

# Ordinance #62

## Sexual Offender Residency and Other Restrictions

The Common Council of the City of Fountain City, Wisconsin do ordain as follows:

**1. FINDINGS AND INTENT.** The common council finds that repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are likely to use physical violence and to repeat their offenses; and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant. It is the intent of this ordinance not to impose a criminal penalty, but 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 restricting other activities that may be used to prey on children.

**2. DEFINITIONS.** In this section:

- a. "Child" means a person less than 16 years of age.
- b. "Child safety location" means the site upon which any of the following are located:
  - (i) A licensed day-care center;
  - (ii) A public park or park facility;
  - (iii) A recreational facility;
  - (iv) A recreational trail;
  - (v) A public playground;
  - (vi) A place of worship;
  - (vii) A public boat landing;

- (viii) An athletic field used by children;
- (ix) Any other place designated by the common council as a place where children are known to congregate.

c. "Child safety zone" means any place within the city that is physically located within 1,500 feet of any child safety location.

d. "Designated offender" means any person who is required to register under §301.45, Wis. Stat., for any sexual offense against a child or any person who is required to register under §301.45, Wis. Stat., and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to §301.46(2) & (2m), Wis. Stats.

e. "Dwelling" means any building or structure that is wholly or partly used or intended to be used for living or sleeping by human occupants.

f. "Loiter" or "Loitering" means, whether in a group, crowd, or as an individual, to stand idly about, loaf, prowl, congregate, wander, stand, linger aimlessly, proceed slowly or with many stops, to delay or dawdle.

g. "Permanent residence" means a dwelling or place where the person abides, lodges or resides for 14 or more consecutive days.

h. "Temporary residence" means a dwelling or 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 4 or more consecutive or non-consecutive days in any month and which is not the person's permanent residence.

### **3. RESIDENCY RESTRICTION**

a. A designated offender shall not establish a permanent residence or temporary residence in any child safety zone located within the City.

b. For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the closest property line of the permanent residence or temporary residence of a designated offender to the closest outer property line of the child safety location.

c. The City Clerk shall maintain an official map showing child safety zones within the City. The City Clerk shall update the map at least annually to reflect any changes in the child safety

zones. In the event of a conflict, the terms of this ordinance shall control. In no event shall failure to update the map preclude the enforcement of this ordinance.

d. The residency restriction may be waived upon approval of the Common Council through appeal by the designated offender. Such appeal shall be made to the City Clerk, who shall forward the request to the Common Council. The Common Council shall hold a hearing on the appeal, during which the Common Council may review pertinent information and accept oral or written statements from any person. The Common Council shall base its decision on whether the designated offender has shown remorse, has rehabilitated, could re-offend, and any other factor related to the City's interest in promoting, protecting and improving the health, safety and welfare of the citizens of the City. An exemption may be unconditional or limited to a certain address or time period. A written copy of the decision shall be provided to the designated offender. The Common Council's decision shall be final.

**4. RESIDENCY RESTRICTION EXCEPTIONS.** A designated offender residing within a child safety zone does not commit a violation of this ordinance if any of the following apply:

a. The designated offender established the permanent residence or temporary residence and reported and registered the residence as provided in §301.45, Wis. Stat., before the effective date of this ordinance.

b. The designated offender was under 17 years of age and is not required to register under §301.45 or §301.46, Wis. Stats.

c. The child safety location was opened after the designated offender established the permanent or temporary residence and reported and registered the residence as provided in §301.45, Wis. Stat.

d. The permanent or temporary residence of the designated offender is also the primary residence of the designated offender's parent, grandparent, sibling, spouse, or child, provided that such parent, grandparent, sibling, spouse or child established the residence at least 2 years before the designated offender established residence at the location.

**5. RENTAL RESTRICTION.** No person shall let or rent any dwelling, or any part thereof, with the knowledge that it will be used as a temporary or permanent residence by a designated offender, if such dwelling is located within a child safety zone.

