

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

ORDINANCE NO. 2006-_____

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE
AS IT PERTAINS IN PART TO THE DEFINITION OF FAMILY AND TO
PROVIDE REGULATIONS FOR WISCONSIN STATUTES
CHAPTER 980 SUPERVISED RELEASE AND CERTAIN
CRIMES AGAINST CHILDREN SEX OFFENDER USES

WHEREAS, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, 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, among the matters to be considered upon any petition for supervised release into the community by a sexually violent person, is the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of the Wisconsin Department of Corrections and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies, pursuant to §980.08(5), Stats.; and

WHEREAS, the Wisconsin Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for crimes against children, including their release 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, a public hearing was held before the City of Franklin Plan Commission on the ____ day of _____, 2006, upon the aforesaid proposition and the Plan Commission thereafter having determined that the proposed zoning text amendments would promote the health, safety and welfare of the Community and having recommended approval thereof to the Common Council; and

WHEREAS, the Common Council having considered the petition and having concurred with the recommendation of the Plan Commission and having determined that the proposed zoning text amendments as they pertain to the definition of “family”, generally in application to the administration and regulation of single-family, two-family and multi-family residential zoning districts; the creation of a definition of a “functional family unit”; and the more specific regulation of Chapter 980 Stats., supervised release and certain crimes against children sex offender uses, 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: Section 15-3.0602 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Residential Zoning Districts, be and the same is hereby amended to add a row entitled “Ch. 980 Stats. supervised release and crimes against children sex offender use” and to insert an “S” in each zoning district column for such row.

SECTION 2: Section 15-3.0602 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Residential Zoning Districts, be and the same is hereby amended to add a row entitled “Family functional unit” and to insert an “S” in each zoning district column for such row.

SECTION 3: Section 15-3.0602 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Residential Zoning Districts, be and the same is hereby amended to add a footnote, as follows: “Footnotes: (a) No foster family home, community living arrangement, housing for farm laborers or multiple-family residential housing for older persons as listed above, shall include any Ch. 980 Stats. supervised release and crimes against children sex offender use.”

SECTION 4: Section 15-3.0702C. of the Unified Development Ordinance of the City of Franklin, Wisconsin, pertaining to detailed standards for special uses in residential districts, be and the same is hereby created to read as follows:

“C. Ch. 980 Stats. supervised release and crimes against children sex offender use. The following factors, in addition to the general standards for special uses to be established by an applicant under Section 15-3.0701 of this Ordinance, shall be established by an applicant for a Ch. 980 Stats. supervised release and crimes against children sex offender use:

1. The use shall not make the community unsafe;
2. The use shall not be located [proximate] to [within 2,500 feet of] a location frequented by a child or children;
3. The facility shall be secure;
4. The use shall be located so as to allow for the accessibility to potential treatment for the use occupant;
5. The use shall not be located [proximate] to [within 2,500 feet of] the residence of other persons on supervised release or a crimes against children sex offender;
6. The use shall not be located [proximate] to [within 2,500 feet of] the residence of persons who are in the custody of the Wisconsin Department of Corrections, the Wisconsin Department of Health and Family Services, the Milwaukee County Sheriff or any other agency or entity charged with or performing operations of or pertaining to law enforcement custody of persons, and regarding whom a sex offender notification has been

- issued to law enforcement agencies under §301.46(2m)(a) or (am), Stats.;
7. 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, Plan Commission, from public input, staff recommendations]
 8. The use shall not be located [proximate] to [within 2,500 feet of] any facility used for:
 - a. a public park;
 - b. a public swimming pool;
 - c. a public library;
 - d. a multi-use recreational trail;
 - e. a public playground;
 - f. a church;
 - g. a school for children;
 - h. athletic fields used by children;
 - i. a movie theatre;
 - j. a daycare center;
 - k. the Milwaukee County Sports Complex and grounds;
 - l. a ski hill open to the public;
 - m. a gymnastics school for children;
 - n. a private golf course or range;
 - o. school bus stops;
 - p. medical hospitals, clinics and healthcare facilities; and
 - q. aquatic facilities open to the public;[r.additions by the Council, Plan Commission, from public input, staff recommendations]
 9. The use shall not be located [proximate] to [within 2,500 feet of] a residential subdivision.”

