

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

ORDINANCE NO. 2006-_____

AN ORDINANCE TO AMEND THE MUNICIPAL CODE TO PROVIDE
REGULATIONS RELATING TO RESIDENCY RESTRICTIONS FOR SEX OFFENDERS
AND DIRECTING ACTION FOR INJUNCTIVE RELIEF FOR VIOLATION THEREOF

WHEREAS, the Wisconsin Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community; and

WHEREAS, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically, at §980.08, Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

WHEREAS, the City of Franklin places a high priority on maintaining public safety through a highly skilled and trained law enforcement as well as dependency upon laws that deter and punish criminal behavior; and

WHEREAS, sex offenders have very high recidivism rates, and according to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend and prey on the most innocent members of our society, and more than two-thirds of the victims of rape and sexual assault are under the age of 18 and sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon; and

WHEREAS, the Common Council has reviewed the findings of a number of the Legislatures of these United States, including Wisconsin, and including, but not limited to Pennsylvania, Alabama, Iowa, Florida, Maine and Louisiana, as they pertain to laws adopted which relate to and in part impose restrictions upon sex offenders with respect to residency; and

WHEREAS, the Common Council having also reviewed the decision of the United States Court of Appeals for the 8th Circuit, in *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, 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, the Common Council having considered proposed amendments to the Municipal Code to provide residency restrictions for sex offenders and child safety zones to further protect children, and having received input at a public hearing upon the proposed amendments on November 21, 2006, following a class II notice, will serve to protect the health, safety and welfare of the Community.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: Chapter 167 of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

Chapter 167

SEX OFFENDER RESIDING WITHIN 2,500 FEET OF SCHOOLS, DAYCARE CENTERS, PARKS AND OTHER SPECIFIED FACILITIES AND USES PROHIBITED; CHILD SAFETY ZONES

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| § 167-1. Purpose | § 167-4. Residency Exceptions |
| § 167-2. Definitions | § 167-5. Child Safety Zones |
| § 167-3. Residency Restrictions | § 167-6. Violations |

§ 167-1. Purpose.

This Chapter is a regulatory measure aimed at protecting the health and safety of children in Franklin from the risk that convicted sex offenders may reoffend in locations close to their residences. 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 re-arrested 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.

§ 167-2. Definitions.

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

A. A “sexually violent offense” shall have the meaning as set forth in Wis. Stat. § 980.01(6), as amended from time to time.

B. A “crime against children” shall mean any of the following offenses set forth within the Wisconsin Statutes, as amended:

A “crimes against children sex offender use” is an occupancy use by an individual 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 any of the following offenses set forth within 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:

§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;

§944.01 Rape (prior statute);

§944.06 Incest;

§944.10 Sexual Intercourse with a Child (prior statute);

§944.11 Indecent Behavior with a Child (prior statute);

§944.12 Enticing Child for Immoral Purposes (prior statute);

§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 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-of an included offense; and

§975.06 Sex Crimes Law Commitment.”

[additions by the Council, from public input, staff recommendations]

C. “Person” 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.

D. "Residence" means the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

§ 167-3. Residency restriction.

A person shall not reside within two thousand five hundred feet of the real property comprising any of the following:

A. The use shall not be located [proximate] to [within 2,500 feet of] any facility for children (which means a public or private school, a group home, as defined in §48.02 (7), Stats., a residential care center for children and youth, as defined in §48.02 (15d), Stats., a shelter care facility, as defined in §48.02 (17), Stats., a foster home, as defined in §48.02 (6), Stats., a treatment foster home, as defined in §48.02 (17q), Stats., a day care center licensed under §48.65, Stats., a day care program established under §120.13 (14), Stats., a day care provider certified under §48.651, Stats., or a youth center, as defined in §961.01 (22), Stats.); [additions by the Council, from public input, staff recommendations]

B. The use shall not be located [proximate] to [within 2,500 feet of] any facility used for:

- (1) a public park;
- (2) a public swimming pool;
- (3) a public library;
- (4) a multi-use recreational trail;
- (5) a public playground;
- (6) a church;
- (7) a school for children;
- (8) athletic fields used by children;
- (9) a movie theatre;
- (10) a daycare center;

- (11) the Milwaukee County Sports Complex and grounds;
- (12) a ski hill open to the public;
- (13) a gymnastics school for children;
- (14) a private golf course or range;
- (15) school bus stops;
- (16) medical hospitals, clinics and healthcare facilities;
- and
- (17) aquatic facilities open to the public;
- [(18) additions by the Council, from public input, staff recommendations]

C. The use shall not be located [proximate] to [within 2,500 feet of] a residential subdivision.”

The distance shall be measured from the closest boundary line of the residence of a person to the closest boundary line of the applicable above enumerated use(s).

§ 167-4. Residency restriction exceptions.

A person residing within two thousand five hundred feet of the real property comprising any of the uses enumerated in § 167-3. above, does not commit a violation of this Chapter if any of the following apply:

- A. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
- B. The person has established a residence prior to the effective date of this Chapter on _____, 2006, which is within two thousand five hundred feet of any of the uses enumerated in § 167-3. above, or such enumerated use is newly established after such effective date and it is located within such two thousand five hundred feet of a residence of a person which was established prior to the effective date of this Chapter.
- C. The person is a minor or ward under guardianship.

§ 167-5 Child Safety Zones

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

- (1) a public park;
- (2) a public swimming pool;
- (3) a public library;
- (4) a multi-use recreational trail;
- (5) a public playground;

- (6) a church;
- (7) a school for children;
- (8) athletic fields used by children;
- (9) a movie theatre;
- (10) a daycare center;
- (11) the Milwaukee County Sports Complex and grounds;
- (12) a ski hill open to the public;
- (13) a gymnastics school for children;
- (14) a private golf course or range;
- (15) school bus stops;
- (16) medical hospitals, clinics and healthcare facilities;
- and
- (17) aquatic facilities open to the public;
- (18) any facility for children (which means a public or private school, a group home, as defined in §48.02 (7), Stats., a residential care center for children and youth, as defined in §48.02 (15d), Stats., a shelter care facility, as defined in §48.02 (17), Stats., a foster home, as defined in §48.02 (6), Stats., a treatment foster home, as defined in §48.02 (17q), Stats., a day care center licensed under §48.65, Stats., a day care program established under §120.13 (14), Stats., a day care provider certified under §48.651, Stats., or a youth center, as defined in §961.01 (22), Stats.); [additions by the Council, Plan Commission, from public input, staff recommendations]
- [(19) additions by the Council, from public input, staff recommendations]

(§ 167-5. Residence of Origin.

In addition to and notwithstanding the foregoing, no person and no individual who has been convicted of a sexual offense under Wisconsin law or any other state law or federal law, shall be permitted to reside in the City of Franklin, unless such person was domiciled in the City of Franklin at the time of the offense resulting in the person's most recent conviction for committing a sexual offense. (Language will be proposed at time of public hearing.)

§ 167-6. Violations.

If a person violates § 167-3., above, by establishing a residence or occupying residential premises within two thousand five hundred 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 Chapter, such residence 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 City in the Circuit Court for Milwaukee County to permanently enjoin such residency as a public nuisance. If a person violates § 167-5. above, in addition to the aforesaid injunctive relief, such person shall be subject to the general penalty provisions set forth under § 1-19. 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 Chapter.

SECTION 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 4: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2006, by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2006.

APPROVED:

Thomas M. Taylor, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____