**6. SALE RESTRICTION.** No owner, real estate broker, or real estate sales person shall participate in the sale of any dwelling, or part thereof, with the knowledge that it will be used as

a temporary or permanent residence by a designated offender, if such dwelling is located within a child safety zone.

**7. HOLIDAY EVENT AND PUBLIC GATHERING RESTRICTION.** A designated offender shall not participate in a holiday event or public gathering involving children, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, wearing an Easter Bunny costume on or preceding Easter, participating in coordinated fireworks activities, or other similar activities. This section does not apply to any event in which the designated offender is the parent or guardian of the children involved, and the designated offender's children are the only children present. Participation is defined as actively taking part in the event.

**8. LOITERING RESTRICTION.**

a. A designated sex offender shall not loiter in any child safety zone, in a place, at a time, or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of children in the vicinity.

b. Among the circumstances that may be considered in determining whether such alarm is warranted are that the actor takes flight upon appearance of a peace 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 peace officer shall prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm that would otherwise be warranted, by requesting the actor to identify himself or herself or explain his or her presence and conduct in the child safety zone. No person shall be convicted of an offense under this section if the peace 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 peace officer at the time, would have dispelled the alarm.

c. This section shall not apply where the actor was accompanied by his or her parent, guardian or other adult person having his or her care, custody or control, of where that actor was exercising First Amendment rights protected by the United States Constitution or the Wisconsin Constitution, including freedom of speech, the free exercise of religion and the right of assembly.

**9. PENALTIES AND REMEDIES.**

a. A designated sex offender who violates this ordinance shall be subject to a forfeiture of not less than \$1,000.00 nor more than \$2,000 for each violation. Each violation and each day a violation continues or occurs shall constitute a separate offense. The City may also seek equitable relief. Neither the issuance of a citation nor the imposition of forfeiture under this

ordinance shall preclude the City from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this ordinance.

b. If a designated sex offender establishes a permanent residence or temporary residence in violation of this ordinance, the Common Council may refer the matter to the City Attorney. The referral shall include a written determination by the Common Council that, upon all of the facts and circumstances and the purpose and intent of this ordinance, such violation interferes substantially with the comfortable enjoyment of life, health, and/or safety of another or others. Upon such referral, the City Attorney shall bring an action in the name of the City in circuit court to permanently enjoin such residency as a public nuisance.

c. A person who violates the rental restriction set forth in section 5 or the sale restriction set forth in section 6 of this ordinance shall be subject to a forfeiture of not less than \$500 nor more than \$1,000 for each violation. Each violation shall constitute a separate offense. The City may also seek equitable relief.

**10. EXCEPTION FOR PLACEMENTS UNDER CHAPTER 980.** To the extent required by §980.135, Wis. Stats., and notwithstanding the foregoing provisions of this ordinance, the City will not enforce any portion of this ordinance that restricts or prohibits a designated sex offender from residing at a certain location or that restricts or prohibits a person from providing housing to a designated sex offender against an individual who is released under §980.08, Wis. Stats., or against a person who provides housing to the individual so long as the individual is subject to supervised release under Chapter 980, Wis. Stats., the individual is residing where he or she is ordered to reside under §980.08, Wis. Stats., and the individual is in compliance with all court orders issued under Chapter 980, Wis. Stats.

**11. SEVERABILITY.** The provisions of this ordinance shall be deemed severable and it is expressly declared that the Common Council would have passed the other provisions of this ordinance irrespective of whether or not one or more provisions may be declared invalid. If any provision of this ordinance or the application to any person or circumstance is held invalid, the remainder of the ordinance or the application of such other provisions to other persons or circumstances shall not be affected.

This ordinance shall take effect upon passage and be enforced from and after its passage, posting and/or public action as required by law.

Dated this 14th day of April, 2020.

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**Bobbi Farrand, Mayor**

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**Michelle Copley, Clerk-Treasurer**