

TOWN OF MENTOR

CLARK COUNTY, WISCONSIN

ORDINANCE # 126

**THE TOWN BOARD OF THE TOWN OF MENTOR, CLARK COUNTY, WISCONSIN,
DOES HEREBY ORDAIN AS FOLLOWS:**

Ordinance # 126 for the Town of Mentor is hereby created as follows:

WHEREAS, the Wisconsin State legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release in the community, and

WHEREAS, Ch. 980 of the Wis. Stats provides for the civil commitment of sexually violent persons. The purpose of the statute is to protect the public, to treat convicted sex offenders who are at a high risk to reoffend, to reduce the likelihood that they will engage in such conduct in the future, and following such commitment sec. 980.08 Wis. Stats. provides under certain conditions for the supervised release of such persons into the community, and

WHEREAS, according to a 1997 report prepared by the US Department of Justice titled "Sex Offenses and Offenders", nearly two-thirds of victims of convicted rape and sexual assault offenders serving time in state prison were under the age of eighteen (18); the median age of victims of imprisoned sexual assault offenders was less than thirteen (13) years; the median age for rape victims was about twenty-two (22) years; an estimated twenty-four percent (24%) of those serving time for rape and nineteen percent (19%) of those serving time for sexual assault had been on probation or parole at the time of the offense, and

WHEREAS, the United States Supreme Court has recognized that the risk of recidivism posed by sexual offenders is "frightening and high" and "when convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault", *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 U.S. 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*, page 6 (1997), and

WHEREAS, the Town Board has reviewed the decision of the United States Court of Appeals for the 8th Circuit in *Doe v. Miller*, 405 F.3d 700, 716 (8th Circuit 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, 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 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. [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, after consideration of the foregoing recitals and related reports and proceedings pertaining to this subject matter; and upon the prior experience of the Town of Mentor in protecting the members of the community from sexually violent persons, the Town Board of the Town of Mentor finds the proposed ordinance creating residency restrictions for sex offenders will serve to protect the health, safety and welfare of the community;

ORDINANCE CREATING RESIDENCY RESTRICTIONS FOR SEXUAL OFFENDERS

Section 1. Findings and Intent. The Board of Supervisors finds 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. 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. 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.

Section 2. Definitions. For the purposes of this Ordinance:

- a. “Child” means a person under the age of eighteen (18) years.
- b. “Crime Against Children” means any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or federal government, having like elements necessary for conviction, respectively:

§ 940.225(1)	First Degree Sexual Assault
§ 940.225(2)	Second Degree Sexual Assault
§ 940.225(3)	Third Degree Sexual Assault
§ 940.22(2)	Sexual Exploitation by Therapist
§ 940.30	False Imprisonment – Victim was Minor and Not the Offender’s Child
§ 940.31	Kidnapping – Victim was Minor and Not the Offender’s Child
§ 940.225	Rape
§ 944.06	Incest
§ 948.02	Sexual Intercourse with a Child
§ 948.02	Indecent Behavior with a Child
§ 948.07	Enticing Child for Immoral Purposes
§ 948.02(1)	First Degree Sexual Assault of a Child
§ 948.02(2)	Second Degree Sexual Assault of a Child
§ 948.025	Engaging in Repeated Acts of Sexual Assault of the Same Child

§ 948.05	Sexual Exploitation of a Child
§ 948.055	Causing a Child to View or Listen to Sexual Activity
§ 948.06	Incest with a Child
§ 948.07	Child Enticement
§ 948.075	Use of a Computer to Facilitate a Child Sex Crime
§ 948.08	Soliciting a Child for Prostitution
§ 948.095	Sexual Assault of a Student by School Instructional Staff
§ 948.11(2)(a)or(am)	Exposing a Child to Harmful Material felony sections
§ 948.12	Possession of Child Pornography
§ 948.13	Convicted Child Sex Offender Working with Children
§ 948.30	Abduction of Another's Child
§ 971.17	Not Guilty by Reason of Mental Disease or an Included Offense
§ 975.06	Sex Crime Law Commitment

c. "Sex Offender" shall mean:

- i. Any person who is required to register under Sec. 301.45 Wis. Stats. and/or any person who is required to register under Sec. 301.45 Wis. Stats. and who is subject to the Special Bulletin Notification process set forth in Sec. 301.46(2) and (2m) Wis. Stats.;
- ii. Any person subject to the sex crimes commitment provisions of Sec. 975.06 Wis. Stats.;
- iii. Any person found guilty by reason of disease or mental defect placed on lifetime supervision under Sec. 971.17 (1j) Wis. Stats.; or
- iv. Any person who has been convicted of, or has been found not guilty by reason of disease or mental defect of, any "crime against children" as defined herein.

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

e. "Temporary residence" shall mean a place where a 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 place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's primary address.

Section 3. Residency Restriction.

- a. In absence of a circuit court order specifically exempting a Sex Offender from the residency restriction in this subsection, a Sex Offender shall not establish a permanent or temporary residence within two thousand five hundred (2,500) feet of: any private or

public school; churches; athletics field used by children; playground or park where children regularly gather; licensed child care center as defined in Sec. 48.65 Wis. Stats.; or group home as defined in Sec. 48.02(7) Wis. Stats. A map of restricted areas shall be maintained, updated, and available to the public at the Town Hall.

