

ORDINANCE NO. 2023-02**AN ORDINANCE REPEALING AND RE-CREATING PORTIONS OF SECTION 10.11 OF THE MUNICIPAL CODE CONCERNING RESIDENCY RESTRICTIONS FOR SEX OFFENDERS**

WHEREAS, the Town Board of the Town of Delafield, Waukesha County, Wisconsin, deems it a priority to act in the interest of public safety within our community, particularly in the interest of our children; and

WHEREAS, according to the U.S. Department of Justice, there are a record number of convicted sex offenders living in our communities¹; and

WHEREAS, all convicted child sex offenders have proven themselves to be dangerous²; and

WHEREAS, research in this area has established sex offenders are rearrested for sex crimes four times more frequently than non-sex offenders³; and

WHEREAS, the reduction of crime and criminal recidivism are inextricably linked to public safety within our community; and

WHEREAS, the risks posed by sex offenders against children, are nationally recognized in such landmark legislation as the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act; 1996 Megan's Laws; and the 2006 Adam Walsh Child Protection and Safety Act; and these risks are also recognized by legislation in every State in the United States of America including Wisconsin; and

WHEREAS, the Town Board finds that the data concerning child sex offenders is horrific and demonstrates the need for action, including the following⁴:

- "sex crimes are unfortunately fairly common in the United States."
- "It is estimated that one in every five girls and one in every seven boys are sexually abused by the time they reach adulthood."
- "Children are particularly vulnerable. Approximately 67% of all victims of reported sexual assaults are under the age of 18, and more than half of these victims are under the age of 12."

¹ Sex Offender Management Assessment and Planning Initiative, July 2015, *"This includes offenders returning to the community upon release from incarceration as well as offenders who are serving or who have been discharged from community-based sentences."*

² Kester, 2013 WI App 50, ¶ 30.

³ Sex Offender Management Assessment and Planning Initiative, July 2015, Langan, P., Schmitt, E., & Durose, M. (2003). *Recidivism of Sex Offenders Released from Prison in 1994.*

⁴Center for Sex Offender Management (CSOM) statistics. CSOM is a collaborative effort of the U.S. Department of Justice, Office of Justice Programs, the National Institute of Corrections, the State Justice Institute, and the American Probation and Parole Association, and these quoted statistics are from its "Fact Sheet: What You Need to Know about Sex Offenders".

- “Most sexual offenses are committed by someone the victim knows ... or acquaintance.”
- “No single factor or combination of factors can fully explain why someone offends sexually, though some factors may combine to increase people’s tendency to offend. These factors are ... [physiological, sociocultural, developmental] and situational/circumstantial (e.g. having easy access to victims...)”
- “About 12% to 24% of sex offenders will reoffend.”

WHEREAS, the Town Board also finds these statistics of the U.S. Department of Justice to be shocking and a call to action⁵:

- “Approximately 1.8 million adolescents in the United States have been victims of sexual assault.”
- “An estimated 60% of perpetrators of sexual abuse are known to the child but are not family members, e.g. family friends, babysitters, child care providers, neighbors.”

WHEREAS, in September of 2015 the State of Wisconsin Department of Corrections conducted an extensive study of sex offender recidivism between 1997 and 2010, and found that in total there were 631 instances (4.9% of all releases) of sexual re-offending, and the top two types of re-offense were second degree sexual assault of a child (103 offenses), first degree sexual assault of a child (100 offenses); and within the top 10 re-offenses also were sex with a child ages 16 or older (46 offenses) and repeated sexual assault of the same child (33 offenses); and the study concludes that of all the repeat offenses committed by sex offenders, “sex offenses that specifically reference children represent a greater proportion of the whole;”⁶

WHEREAS, data within the Town of Delafield may not provide a large enough sample size for statistical analysis, however, there is no reason to believe the outcomes would be different in the Town than were demonstrated statewide by the Department of Corrections data; and

WHEREAS, the creation of Sex Offender Residency Restrictions and Safety Zones by municipal ordinance around locations where children regularly congregate is a reasonable step toward protecting children and deterring recidivism by reducing the opportunity for new offenses within our community; and

⁵ U.S. Department of Justice, National Sex Offender Public Website “Facts and Statistics”

⁶ Joseph R. Tatar II, Ph.D. and Anthony Streveler, M.S.W., Sex Offender Recidivism After Release from Prison, Office of the Secretary, Research and Policy Unit. State of Wisconsin Department of Corrections (September 2015).

