

ORIGINAL

TOWN OF MENTOR  
CLARK COUNTY, WISCONSIN

ORDINANCE #130

**AN ORDINANCE AMENDING ORDINANCE NO. 126 OF THE ORDINANCES OF THE TOWN OF MENTOR, CLARK COUNTY, WISCONSIN CREATING RESIDENCY RESTRICTIONS FOR SEXUAL OFFENDERS**

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, according to the "Sex Offender Management Assessment and Planning Initiative Research Brief," ("SOMAPI Research Brief") issued by the U.S. Department of Justice in July 2015 regarding the recidivism rates for child molesters, in one study "researchers reported that 5.1 percent of the child molesters in the study were rearrested for a new sex crime within 3 years of their release, 14.1 percent were rearrested for a violent crime, and 39.4 percent were rearrested for a crime of any kind." Further, "Similar to the pattern for rapists, child molesters with more than one prior arrest had an overall recidivism rate nearly double (44.3 percent compared to 23.3 percent) that of child molesters with only one prior arrest. As might be expected, child molesters were more likely than any other type of offender—sexual or nonsexual—to be arrested for a sex crime against a child following release from prison." (emphasis added). In another study cited by the SOMAPI Research Brief, based on a 25-year follow up period, the researchers found a sexual recidivism rate of 52 percent (defined as those charged with a subsequent sexual offense) using a sample of 115 child molesters who were discharged from civil commitment in Massachusetts between 1960 and 1984."

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 8<sup>th</sup> Circuit in *Doe v. Miller*, 405 F.3d 700, 716 (8<sup>th</sup> 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, many of the athletic field used by children, playgrounds, or parks where children regularly gather, and other public areas where children recreate and live are located in the southwest corner of the Town of Mentor in and around Humbird; and

WHEREAS, certain areas of the Town of Mentor have poor cellular phone service, and depending on the type of monitoring used, the Town believes there may be a time lapse between an alert notification and agency response to a violation of GPS monitoring. “In some areas, particularly if the cellular coverage is poor, the tracking may be limited. This in effect means that there may be gaps in time or periods throughout any given day where no tracking information is available.” “The Challenges of GPS and Sex Offender Management,” Lisa Bishop, *Federal Probation*, Volume 74, Number 2; and

WHEREAS, electronic monitoring is not foolproof and subject to critical errors. “In 2011, California officials conducted tests on the monitoring devices worn by 4,000 high-risk sex offenders and gang members, and according to the LA Times, found that ‘batteries died early, cases, cracked, tampering alerts failed, and reported locations were off by as much as three miles.’ (“Decades later, electronic monitoring of offenders is still prone to failure,” Jack Karsten and Darrell M. West, The Brookings Institute, (Sept. 21, 2017)). “An audit in Tennessee found that 80 percent of alerts from offender monitoring devices were not checked by officers. Similar issues came to light in Colorado and New York when officers missed or ignored repeated alerts of device failure and then several parolees committed violent crimes. Officers in Florida were so overwhelmed with alerts that they stopped all real-time notifications, save those relating to device removal, and as a result, did not notice when one parolee broke his curfew 53 times in one month before killing three people.” *Id.*

WHEREAS, since the Clark County Sheriff’s Department, as the primary law enforcement agency to respond to issues with sex offenders in Clark County, is located approximately 20 miles from Humbird, and even if there was real-time tracking with instantaneous notification to the Clark County Sheriff’s Department, due to the long response time to arrive in certain areas of the Town

of Mentor, if a sex offender engages in conduct contrary to the public's health, safety, and welfare, the Sheriff's Department may be unable to respond in a timely manner to protect the public's health, safety, and welfare; 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;

**THE TOWN BOARD OF THE TOWN OF MENTOR, CLARK COUNTY, WISCONSIN, DOES HEREBY ORDAIN AND AMENDS ORDINANCE NO. 126 AS FOLLOWS:**

**SECTION 1. Amendment of Section 3(a) and (b). Residency Restrictions. Section 3 (a) and (b) of Ordinance No. 126 of the Ordinances of the Town of Mentor Clark County, Wisconsin is hereby amended as follows:.**

- 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 four thousand eight hundred (4,800) feet of: any private or public school; churches; athletics field used by children; playground, beach, 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 four thousand eight hundred (4,800) feet of: any private or public school; churches; recreational trail; athletics field used by children; playground, beach, 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 2. Amendment of Section 4(c). Restrictions Exemption. Section 4(c) of Ordinance No. 126 of the Ordinances of the Town of Mentor Clark County, Wisconsin is hereby amended as follows:**

- (c) The public or private school; church; playground; athletics field; park; beach; recreational area; licensed child care center; or group home, where children regularly gather within four thousand eight hundred (4,800) 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.;

**SECTION 3. Repeal of Section 4(f). Restrictions Exemption.** Section 4 (f) of Ordinance No. 126 of the Ordinances of the Town of Mentor Clark County, Wisconsin is hereby repealed in its entirety.

**SECTION 4. Amendment of Section 5(a). Appeal.** Section 5(a) of Ordinance No. 126 of the Ordinances of the Town of Mentor Clark County, Wisconsin is hereby amended as follows:

- a. The above 4,800 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 request to 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.

**SECTION 5. SEVERABILITY.** The provisions of this Ordinance shall be deemed severable and it is expressly declared that the Town Board would have passed the other provisions of this Ordinance irrespective of whether or not one or more provisions may be declared invalid and if any provisions of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this Ordinance and the application of such provisions to other persons or circumstances shall not be effected thereby.

**SECTION 6. CONFLICTING ORDINANCES.** Ordinances or parts of ordinances in conflict with the above Ordinance are hereby repealed.

**SECTION 7. EFFECTIVE DATE.** 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 18 day of July, 2020

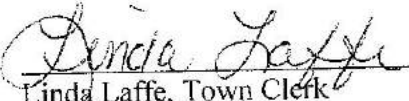
By the Town Board of Mentor, Clark County, Wisconsin

  
\_\_\_\_\_  
Tim Gile, Chairperson

ABSTAINED  
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Carol Johnson, Supervisor

  
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Basil Tollefson, Supervisor

Attest:

  
Linda Laffe, Town Clerk

Date Passed: July 18, 2020  
Published: July 22, 2020