- b. It is unlawful to let or rent any place, structure, or part thereof with the knowledge that it will be used as a residence by a Sex Offender, if such place, structure, or part thereof is located within two thousand five hundred (2,500) feet of: any private or public school; churches; recreational trail; athletics field used by children; playground or park where children regularly gather; licensed child care center as defined in Sec. 48.65 Wis. Stats.; or group home as defined in Sec. 48.02(7) Wis. Stats. A person letting or renting a place or structure shall be deemed to have such knowledge if, at least ten (10) days prior to letting or renting the place, the Sex Offender's name appears on the Wisconsin Department of Corrections Sex Offender registry and the person letting or renting the place knew the Sex Offender would be residing at the subject place or structure.

Section 4. Restrictions Exemption. A Sex Offender residing within a prohibited area as described in Section 3 of this Ordinance does not commit a violation of this Ordinance if any of the following apply:

- a. The person established a permanent residence or temporary residence and reported and registered the residence pursuant to Sec. 301.45 Wis. Stats., before the effective day of this Ordinance;
- b. The person was under seventeen (17) years of age and is not required to register under Sec. 301.45 or 301.45, Wis. Stats.;
- c. The public or private school; church; playground; athletics field; park; licensed child care center; or group home, where children regularly gather within two thousand five hundred (2,500) feet of the person's permanent residence or temporary residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Sec. 301.45 Wis. Stats.;
- d. The person is required to serve a sentence at a jail, juvenile facility or other correctional institution or facility; or
- e. The person is a minor or ward under guardianship; or
- f. The person is placed in the Town under the terms of a supervised release pursuant to Wis. Stats. Ch. 980, in which case the restrictions of the supervised release and Ch. 980 shall control the residency restrictions.

Section 5. Appeal.

- a. The above 2,500 foot requirements for residency and rental may be waived upon approval of the Safety Committee Town Board through appeal by the affected party. Such appeal shall be made in writing to the Town Clerk's Office, who shall forward the

Town Board for referral to the Safety Committee, which shall receive reports from law enforcement agencies on such appeal. The Safety Committee shall convene and consider the public interest as well as the affected party's presentation and concerns. After deliberation, the Safety Committee shall forward its recommendation to the Town Board for consideration. The Town Board shall forward its decision in writing via the minutes or otherwise to the law enforcement officer authorized to enforce the Town of Mentor's ordinances for their information and action. A written copy of the decision shall be provided to the affected party.

- b. The "Safety Committee" shall consist of either one (1) three (3) citizens, two of whom shall constitute a quorum, or, (2) if a Safety Committee has not been appointed, the Town Board could serve as the Safety Committee. The Town Chairperson shall appoint the members of the Safety Committee.

Section 6. Loitering.

- a. It shall be unlawful for any Sex Offender as defined in Section 2(c) above, to loiter or prowl at any school or school property; recreational trail, playground or park, within 300 feet of a licensed child care center or group home; 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 persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object. Unless flight by the 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 the law enforcement officer at the time, would have dispelled the alarm.
- b. **Exceptions.** The prohibitions set forth in Section 6(a) above shall not apply where the actor was with his or her parent or other adult person having his or her care, custody or control; or the actor was exercising First Amendment rights protected by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.

Section 7. Prohibited Activities. It shall be unlawful for any Sex Offender to participate in a holiday event involving children under 18 years of age, including, but not limited to, for purposes of example: distributing candy or other items to children on Halloween; wearing a Santa Claus costume on or preceding Christmas or wearing an Easter Bunny costume on or preceding Easter. 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 Section. Participation is to be defined as actively taking part in the event.

Section 8. Measurement of Distance. For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the closest outer property line of the permanent residence or temporary residence to the closest outer property line of a private or public school, recreational trail, playground or park where children regularly gather or licensed day care center or licensed group foster home.

Section 9. Enforcement and Penalty. The law enforcement officer authorized to enforce the Town of Mentor's ordinances shall enforce the provisions of this Ordinance. A person who violates provisions of this Ordinance shall be subject to a forfeiture of not less than \$500.00 and no more than \$1,000.00 for each violation. Each day a violation continues shall constitute a separate offense. The Town may also seek equitable relief to gain compliance.

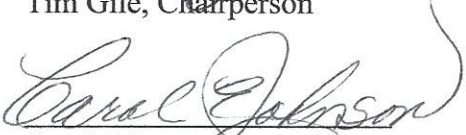
Section 10. Adoption. Following passage by the Town Board, this ordinance shall take effect upon the date of publication as provided in Section 60.80, Wisconsin Statutes.

Adopted this 12 day of Sept, 2017

By the Town Board of Mentor, Clark County, Wisconsin



Tim Gile, Chairperson




Carol Johnson, Supervisor



Basil Tollefson, Supervisor

Attest:



Linda Laffe, Town Clerk