

ORDINANCE NO. 2011-001

**AN ORDINANCE TO CREATE SECTION 10.11 OF THE  
TOWN OF DELAFIELD CODE  
TO PROVIDE REGULATIONS AND RESTRICTIONS  
REGARDING RESIDENCY AND LOITERING  
OF DESIGNATED SEX OFFENDERS  
WITHIN THE TOWN OF DELAFIELD**

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 Wis. Stat. sec. 980.08 provides, under certain conditions, for the supervised release of such persons into the community; and

WHEREAS, according to the US Department of Justice, Bureau of Justice Statistics, in 2001 there were approximately three hundred eighty-six thousand (386,000) convicted sex offenders registered in forty-nine (49) states and the District of Columbia, 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 sex 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 (2003) and *McKune v. Lile*, 536 U.S. 24, 34 (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 decision of the United States Court of Appeals for the 8<sup>th</sup> Circuit in *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir., 2005), provides, 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 re-offense. 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 re-offense 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, Wis. Stat. sec. 60.22(3) and 61.34(1) grants the Town Board “power to act for the government and good ... and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means”;

NOW, THEREFORE, the Town Board of the Town of Delafield, Waukesha County Wisconsin DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 10 entitled “Public Nuisance” of the Town of Delafield Municipal Code, Section 10.11 entitled “Designated Sex Offenders Regulated,” is hereby created to read as follows:

**10.11 DESIGNATED SEX OFFENDERS REGULATED.**

(1) Findings and Intent.

- (a) The Town Board finds that repeat sex offenders, sex offenders who use physical violence, and sex offenders who prey on children are sex predators who present an extreme threat to the public safety. Sex offenders are extremely likely to use physical violence and to repeat their offenses; and most sex offenders commit many offenses, have many more victims that are never reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offenders’ victimization to society at large, while incalculable, clearly exorbitant.
- (b) It is the intent of this section to not impose a criminal penalty, but instead to serve the Town’s compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Town by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sex offenders and sex predators are prohibited from loitering and residing.

(2) Definitions.

- (a) "Child" means a person under the age of 18 for purposes of this ordinance.
- (b) "Child Day Care" means any facility that provides care and supervision for compensation to four or more children for less than 24 hours a day where a license is required under Wisconsin Statute § 48.65(1) for the operation of such facility.
- (c) "Designated Sex Offender", for purposes of this section, means any person who is required to register under Wis. Stat. Sec. 301.45 for any sexual offense against a child and any person who is required to register under Wis. Stat. Sec. 301.45 and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Wis. Stat. Sec. 301.46(2) and (2m).
- (d) "Golf Course" means any public or private golf course or range.
- (e) "Library" means any library that is held open for use by the public where such library includes a collection of material specifically intended for use by children.
- (f) "Minor" means a person under the age of 17.
- (g) "Park/Conservation Area" means any area held open for use by the public for active or passive leisure purposes including, but not limited to, any park, parkway, recreation or open space area, beach, playground, conservation area, lake access point or recreational trail. "Park/Conservation Area" also means any private lake access point or private beach that owners of two or more lots or condominium units are entitled use, pursuant to a deed restriction, subdivision plat, condominium declaration, condominium plat, homeowner's association regulation or similar rights of common use.
- (h) "Public/Private School" means any public or private elementary or secondary school.
- (i) "Permanent Residence" means a place where the person abides, lodges, or resides for 14 or more consecutive days.
- (j) "Specialty School" means any specialized school for children, including, but not limited to, a gymnastics academy, dance academy, or music school. The Schoenstatt Retreat Center is a specialty school.
- (k) "Swimming Pool" means any swimming pool, wading pool, or aquatic facility held open for use by the public.
- (l) "Temporary Residence" means a place where the person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the person's permanent address.

(3) Prohibited Location of Residence for Designated Offenders.

