



IN THE NAME AND BY THE AUTHORITY OF THE TOWN OF CEDARBURG, WISCONSIN

ORDINANCE # 2015-8

An Ordinance to Create Chapter 123. Sex Offender Restrictions of the Code of Ordinances of the Town of Cedarburg, Ozaukee County, Wisconsin.

WHEREAS, the Town of Cedarburg is a municipal body corporate and politic within Ozaukee County;

WHEREAS, the Town Board is authorized to enact ordinances for the health, safety, and welfare of the public;

WHEREAS, the Wisconsin Statutes provide for punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community;

WHEREAS, Wisconsin court cases have upheld the legality and enforceability of sex offender residency restriction ordinances;

WHEREAS, the U.S. Department of Justice published a report entitled *Sex Offenses and Offenders* (1997), and it found the median age of the victims of imprisoned sexual assaulters was less than 13 years old and the median age of rape victims was 22 years; and 19% of those serving time for sexual assault and an estimated 24% of those serving time for rape had been on probation or parole at the time of the offense;

WHEREAS, it has been estimated that 12% of imprisoned violent sex offenders had a prior conviction for rape or sexual assault while 61% had a prior felony for other crimes;

WHEREAS, the Town Plan Commission and the Town Board have reviewed the findings of a number of other State laws, as they pertain to laws enacted which relate to, and in part impose restrictions upon sex offenders with respect to residency;

WHEREAS, the Town Plan Commission and Town Board have considered court decisions as they relate to the interpretation and enforceability of restrictions upon sex offenders with respect to residency, which included the decision of the U. S. Court of Appeals for the 8th Circuit, in *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005), providing in pertinent part; "[th]e 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 re-offend,

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, the Town of Cedarburg is a place of residence for families with children;

WHEREAS, the Town Board, upon a favorable recommendation by the Plan Commission, has determined that the establishment of sex offender residency restrictions is reasonable and necessary to protect the health, safety and welfare of the residents and the Community;

NOW, THEREFORE, THE TOWN BOARD OF THE TOWN OF CEDARBURG, OZAUKEE COUNTY, STATE OF WISCONSIN, DO ORDAIN AS FOLLOWS:

Chapter 123

SEX OFFENDER RESTRICTIONS

§ 123-1. Purpose and intent.

The Town 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 sexually based crime. 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. The Town finds and declares that, in addition to schools and day-care centers, children congregate or play in a number of public places, including public parks and other facilities for children. It is the intent of this chapter to serve the Town's compelling interest to promote, protect, and improve the health, safety, and welfare of Town citizens by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders are prohibited from entering or establishing residency.

§ 123-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

RESIDENCE

A place where a person sleeps, abides, lodges, or resides either on a permanent or temporary basis. For purposes of this chapter, a "permanent residence" means a place where the person sleeps, abides, lodges, or resides for 14 or more consecutive days, and a "temporary residence" means a place that is not a permanent residence and is 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 or four or more days in any month. A residence may be mobile or transitory.

SAFETY ZONE

Any real property that supports or upon which there exists any facility used for or that supports a school for children, a day-care center, a public park, park facility, park pathway, athletic field, or skating rink.

SEX OFFENDER

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.

SEXUALLY VIOLENT OFFENSE

Shall have the meaning as set forth in § 980.01(6), Wis. Stats., as amended from time to time.

CRIME AGAINST CHILDREN

Any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or federal government, having like elements necessary for conviction, 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
§ 944.02	Rape (prior statute, see now 940.225)
§ 944.06	Incest
§ 944.10	Sexual Intercourse with a Child (prior statute, see now 948.02)
§ 944.11	Indecent Behavior with a Child (prior statute, see now 948.02)
§ 944.12	Enticing Child for Immoral Purposes (prior statute, see now 948.07)
§ 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 a 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 or an Included Offense
§ 975.06	Sex Crime Law Commitment

§ 123-03. Residency restrictions.