WHEREAS, the Town Board has reviewed many studies and reports concerning recidivism of sex offenders and the effectiveness of sex offender residency restrictions⁷, and has been fully advised in the matter; and

WHEREAS, the literature on the subject includes some studies that support the practice of imposing sex offender residency restrictions and others that are critical of the practice; and

WHEREAS, the Town Board finds it to be significant that some of the key studies that have concluded that sex offender residency restrictions have limited effectiveness have added significant qualifications to that conclusion; e.g. in “An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri,” (Huebner, et al., 2013), the authors generally do not support sex offender residency restrictions, but nevertheless find that following adoption of sex offender residency restrictions “the rate of recidivism for technical violations significantly decreased for Missouri sex offenders...” (id. at 9) and “the number of sex offense convictions did decline...” in Missouri (id. at 10); and

WHEREAS, in review of the residency restrictions of communities throughout Waukesha County and its environs, the Town Board finds that many of such communities have an “original domicile restriction,” which allows each community to take back its own while not adding an additional burden of more than its own sex offenders to its community; such burdens including neighborhood and citizen concerns and responses, risks of recidivism, and potential property value impacts⁸; and

⁷ These include but are not limited to: Recidivism of sex offenders released from prison in 1994, U.S. Department of Justice, Office of Justice Programs, copyright November 2003; The final report of the Commission to Improve Community Safety and Sex Offender Accountability, of the State of Maine, dated January 2004; Sex Offender Recidivism Prediction, Correctional Service of Canada dated October 14, 2004; Recidivism of Sex Offenders, May 2001, Center for Sex Offender Management; Treating Sex Offenders, Wisconsin Lawyer Magazine, October 1994; The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review, Marcus Nieto and Professor David Jung, California Research Bureau, California State Library, August 2006; Sex Offenders: You Are Now Free to Move About the Country, and Analysis of Doe v. Miller’s Effects on Sex Offender Residential Restrictions, UMKC Law Review, Spring 2005; There Goes the Neighborhood? Estimates of the Impact of Crime Risk on Property Values from Megan’s Laws, Linden and Rockoff, National Bureau of Economic Research, May 2006; The Effect of Proximity to a Registered Sex Offender’s Residence on Single-Family Housing Selling Price, Goliath Appraisal Journal, July 2003; Sex Offenders, Sexually Violent Predators, Punishment, Residence Restrictions and Monitoring, California Proposition 83, Analysis by the Legislative Analyst; An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri, Huebner, et al., 2013.

⁸ Property value impacts have been noted in numerous studies, including “The Effect on Proximity to a Registered Sex Offender’s Residence on Single-Family House Selling Price,” Larsen, J., Lowery, K., & Coleman, J. (2003), *The Appraisal Journal*, 71(3), 253-65; and “Neighborhood Tipping and Sorting Dynamics in Real Estate: Evidence from the Virginia Sex Offender Registry,” Wentland, Bain, Brastow, Stoll, Waller, *Social Science Research Network*, April 2013. Property values are only one such impact. Stop it Now, a non-profit organization devoted to sex offender research, offers this advice to those concerned about sex offenders moving into a neighborhood, among others: Create a family safety plan; attend notification meetings; notify the police of suspicious activity; and don’t wait to take action for prevention. At a minimum, this heightened awareness and activity burdens the families and neighbors where sex offenders are placed, and collectively this burdens the Town staff and resources, for every Sex Offender placement.

