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12-21-15

15-1210

ORDINANCE

An Ordinance to create Section 14.575 of the Manitowoc Municipal Code to establish sexual offender residency restrictions as follows:

Section 1. Section 14.575 is created to read as follows:

“14.575 Sexual Offender Residency Restrictions.

(1) Findings and Intent. The Wisconsin Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community.

Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender due to their likelihood to reoffend, and specifically, in Wis. Stat. § 980.08, provides for the supervised release of such persons into the community.

The City of Manitowoc places a high priority on maintaining public safety through highly skilled and trained law enforcement as well as dependency on laws that deter and punish criminal behavior.

The City 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 rearrested for a new rape or 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 and daycare centers. The City finds and declares that, in addition to schools and daycare centers, children congregate or play in a number of public places, including public parks and houses of worship.

This chapter is a regulatory measure aimed at protecting the health and safety of children in the City from the risk that convicted sex offenders may reoffend in locations close to their residences. 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 areas 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 by creating child safety zones where children regularly congregate in concentrated numbers wherein access by certain sexual offenders and sexual predators to such zones shall be restricted or excluded.

(2) Definitions. As used in this chapter, and unless the context requires otherwise:

(a) A “sexually violent offense” shall have the meaning as set forth in Wis. Stat.

§980.01(6), as amended from time to time.

(b) 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, where the victim is under the age of 18, respectively:

<u>Wisconsin Statute Sections</u>	
<u>940.225(1)</u>	<u>First Degree Sexual Assault</u>
<u>940.225(2)</u>	<u>Second Degree Sexual Assault</u>
<u>940.225(3)</u>	<u>Third Degree Sexual Assault</u>
<u>940.22(2)</u>	<u>Sexual Exploitation by Therapist</u>
<u>940.30</u>	<u>False Imprisonment-victim was minor and not the offender's child</u>
<u>940.31</u>	<u>Kidnapping-victim was minor and not the offender's child</u>
<u>944.01</u>	<u>Rape (prior statute)</u>
<u>944.06</u>	<u>Incest</u>
<u>944.10</u>	<u>Sexual Intercourse with a Child (prior statute)</u>
<u>944.11</u>	<u>Indecent Behavior with a Child (prior statute)</u>
<u>944.12</u>	<u>Enticing Child for Immoral Purposes (prior statute)</u>
<u>948.02(1)</u>	<u>First Degree Sexual Assault of a Child</u>
<u>948.02(2)</u>	<u>Second Degree Sexual Assault of a Child</u>
<u>948.025</u>	<u>Engaging in Repeated Acts of Sexual Assault of the Same Child</u>
<u>948.05</u>	<u>Sexual Exploitation of a Child</u>
<u>948.055</u>	<u>Causing a Child to View or Listen to Sexual Activity</u>
<u>948.06</u>	<u>Incest with a Child</u>
<u>948.07</u>	<u>Child Enticement</u>
<u>948.075</u>	<u>Use of a Computer to Facilitate a Child Sex Crime</u>
<u>948.08</u>	<u>Soliciting a Child for Prostitution</u>
<u>948.095</u>	<u>Sexual Assault of a Student by School Instructional Staff</u>
<u>948.11(2)(a) or (am)</u>	<u>Exposing Child to Harmful Material-felony sections</u>
<u>948.12</u>	<u>Possession of Child Pornography</u>
<u>948.13</u>	<u>Convicted Child Sex Offender Working with Children</u>
<u>948.30</u>	<u>Abduction of Another's Child</u>
<u>971.17</u>	<u>Not Guilty by Reason of Mental Disease-of an included offense</u>
<u>975.06</u>	<u>Sex Crimes Law Commitment</u>

(c) "Facility for children" means a public or private primary or secondary school; a church, synagogue, or house of worship as zoned by the City; a group home, as defined in Wis. Stat. § 48.02(7); a residential care center for children or youth, as defined in Wis. Stat. §48.02(15d); a shelter care facility, as defined in Wis. Stat. § 48.02(17); a daycare center licensed under Wis. Stat. § 48.65; a daycare program established under Wis. Stat. § 120.13(14); or a daycare provider certified under Wis. Stat. § 48.651.