A. A sex offender shall not reside within 2,000 feet of any real property that supports or upon which there exists any of the following uses:

- (1) A school for children.
- (2) A public park, parkway, parkland, park facility, nature preserve, or park pathway used by children.
- (3) A day-care center for children.
- (4) A recreational trail, multi-purpose trail or bike path used by children.
- (5) An athletic field used by children
- (6) A skating rink used by children

B. The distance shall be measured from the closest boundary line of the real property supporting the residence of a sex 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 above.

C. It is unlawful to let or rent any place, structure, or part thereof with the knowledge that it will be used as a residence by a sex offender if such place, structure, or part thereof is located within 2,000 feet of any of the uses enumerated in Subsection A above. A person letting or renting a place or structure shall be deemed to have such knowledge if, at least 10 days prior to letting or renting the place, the sex offender's name appears on the Wisconsin Department of Corrections sex offender registry and the person letting or renting the place knew the sex offender would be residing at the subject place or structure.

D. Residency restriction exceptions. A sex offender residing within 2,000 feet of any real property that supports or upon which there exists any of the uses enumerated in Subsection A above does not commit a violation of this chapter if any of the following apply:

- (1) The sex offender established, reported and registered a residence pursuant to § 301.45, Wis. Stats., prior to the effective date of this chapter.
- (2) The use enumerated in Subsection A above is commenced after the sex offender established a residence and reported and registered that residence pursuant to § 301.45, Wis. Stats.
- (3) The sex offender is a minor who was not convicted in adult court or ward under guardianship.

123-4. Safety zones.

A. A sex offender shall not enter upon or be present upon or within a safety zone.

B. Safety zone exceptions. A sex offender who enters upon or who is present upon or within a safety zone does not commit a violation of this chapter if any of the following apply:

- (1) The property also supports a church, synagogue, mosque, temple or other house of religious worship, subject to all of the following conditions:
 - (a) The sex offender's entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - (b) The sex offender shall not participate in any religious education programs that include individuals under the age of 18.
- (2) The property also supports a use lawfully attended by a sex offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the sex offender as the child's parent upon the property, subject to the following condition:
 - (a) The sex offender's entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public.
- (3) The property also supports a polling location in a local, state or federal election, subject to all of the following conditions:
 - (a) The sex offender is eligible to vote;
 - (b) The property is the designated polling place for the sex offender; and
 - (c) The sex offender enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is to any member of the electorate, and vacates the property immediately after voting.
- (4) The property also supports a school lawfully attended by a sex offender as a student, under which circumstances the sex offender may enter upon the property supporting the school at which the sex offender is enrolled, for such purposes and at such times as are reasonably required for the educational purposes of the school.
- (5) The property also supports a court, government office or room for public governmental meetings, subject to all of the following conditions:
 - (a) The sex offender is on the property only to transact business at the government office or place of business, other than a public library, or attend an official meeting of a governmental body; and
 - (b) The sex offender leaves the property immediately upon completion of the business or meeting.

123-5. Penalties and remedies.

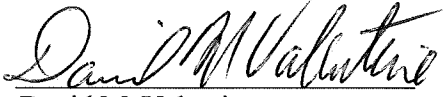
A. Forfeitures. Any person who shall violate any provision of this chapter or any regulation, rule or order made herein shall be subject to a forfeiture as set forth in § 1-3 of the Town Code as

amended from time to time. Each day a violation continues shall constitute a separate offense. Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the Town from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this chapter.

B. Injunction. If an offender establishes a residence in violation of § 123-3 above, or enters or is present upon or within a safety zone in violation of § 123-4 above, the Town Attorney may bring an action in the name of the Town in Circuit Court to permanently enjoin any such violation as a public nuisance.

This ordinance shall be in full force and effect upon its passage and posting as provided by law.

PASSED AND ADOPTED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, this 5th day of August, 2015.


David M. Valentine
Town Chairman


Eric Ryer, Town Clerk