WHEREAS, if the Town of Delafield would not have an original domicile restriction, the Town would have open doors for non-resident sex offender residency when other communities have closed doors, inviting a substantial increase in child sex offender placements, with the related adverse impacts on the health, safety and welfare of the Town and its residents; and

WHEREAS, the Town Board recognizes the merits, mentioned in some studies, of individualized consideration of the risks and benefits of residency restrictions on an offender-by-offender basis, and the Town has carefully considered how it can best provide this individualized consideration, and hereby intends to consider the original domicile restrictions, on an offender-by-offender basis, to ensure that the ordinance does not banish sex offenders from the Town; and

WHEREAS, the Town Board recognizes that it cannot eliminate all risk of child sex offender re-offense, and it must balance all of the competing public policies, but intends by these regulations to strike the legislative balance that is appropriate for the circumstances of the Town of Delafield; and

WHEREAS, it is not the intent of this ordinance to banish sex offenders from residing within the Town of Delafield and careful attention has been given to ensure that there are ample locations for sex offenders to reside within the Town of Delafield in compliance with the requirements of this ordinance:

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

SECTION 1: Chapter 10 of the Town of Delafield Municipal Code entitled, "Public Nuisances," Section 10.11 entitled, "Designated Sex Offenders Regulated" is hereby repealed and re-created as depicted in attached Exhibit A, which is incorporated herein by reference.

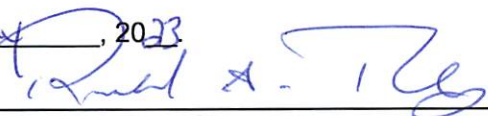
SECTION 2: SEVERABILITY.

The terms and provisions of this Ordinance are severable. Should any term or provision of this Ordinance be found invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect, or, to the extent permitted by law, the court is authorized to substitute an alternative term or provision for the invalid term or provision.

SECTION 3: EFFECTIVE DATE.

This ordinance shall take effect and be in full force from and after its passage and posting according to law.

PASSED and ADOPTED this 14 day of February, 2023



Ron Troy, Town Chairman

Attest:



Dan Green, Town Administrator – Clerk/Treasurer

Exhibit A

10.11 **DESIGNATED SEX OFFENDERS REGULATED.**

1. Findings and Intent.

- (a) This Chapter is a regulatory measure aimed at protecting the health and safety of children from the risk that convicted sex offenders may re-offend in locations close to their residences. The Governing Body has closely considered this question and had made numerous findings and expressions of intent within the preamble to the Ordinance which adopts this Code Section which are incorporated herein by reference. The Governing Body finds and declares that sex offenders are a serious threat to public safety. 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 sexual assault. The Governing Body further finds that, given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of re-offense, 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, and other places children frequent. The Governing Body finds and recognizes that, in addition to schools, there are other areas where children congregate or play.
- (b) This Chapter is not intended to impose a criminal penalty or punishment of sexual offenders, but rather to serve the Town's compelling interest to promote, protect, and improve the health, safety, and welfare of children in the Town by creating areas around locations where children regularly congregate in concentrated numbers where sexual offenders and sexual predators are prohibited from loitering and/or establishing temporary or permanent residence and by regulating certain activities that may be used by sexual offenders to prey upon children.
- (c) Due to the high rate of recidivism for sexual offenders, and because reducing both opportunity and temptation would help minimize the risk of re-offense, the Governing Body finds that there is a compelling need to protect children where they congregate or play in public places.

2. Definitions.

For purposes of this Chapter, the following terms shall have the following meaning unless the context otherwise requires:

- (a) Child means a person under the age of 18.
- (b) Children means two or more persons under the age of 18.
- (c) Child Safety Location means the site upon which any of the following are located without regard to whether such site is located within the geographic limits of the Town of Delafield:
1. Facility for children;
 2. Group home, as defined in Wis. Stat. sec. 48.02(7);
 3. Library, that is held open for use by the public;
 4. Licensed day care center as defined in Wis. Stat. sec. 48.65;
 5. Public or private primary, elementary, secondary, middle, junior high, or high school;
 6. Recreational trail, playground or park;
 7. Specialized school for children, including, without limitation, a gymnastics

- academy, dance academy, or music school; the Schoenstatt Retreat Center is a specialized school;
8. Swimming pool, wading pool, or aquatic facility held open for use by the public;
 9. A public or private golf course or range;
 10. Church or places of worship;
 11. Movie theater; and
 12. Delafield Town Hall.

