

ORDINANCE NO. 09-07-13.

AN ORDINANCE TO AMEND THE TOWN OF SALEM CODE OF ORDINANCES 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 Offenders 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 Offenders, a more dangerous type of sex offender, and specifically, at Section 980.08, Stats., following such commitment, under certain conditions, provides for the supervised release of such Offenders into the community; and

WHEREAS, the Town of Salem places a high priority on maintaining public safety through 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 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 Town Board has considered 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 Town Board has also considered the decision of the United States Court of Appeals for the 8th Circuit, in Doe v. Millet, 405 Fd 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 Town Board has considered proposed amendments to the Town of Salem Code of Ordinances 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 August \_\_\_\_\_, 2009, following a class II notice, and upon all of the records and files and reports and proceedings pertaining to the subject matter, the Town Board finds the proposed amendments will serve to protect the health, safety and welfare of the Community.

NOW, THEREFORE, the Town Board of the Town of Salem, Kenosha County Wisconsin, does hereby ordain as follows:

SECTION 1: Chapter 4 Created. Chapter 4 of the Town of Salem Code of Ordinances is hereby ceated to provide as follows:

#### Chapter 4

#### SEX OFFENDER RESIDING WITHIN 2,000 FEET OF SCHOOLS, DAYCARE CENTERS, PARKS AND OTHER SPECIFIED FACILITIES AND USES PROHIBITED; CHILD SAFETY ZONES

##### 4.01. Purpose.

This Chapter is a regulatory measure aimed at protecting the health and safety of children in Salem from the risk that convicted sex offenders may reoffend in locations close to their residences. The Town 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 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 Town finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.

##### 4.02. Definitions.

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

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

2. 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:

- a. Section 940.225(1) First Degree Sexual Assault;
- b. Section 940.225(2) Second Degree Sexual Assault;
- c. Section 940.225(3) Third Degree Sexual Assault;
- d. Section 940.22(2) Sexual Exploitation by Therapist;
- e. Section 940.30 False Imprisonment-victim was minor and not the offender's child;
- f. Section 940.31 Kidnapping-victim was minor and not the offender's child;
- g. Section 944.01 Rape (prior statute);
- h. Section 944.06 Incest;
- i. Section 944.10 Sexual Intercourse with a Child (prior statute);
- j. Section 944.11 Indecent Behavior with a Child (prior statute);
- k. Section 944.12 Enticing Child for Immoral Purposes (prior statute);
- l. Section 948.02(1) First Degree Sexual Assault of a Child;
- m. Section 948.02(2) Second Degree Sexual Assault of a Child;
- n. Section 948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child;
- o. Section 948.05 Sexual Exploitation of a Child;
- p. Section 948.055 Causing a Child to View or Listen to Sexual Activity;
- q. Section 948.06 Incest with a Child;
- r. Section 948.07 Child Enticement;
- s. Section 948.075 Use of a Computer to Facilitate a Child Sex Crime;
- t. Section 948.08 Soliciting a Child for Prostitution;
- u. Section 948.095 Sexual Assault of a Student by School Instructional Staff;
- v. Section 948.11(2)(a) or (am) Exposing Child to Harmful Material-felony sections;
- w. Section 948.12 Possession of Child Pornography;
- x. Section 948.13 Convicted Child Sex Offender Working with Children;
- y. Section 948.30 Abduction of Another's Child;
- z. Section 971.17 Not Guilty by Reason of Mental Disease-of an included offense;
- aa. Section 975.06 Sex Crimes Law Commitment.

3. "Offender" means an Offender 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.

4. "Residence" ("reside") means the place where an Offender sleeps, which may include more than one location, and may be mobile or transitory.

#### 4.03. Residency restrictions.

1. Offender shall not reside within two thousand (2000) feet of the real property comprising any of the following:

- a. Any facility for children (which means a public or private school, a group

home, as defined in Section 48.02 (7), Stats., a residential care center for children and youth, as defined in Section 48.02 (15d), Stats., a shelter care facility, as defined in Section 48.02 (17), Stats., a foster home, as defined in Section 48.02 (6), Stats., a treatment foster home, as defined in Section 48.02 (17q), Stats., a day care center licensed under Section 48.65, Stats., a day care program established under Section 120,13 (14), Stats., a day care provider certified under Section 48.651, Stats., or a youth center, as defined in Section 961.01 (22), Stats.); and/or

b. Any facility used for:

1. a public park, parkway, parkland, park facility;
2. a public swimming pool;
3. a public library;
4. a recreational trail;
5. a public playground;
6. a school for children;
7. athletic fields used by children;
8. a movie theatre;
9. a daycare center;
10. a ski hill open to the public;
11. any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
12. a public or private golf course or range; and
13. aquatic facilities open to the public;

2. The distance shall be measured from the closest boundary line of the real property supporting the residence of an Offender to the closest real property boundary line of the applicable above enumerated use(s). A map depicting the above enumerated uses and the resulting residency restriction distances, as amended from time to time, shall be maintained in the Office of the Town Clerk for public inspection.