SECTION 5:

Section 15-3.0603 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Nonresidential Zoning Districts, be and the same is hereby amended to add a row under “Other uses not classified under SIC Code” entitled “Ch. 980 Stats. supervised release and crimes against

children sex offender use” and to insert an “S” in the A-1 and the A-2 zoning district columns, and to leave all remaining columns blank, for such row.

SECTION 6: Section 15-3.0602 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in The Residential Zoning Districts, be and the same is hereby amended, at “Community living arrangement (serving 15 or fewer persons)” only, to delete “P” in the R-8 column.

SECTION 7: Section 15-3.0603 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Nonresidential Zoning Districts, be and the same is hereby amended, at Title 8361 “Residential Care” only, to delete “P” in the B-3 column, and amended to add a footnote, as follows: “Footnotes: (a) No “Hotels and Other Lodging Places” or like use as listed above, shall include any Ch. 980 Stats. supervised release and crimes against children sex offender use.”.

SECTION 8: Section 15-11.0103 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for the definitions of specific words and phrases, be and the same is hereby amended to add the following definitions:

“Chapter 980 Stats. supervised release and crimes against children sex offender use. An occupancy use of a dwelling unit or a residential use unit pursuant to a plan of the Department of Health and Family Services, a Court order, or as may otherwise result from or be provided for under Chapter 980 of the Wisconsin Statutes, which occupancy use is the supervised release of a sexually violent person and/or a crimes against children sex offender or a residential use without supervision by a person now, then or previously a sexually violent person and/or a crimes against children sex offender. 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, Plan Commission, from public input, staff recommendations]

“Family. A family may consist of a person living alone or any of the following groups living together in a dwelling unit and sharing common living, sleeping, cooking and eating facilities:

1. Any number of people related by blood, marriage, adoption, guardianship or other duly authorized custodial relationships;
2. Two unrelated people;
3. Two unrelated people and any children related to either of them.

A family does not include:

1. Any society club, fraternity, sorority, association, lodge, combine, federation or other like organization.
2. Two or more individuals whose association to each other is temporary and/or seasonal in nature;
3. More than one person determined to be a sexually violent person under Chapter 980, Wisconsin Statutes and/or a crimes against children sex offender as defined within

this Ordinance.

4. Three or more people who are granted a Special Use Permit as a Functional Family Unit, provided that a Special Use Permit for a Functional Family Unit shall be personal to the Functional Family Unit.”

“Family Functional Unit. In R-1, R-2, R-3, R-3E, R-4, R-5 and R-6 single-family residence zoning districts and in R-7 two-family, R-8 general residence, VR Village residence, residential planned development and A-1 and A-2 agricultural zoning districts, a functional family unit shall consist of a group of individuals living together in a single dwelling unit and functioning as a family with respect to those characteristics that are consistent with the purposes of zoning restrictions in single family residential neighborhoods. In determining whether or not a group of unrelated individuals is a functional family unit under this definition, the following criteria must be used.

1. The occupants must share the entire dwelling unit. A unit in which the various occupants act as separate roomers cannot be deemed to be occupied by a functional family unit.
2. The following factors shall be considered in determining whether a functional family exists:
 - a. The presence of minor dependent children regularly residing in the household;
 - b. Evidence of shared household expenses;
 - c. Whether or not different members of the household have the same address for the purposes of voter registrations, drivers’ licenses, motor vehicle registrations, summer or other residences and the filing of taxes;
 - d. Enrollment of dependent children in local schools;
 - e. Any other evidence reasonably related to whether or not the group or persons have functioned as a family unit as defined in this ordinance.”

SECTION 9:

Section 15-11.0103 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for the definitions of specific words and phrases, be and the same is hereby amended, as to the definition of “Community Living Arrangement” only, as follows: immediately before “prisons”, insert: “Chapter 980 Stats. supervised release and crimes against children sex offender uses”; delete: “and amendments thereto”.

SECTION 10: 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 11: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 12: 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 _____