- (a) **Child Safety Zones.** No designated sex offender shall establish a permanent residence or temporary residence on property that is within 2,000 feet of real property consisting of any of the following:
  - i. Public/Private School
  - ii. Specialty School
  - iii. Child Day Care
  - iv. Library
  - v. Park/Conservation Area
  - vi. Swimming Pool
  - vii. Golf Course
  - viii. Movie Theater
  - ix. Delafield Town Hall
- (b) **Original Domicile Restriction.** In addition to and not to the exclusion or prejudice of the foregoing, no designated sex offender shall be permitted to reside in the Town of Delafield unless the person was domiciled in the Town of Delafield at the time of the offense resulting in the person's most recent conviction of a designated sex offender crime.
- (c) **Distances for purposes of this section shall be measured from the closest boundary line of the real property supporting the residence of a person to the closest real property boundary line of the applicable above enumerated use(s).** The uses identified in Section 10.11(3)(a) include all such uses within the Town of Delafield, or within 2,000 feet of the Town of Delafield, that are known to the Town Zoning Administrator, provided that the Child Safety Zone covered by this Section 10.11 includes only the portion of the 2,000 foot distance that is located within the Town of Delafield. A map depicting the above-enumerated uses and the resulting residency restriction distances, as amended from time to time, is on file in the Office of the Town Clerk for public inspection pursuant to Section 10.11(6) of this Ordinance.
- (d) **Exception.** A designated sex offender residing within a prohibited area as described in Section 10.11(3)(a) or who does not satisfy the original domicile restriction of Section 10.11(3)(b) does not commit a violation of Section 10.11(3) if any of the following apply:
  - i. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wisconsin Statute § 301.45 before the effective date of this Ordinance.
  - ii. The person is a minor and is not required to register under Wisconsin

Statute § 301.45 or § 301.46.

- iii. The applicable use described in Section 10.11(3)(a) was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wisconsin Statutes § 301.45.
- iv. The person is a resident of the State of Wisconsin Department of Corrections Ethan Allen School juvenile correctional facility.

(4) Loitering by Designated Sex Offender Prohibited.

- (a) It shall be unlawful for any designated sex offender in the Town of Delafield to loiter or prowl in any child safety zone identified on the map prepared pursuant to Section 10.11(6) if any of the foregoing is done in a place, at a time, or a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of the persons or property in the vicinity. Among the circumstances that 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 him or herself, or manifestly endeavors to conceal him 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) The prohibitions set forth in subsection(4)(a), above, shall not apply where the designated sex offender is a minor and is accompanied by one or both of his or her parents, guardian, or other adult person having his or her care.
- (5) Other Prohibited Activity. It is unlawful for any designated offender to participate in a holiday event in the Town of Delafield involving one or more child by means of: distributing candy or other items to such child or children on Halloween; wearing a Santa Claus costume on, or during any of the thirty days preceding, Christmas; wearing an Easter Bunny costume on or during any of the thirty days preceding Easter; or by engaging in other similar type(s) of activity that may, under the circumstances then present, tend to entice a child to have contact with a designated offender. Holiday events in which the designated sex offender is the parent or legal guardian of the child or children involved, and no other children are present, are exempt from this paragraph.

(6) Child Safety Zones Map.

The Town Clerk shall maintain an official map showing locations identified in Section 10.11(3)(a) of this Ordinance. The Town Clerk shall cause such map to be updated at least annually to reflect any changes in the location of prohibited zones. These shall be designated on the map as "child safety zones". The map is to be displayed in the office of the Town Clerk. In the event of a conflict, the written terms of this Ordinance shall control.

(7) Penalties. In addition to and not to the prejudice or exclusion of such other penalties and remedies as may apply, violation of this Section 10.11 is subject to the following:

- (a) Any violation of this section shall be subject to the penalties and remedies as set forth in Section 25.04 of the Town Code. Each day of each violation shall constitute a separate offense.
- (b) Violation of this Section 10.11 shall constitute a public nuisance, which, in addition to monetary forfeitures shall be subject to action by the Town to abate and enjoin such nuisance.

SECTION 2: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 11 day of January, 2011.

TOWN OF DELAFIELD

Paul L. Kanter  
Paul L. Kanter, Town Chairman

ATTEST:

Mary Elsjer  
Mary Elsjer, Town Clerk

Published and/or posted this 3rd day of February, 2010.