(d) "Offender" means a person who has been convicted of or who has been found not guilty by reason of disease or mental defect of a sexually violent offense and/or a crime against children who was tried as an adult; or who was deemed an offender under Wis. Stat. Ch. 980.

(e) "Permanent residence" means the place where a person sleeps, abides, lodges, or resides for 14 or more consecutive days or which qualifies as a residence under the laws of the State of Wisconsin, and may be mobile or transitory.

(f) "Sexually violent offense" shall have the meaning as set forth in Wis. Stat. § 980.01(6), as amended from time to time.

(g) "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 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 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.

(3) Original Domicile Restriction. (a) Residency Prohibited. No offender who has ever been ruled a sexually violent offender by a petition filed under Wis. Stat. Ch. 980 or any offender who has been convicted of a crime against children as defined in subsection (2)(b) shall be permitted to reside in the City, and no supervised release of such offender shall be established in the City, unless the offender was domiciled in the City at the time of an offense resulting in conviction or the person previously resided in the City for over five years.

(b) Exemptions. An offender 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 this ordinance.

3. The offender is a minor or ward under guardianship.

4. The residence is also the primary residence of the person's parents, grandparents, siblings, spouse, or child, provided that such parent, grandparent, sibling, spouse, or child established the residence at least five years before the designated offender established residence at that location.

(4) Property Owners Prohibited from Renting Real Property to Certain Sexual Offenders and Sexual Predators. It is unlawful for a property owner to let or rent any place, structure, or part thereof, trailer, or other conveyance, if the property owner knows or should have known that it will be used as a permanent or temporary residence by any offender prohibited from establishing such residence by this ordinance, if the property is not subject to an exception set forth by subsection 3(b).

(5) Loitering. (a) Unlawful to Loiter or Prowl. It is unlawful for an offender, as defined by subsection 2(d), to loiter or prowl, as said words are defined in section 14.350(1), within 500' of real property that supports or upon which there exists a facility for children, a public park, a public swimming pool, a public library, or a public recreational trail.

(b) Measurement of Distance. The distance of 500' shall be measured from 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 to the closest boundary line of the real property where the offender is loitering or prowling.

(6) Appeal. The residency restrictions of this chapter may be waived upon approval of the Common Council through an appeal by the affected offender. Such appeal shall be made in writing to the City Clerk, who shall forward the request to the Public Safety Committee and the Chief of Police. The Chief of Police shall forward a report on the appeal request to the Public Safety Committee. The Public Safety Committee will convene within 30 days of the appeal being filed with the Clerk to hear from the Chief of Police and the affected offender or their counsel. After deliberation, the Public Safety Committee shall forward a recommendation to the Common Council, who shall act on the

recommendation at their next regularly scheduled meeting. A written copy of the decision shall be provided to the affected offender by the City Clerk. The Public Safety Committee may reject a waiver request when the request is filed with the City Clerk within 90 days of denial by the committee of a prior identical waiver request of the requester, absent a change in circumstances.

(7) Penalties. Any person found guilty of violating this ordinance shall be penalized by a forfeiture not less than \$300 and not to exceed \$1,000. Each day an offender maintains a residence in violation of this article constitutes a separate violation. The City may also seek equitable relief.

(8) Severability. Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.”

Section 2. This Ordinance shall take effect on the day after its publication.

Introduced DEC 21 2015 _____

Adopted _____

Approved _____

Justin M. Nickels, Mayor

This Ordinance was drafted by Kathleen M. McDaniel, City Attorney

Fiscal Impact: \$0

Funding Source: n/a

Finance Director Approval: /sc

Approved as to form: /kmm