousand (2,000) feet of any of the uses enumerated in Section 2 above, or such enumerated use is newly established after such effective date, and it is located within two thousand (2,000) feet of a residence of an offender which was established prior to the effective date of this ordinance

c. The offender is a minor or ward under guardianship of the property owner.

4. In addition to and not withstanding the foregoing, but subject to Section 3 above, no offender and no individual who has been convicted, or adjudicated delinquent for, or been found not guilty by reason of mental disease or defect of a sexually violent offense and/or a crime against children, shall be permitted to reside in the Township of Waterford unless such offender was domiciled in the Township of Waterford at the time of the offense resulting in the offender's most recent conviction for committing the violent offense and/or crime against children.

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

a. A public or private school;
b. A foster home as defined in Wis. Stat. § 48.02(6);
c. A group home as defined in Wis. Stat. § 48.02(7);
d. A residential care center for children or youth as defined in Wis. Stat. § 48.02(15d);
e. A shelter care facility as defined in Wis. Stat. § 48.02(17);
f. A treatment foster home as defined in Wis. Stat. § 48.02(17q);
g. A day care center licensed under Wis. Stat. § 48.65;
h. A day care provider certified under Wis. Stat. § 48.651; or
i. A child care program established under Wis. Stat. § 120.13(14);
j. A youth center as defined in Wis. Stat. § 961.01(22);
k. A public park, parkway, parkland, park facility;
l. A public swimming pool;
m. A public library;
n. A recreational trail;
o. A public playground;
p. A school for children;
q. An athletic field used by children;
r. A movie theatre;
s. A daycare center;
t. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy, or music school;
u. A public or private golf course or range; and
v. An aquatic facility open to the public.

6. An offender does not commit a violation of Section 5 above and the enumerated uses may allow an offender on the property supporting such use if any of the following apply:

a. The properly supporting an enumerated use under Section 5 also supports a church, synagogue, mosque, temple, or other house of religious worship (collectively "church"), subject to the following conditions:

1. Entrance and presence on 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 offender 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 offender; and
3. The offender shall not participate in any religious education programs which include individuals under the age of eighteen (18).

b. The property supporting an enumerated use under Section 5 above also supports a use lawfully attended by an offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the offender 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. In advance of the attendance of the offender, written notice is made from the offender 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.

c. The property supporting an enumerated use under Section 5 also supports a polling location in a local, state, or federal election, subject to the following conditions:

1. The offender is eligible to vote:
2. The designated polling place for the offender is an enumerated use;
3. The offender 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 offender vacates the property immediately after voting.

d. The property supporting an enumerated use under Section 5 also supports an elementary or secondary school lawfully attended by the offender as a student under which circumstances the offender who is a student may enter upon the property supporting the school at which the offender is enrolled, as is reasonably required for the educational purposes of the school.

7. Other Prohibited Activity. It is unlawful for any offender to participate in a holiday event in the Township of Waterford involving children under 18 years of age by means of: distributing candy or other items to such children on Halloween; wearing a Santa Claus costume on, or during any of the thirty days preceding, Christmas; wearing an Easter Bunny costume on or during any of the thirty days preceding Easter; or by engaging in other similar type(s) of activity that may, under the circumstances then present, tend to entice a child to have contact with a designated offender. Holiday events in which the designated sex offender is the parent or legal guardian of the child or children involved, and no other children are present, are exempt from this paragraph.

8. Penalty

a. A person who violates any provision of this Ordinance shall be subject to a forfeiture of not less than $500.00 nor more than $1,000.00 for each violation. Each day a violation continues shall constitute a separate offense.

b. In addition to the forfeitures indicated above, if an offender violates any provision of this Ordinance by establishing a residence or occupying residential premises within 2,000 feet of those premises as described herein, without any exception as also set forth above, the Town Attorney, upon referral from the chief of police and the written determination by the chief of police and the Town Board that, upon all of the facts and circumstances, such residence or 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 Town in the circuit court to permanently enjoin such residency as a public nuisance.

PASSED AND ADOPTED this 14th day of March, 2011, to take effect upon posting and / or publication as required by law.

ROBERT E. LANGMESSER
Town Chairman

ATTEST:

TINA MAYER
Town Clerk