(d) **Child Safety Zone** means any place within the Town that is physically located within two thousand feet (2,000') of any Child Safety Location.

(e) ~~Crime Against Children~~ means 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 where the victim is a child, 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;~~
- ~~§ 975.06, Sex Crimes Law, commitment.~~

(f)(e) **Domicile** means an individual's fixed and permanent home where the individual intends to remain permanently and indefinitely and to which whenever absent the individual intends to return provided, however, that no individual may have more than one domicile at any time. Domicile does not include a residence for any special or temporary purpose.

(g)(f) **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 program established under Section 120.13(14), 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.

(h)(g) Minor means a person under the age of 17.

(h)(h) Park 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" 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)(i) Permanent Residence means a place where the person abides, lodges, or resides for 14 or more consecutive days.

(i) Sex Offender shall mean:

1. Any person who is required to register under §301.45, Wis. Stats., for any offense against a child or any person who is required to register under §301.45, Wis. Stats., and who is subject to the Special Bulletin Notification process set forth in §301.46(2) and (2m), Wis. Stats.;

~~2.~~ Any person subject to the sex crimes commitment provisions of §975.06, Wis. Stats.;

~~—~~ Any person found not guilty by reason of disease or mental defect placed on lifetime supervision under §971.17(1j), Wis. Stats.

(k) ~~means a person who has been convicted of, found delinquent of, or found not guilty by reason of disease or mental defect of a sexually violent offense and/or a crime against children.~~

(l) Sexually Violent Offense has the meaning set forth in Wis. Stat. sec. 980.01(6), as amended from time to time.

(m) 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 domicile.

3. Residency Restrictions for Sex Offenders, Exceptions.

(a) Child Safety Zone Restriction. Subject to the exceptions in Section 3(c), no ~~s~~Sex ~~e~~Offender shall establish a permanent residence or temporary residence within the Town of Delafield that is within a Child Safety Zone, as determined by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of any Child Safety Location.

(b) Original Domicile Restriction. In addition to Section 3(a), but subject to the exceptions in Section 3(c), no ~~s~~Sex ~~e~~Offender, shall establish a permanent or temporary residence within the Town of Delafield and no supervised release of a ~~s~~Sex ~~e~~Offender shall be established in Town of Delafield unless such person was

domiciled in the Town of Delafield 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. The original domicile restriction shall only apply to Sex Offenders whose applicable crimes or offenses were committed after January 11, 2011 when an original domicile restriction was first enacted.

(c) Exceptions. A Sex Offender may not be found to be in violation of the residency restrictions in Section 3(a) if the Sex Offender establishes that any of the following apply:

1. The person was domiciled in the Town of Delafield prior to January 11, 2011, provided, however, that if the person was then subject to Wis. Stat. Sec. 301.45, the person must have also reported and registered the residence pursuant to Wis. Stat. Sec. 301.45 prior to such date to take advantage of the exception.
2. The person is a minor and is not required to register under Wis. Stats. Sec. 301.45 and Sec. 301.46.
3. The Child Safety Location began after the Sex Offender had established the permanent residence or temporary residence and reported and registered the residence if required pursuant to Wis. Stat. Sec. 301.45.
4. The Sex Offender is subject to an active court order to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental facility within the Child Safety Zone.

(d) Petition for Exemption.