#### 4.04. Residency restriction exceptions.

An Offender residing within two thousand feet of the real property comprising any of the uses enumerated in Section 4.03. above, does not commit a violation of this Chapter if any of the following apply:

1. The Offender is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
2. The Offender has established a residence prior to the effective date of this Chapter on \_\_\_\_\_, which is within two thousand (2000) feet of any of the uses enumerated in Section 4.03. above, or such enumerated use is newly established after such effective date and it is located within such two thousand (2000) feet of a residence of an Offender which was established prior to the effective date of this Chapter.
3. The Offender is a minor or ward under guardianship.

#### 4.05. Original domicile restriction.

In addition to and notwithstanding the foregoing, but subject to Section 4.04 above, no Offender and no individual who has been convicted of a sexually violent offense and/or a crime against children, shall be permitted to reside in the Town of Salem, unless such Offender was domiciled in the Town of Salem at the time of the offense resulting in the Offender's most recent conviction for committing the sexually violent offense and/or crime against children.

#### 4.06. Child safety zones.

No Offender 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, parkway, parkland, park facility;
2. a public swimming pool;
3. a public library;
4. a recreational trail;
5. a public playground;
6. a school for children;
7. athletic fields used by children;
8. a movie theatre;
9. a daycare center;
10. a ski hill open to the public;
11. any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
12. a public or private golf course or range;
13. aquatic facilities open to the public; and
14. any facility for children (which means a public or private school, a group home, as defined in Section 48.02 (7), Stats., a residential care center for children and youth, as defined in Section 48.02 (15d), Stats., a shelter care facility, as defined in Section 48.02 (17), Stats., a foster home, as defined in Section 48.02 (6), Stats., a treatment foster home, as defined in Section 48.02 (17q), Stats., a day care center licensed under Section 48.65, Stats., a day care program established under Section 120.13 (14), Stats., a day care provider certified under Section 48.651, Stats., or a youth center, as defined in Section 961.01 (22), Stats.).

A map depicting the locations of the real property supporting the above enumerated uses, as amended from time to time, shall be maintained in the Office of the Town Clerk for public inspection.

#### 4.07. Child safety zone exceptions.

An Offender does not commit a violation of Section 4.06 above and the enumerated uses may allow such Offender on the property supporting such use if any of the following apply:

1. The property supporting an enumerated use under Section 4.06 also supports a

church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:

- a. Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
- b. Written advance notice is made from the Offender to an individual in charge of the church and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the Offender; and
- c. The Offender shall not participate in any religious education programs which include individuals under the age of 18.

2. The property supporting an enumerated use under Section 4.06. also supports a use lawfully attended by an Offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the Offender as the child's parent upon the property, subject to the following conditions:

- a. Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
- b. Written advance notice is made from the Offender to an individual in charge of the use upon the property and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the Offender.

3. The property supporting an enumerated use under Section 4.06. also supports a polling location in a local, state or federal election, subject to the following conditions:

- a. The Offender is eligible to vote;
- b. The designated polling place for the Offender is an enumerated use; and
- c. The Offender enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate; and the Offender vacates the property immediately after voting.

4. The property supporting an enumerated use under Section 4.06. also supports an elementary or secondary school lawfully attended by an Offender as a student, under which circumstances the Offender who is a student may enter upon that property supporting the school at which the Offender is enrolled, as is reasonably required for the educational purposes of the school.

#### 4.08. Violations.

If an Offender violates Section 4.03 above, by establishing a residence or occupying residential premises within two thousand (2000) feet of those premises as described therein, without any exception(s) as also set forth above, the Town Attorney, upon referral from a law enforcement officer and the written determination by the law enforcement officer 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 Town in the Circuit Court for

Kenosha County to permanently enjoin such residency as a public nuisance. If an Offender violates Section 4.06 above, in addition to the aforesaid injunctive relief, such Offender shall be subject to the general penalty provisions set forth under Section 25.04 (1) c. of the Town of Salem Code of Ordinances. Each day a violation continues shall constitute a separate offense. In addition, the Town may undertake all other legal and equitable remedies to prevent or remove a violation of this Chapter.

SECTION 2: Severability. Each Section , subsection , paragraph, sentence, clause, phrase, and provision of the foregoing Ordinance is, and the same as hereby declared to be, severable and if any portion or provision thereof is duly determined to be invalid for any reason, such determination shall not invalidate any other portion or provision thereof.

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

SECTION 4: Effective Date. This ordinance shall take effect and be enforced from and after its passage and posting as required by law.

Adopted by the Town Board of the Town of Salem, Kenosha County, Wisconsin this  
13<sup>th</sup> day of July, 2009.

TOWN OF SALEM  
Kenosha County, Wisconsin

By: Linda Valentine  
Linda Valentine, Town Chair

Attest: Cynthia Ernest  
Cynthia Ernest, Town Clerk