

ORDINANCE NO. 2010-02

An Ordinance Relating to Sex Offender Residency Restrictions and Child Safety Zones

The Common Council of the City of Cedarburg, Wisconsin, hereby ordains as follows:

SECTION 1. Section 5-6 of the Municipal Code of the City of Cedarburg is hereby created as follows:

SEC. 5-6-1 PURPOSE AND INTENT.

The city finds and declares that sex offenders are a serious threat to public safety. Given the high rate of recidivism for sex offenders, the city believes that in addition to the protections afforded by state law near schools, day care centers and other places children frequent, reducing opportunity and temptation is appropriate to minimizing the risk of re-offense to better protect the children in these public places. This chapter is a regulatory measure aimed at protecting the health and safety of children in the City of Cedarburg from the risk that convicted sex offenders may re-offend in locations close to their residences where children tend to congregate or be regularly present. It is the intent of this chapter not to impose a criminal penalty but rather to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating safety zones around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence and wherein access by certain sexual offenders and sexual predators shall be restricted and excluded.

SEC. 5-6-2 DEFINITIONS.

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

A sexual violent offense shall have the meaning as set forth in Wis. Stats. 980.01(6) as amended from time to time.

A crime against children shall mean 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:

- Wis. Stats. 940.225(1) First Degree Sexual Assault;
- Wis. Stats. 940.225(2) Second Degree Sexual Assault;
- Wis. Stats. 940.225(3) Third Degree Sexual Assault;
- Wis. Stats. 940.22(2) Sexual Exploitation by Therapist;
- Wis. Stats. 940.30 False Imprisonment-Victim was a minor and not the offender's child;
- Wis. Stats. 940.31 Kidnapping-Victim was a minor and not the offender's child;
- Wis. Stats. 944.01 Rape (prior statute);
- Wis. Stats. 944.06 Incest;
- Wis. Stats. 944.10 Sexual Intercourse with a Child (prior statute);
- Wis. Stats. 944.11 Indecent Behavior with a Child (prior statute);

Wis. Stats. 944.12 Enticing Child for Immoral Purposes (prior statute);
Wis. Stats. 948.02(1) First Degree Sexual Assault of a Child;
Wis. Stats. 948.02(2) Second Degree Sexual Assault of a Child;
Wis. Stats. 948.025 Engaging in repeated Acts of Sexual Assault of the Same Child;
Wis. Stats. 948.05 Sexual Exploitation of a Child;
Wis. Stats. 948.055 Causing a Child to View or Listen to Sexual Activity;
Wis. Stats. 948.06 Incest with a Child;
Wis. Stats. 048.07 Child Enticement;
Wis. Stats. 948.075 Use of a Computer to Facilitate a Child Sex Crime;
Wis. Stats. 948.08 Soliciting a Child for Prostitution;
Wis. Stats. 948.095 Sexual Assault of a Student by Instructional Staff;
Wis. Stats. 948.11(2)(a) or (am) Exposing Child To Harmful Material-felony sections;
Wis. Stats. 948.12 Possession of Child Pornography;
Wis. Stats. 948.13 Convicted Child Sex Offender Working with Children;
Wis. Stats. 948.30 Abduction of Another's Child;
Wis. Stats. 971.17 Not Guilty by Reason of Mental Disease-of an included offense; and
Wis. Stats. 975.06 Sex Crimes Law Commitment.

“Facility for children” means a public or private school, a group home, as defined in Section 48.02(7), Wisconsin Statutes, a residential care center for children and youth, as defined in Section 48.02(15d), Wisconsin Statutes, a shelter care facility, as defined in Section 48.02(17), Wisconsin Statutes, a daycare center licensed under Section 48.65, Wisconsin Statutes, a daycare provider certified under Section 48.651, Wisconsin Statutes, or a youth center, as defined in section 961.01(22), Wisconsin Statutes.

“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.

“Permanent residence” means the place where a person sleeps, abides, lodges or resides for fourteen (14) or more consecutive days or which qualifies as a residence under the holdings of the Wisconsin Supreme Court and which may include more than one location, and may be mobile or transitory.

“Recreational trail” means all parts and segments of the Ozaukee Interurban Trail.

“Sexually violent offense” shall have the meaning as set forth in Section 980.01(06), Wisconsin Statutes, as amended from time to time.

“Temporary residence” means residence or premises meeting any of the following criteria:

1. A place where the person sleeps, abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not that person's permanent residence as defined in this section;
2. A place where the person routinely sleeps, abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not that person's permanent residence as defined in this section; or

3. A place where a person sleeps, or which qualifies as a temporary residence under the holdings of the Wisconsin Supreme Court, and which may include more than one location, and may be mobile or transitory.

SEC. 5-6-3 RESIDENCY RESTRICTIONS.

- (a) No offender shall reside within five hundred (500) feet of real property that supports or upon which there exists any of the following uses:
 - (1) Public parks, parkways, parkland, park facilities;
 - (2) Public swimming pools;
 - (3) Public libraries;
 - (4) Recreational trails;
 - (5) Public playgrounds;
 - (6) Schools for children;
 - (7) Athletic fields used by children;
 - (8) Daycare facilities;
 - (9) Specialized schools for children, including, but not limited to a gymnastics academy, dance academy or music school;
 - (10) Aquatic facilities open to the public.
 - (11) Facilities for children's clubs, e.g. Boy Scout and Girl Scout Houses.
- (b) 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 boundary line of the real property that supports or upon which there exists any of the uses enumerated in subsection A of this section.
- (c) Residency Restriction Exceptions. An offender residing within five hundred (500) feet of real property that supports or upon which there exists any of the uses enumerated in subsection A of this section does not commit a violation of this chapter if any of the following apply:
 - (1) The offender is required to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental facility.
 - (2) The offender has established a residence prior to the effective date of the ordinance codified in this chapter.
 - (3) The use enumerated in subsection A of this section began after the offender established a residence.
 - (4) The offender is a minor or ward under guardianship.
- (d) In addition to and notwithstanding the forgoing, but subject to subsection C of this section, no person, who has been convicted of a sexually violent offense and/or crime against children, shall be permitted to reside in the City of Cedarburg and no supervised release of such Wisconsin Statute Chapter 980 sexually violent person shall be established in the City of Cedarburg unless such person had lived in the City of Cedarburg at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime against children.

SEC. 5-6-4 LOITERING.

It is unlawful for any person defined as an offender pursuant to Section 9.34.020 to loiter or prowl in the locations enumerated under *Residential Restrictions* herein, in a place, at a time, or a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity.

SEC. 5-6-5 PENALTIES AND REMEDIES

- (a) Forfeitures. Any person found guilty of violating this chapter shall be subject to a forfeiture of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) for each violation. Each violation and each day a violation continues or occurs shall constitute a separate offense.

- (b) Injunction-Violation of Residency Restrictions. If an offender establishes a permanent or temporary residence in violation of the Residency Restrictions contained herein, the chief of police may refer the matter to the city attorney. The referral shall include a written determination by the chief of police that, upon all of the facts and circumstances and the purpose and intent of this chapter, such violation interferes substantially with the comfortable enjoyment of life, health, safety of another or others. Upon such referral, the city attorney shall bring an action in the name of the city in circuit court to permanently enjoin such residency as a public nuisance.

SECTION 2. This ordinance shall take effect upon its passage and publication as provided by law.

Passed and adopted this 25th day of January 2010.

Gregory P. Myers, Mayor

Countersigned:

Constance K. McHugh, City Clerk

Approved as to form:

Kaye K. Vance, City Attorney