- 4.1. A Sex Offender may seek an exemption from this Section 10.11 by petitioning to the Town Board.
2. The Town Board shall approve an official petition form. The Sex Offender seeking an exemption must complete the petition and submit it to the Town Clerk who shall forward it to the Town Board. The Town Board shall hold a hearing on each petition, during which the Town Board may review any pertinent information and accept oral or written statements from any person. The Town Board shall base its decision on factors related to the Town's interest in promoting, protecting and improving the health, safety and welfare of the community. Applicable factors for the Town Board's consideration shall include, but are not limited to:
 - a. Nature of the offense that resulted in sex offender status
 - b. Date of offense
 - c. Age at time of offense
 - d. Recommendation of probation or parole officer
 - e. Recommendation of Police Department
 - f. Recommendation of any treating practitioner
 - g. Counseling, treatment and rehabilitation status of sex offender
 - h. Remorse of sex offender
 - i. Duration of time since sex offender's incarceration
 - j. Support network of sex offender

- k. Relationship of sex offender and victim(s)
- l. Presence or use of force in offense(s)
- m. Adherence to terms of probation or parole
- n. Proposals for safety assurances of sex offender
- a-o. Conditions to be placed on any exception from the requirements of this Ordinance

3. The Town Board shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or limited to a certain address or time, or subject to other reasonable conditions. The Town Board's decision shall be final for purposes of any appeal. A written copy of the decision shall be provided to the Sex Offender and the Town of Delafield Police Department.

4. Renting Real Property to Sex Offenders, Restricted.

No person shall let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by a sSex eOffender contrary to the provisions of Section (3) of this Ordinance.

5. Prohibited Activities by Sex Offenders, Exception.

- (a) Prohibited Activities by Sex Offenders. Except as provided in subsection 5(b), no sSex eOffender shall 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 in relationship to Halloween, wearing a Santa Claus costume in a public place in relationship to Christmas, or wearing an EasterBunny costume in a public place in relationship to Easter, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a sSex eOffender.
- (b) Exception. Events in which the sSex eOffender is a parent or legal guardian of the child or children involved are exempt from the provisions of Section (5)(a) of this Ordinance provided that no child or children other than a child or children of the sSex eOffender are present at the event.

6. Loitering by Sex Offender Prohibited, Exception.

- (a) Loitering by Sex Offender. No sSex eOffender shall loiter or prowl on or within 200 feet of any Child Safety Location, 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 which 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 himself or herself or manifestly endeavors to conceal himself 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) Exception. The prohibitions set forth in section 6(a) of this Ordinance shall not apply where the sSex eOffender is a minor who is with one or both of his or her parents or guardian at the time of the offense or the actor was exercising First Amendment rights protected by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.

7. Child Safety Zone Map.

The Town Clerk's Office shall maintain an official map showing Child Safety Zones within the Town. The Town Clerk's Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the Delafield Town Clerk. In the event of a conflict, the terms of this Ordinance shall control. In no event shall a failure to update the map in compliance with this Ordinance preclude the prosecution or conviction of any sSex eOffender under this Ordinance.

8. Penalties.

- (a) Any violation of this ordinance shall be subject to the penalties and remedies as set forth in Section 25.04 of this Code. Each day of violation shall constitute a separate offense.
- (b) In addition and not to the exclusion or prejudice of such other penalties and remedies as may apply, violation of Section 3 or Section 4 of this Ordinance shall also constitute a public nuisance, which the Town may enforce by action or proceeding to enjoin or abate such public nuisance.

9. Exception for Placements under Chapter 980 of the Wisconsin Statutes.

(a) To the extent required by Section 980.135 of the Wisconsin Statutes, and notwithstanding the foregoing provisions of this Chapter, the Town of Delafield hereby exempts and may not enforce any portion thereof that restricts or prohibits a Sex Offender from residing at a certain location or that restricts or prohibits a person from providing housing to a Sex Offender against an individual who is released under Wisconsin Statutes Section 980.08, or against a person who provides housing to such individual, so long as the individual is subject to supervised release under Chapter 980 of the Wisconsin Statutes, the individual is residing where he or she is ordered to reside under Section 980.08 of the Wisconsin Statutes, and the individual is in compliances with all court orders issued under Chapter 980 of the Wisconsin Statutes.