

Ord. 11-18

AN ORDINANCE REPEALING AND RE-CREATING CHAPTER 9 OF THE TOWN OF LISBON CODE RELATING TO RESIDENCY RESTRICTION FOR SEX OFFENDERS

WHEREAS, the Town Board of the Town of Lisbon, 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, the Town of Lisbon Board adopted Ordinance Number 07-15 on or about November 9, 2015 to establish sex offender residency restrictions and establish prohibitions against certain activities by sex offenders within the Town of Lisbon, and

WHEREAS, The Town of Lisbon Board hereby intends to revisit this issue in light of current laws, current knowledge of the effectiveness of sex offender restrictions, reports, data and court decisions; 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

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.

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."
- "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

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".

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, data within the Town of Lisbon 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

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 City staff and resources, for every Sex Offender placement.

WHEREAS, if the Town of Lisbon 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 create an Appeals Board with sufficient jurisdiction to consider the original domicile restrictions 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 Lisbon; and

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

NOW, THEREFORE, THE TOWN BOARD OF THE TOWN OF LISBON, WAUKESHA COUNTY, WISCONSIN DOES ORDAIN AS FOLLOWS:

SECTION 1. An ordinance for the Town of Lisbon Municipal Code, entitled "*Sex Offender Residency and Loitering Restrictions*", is hereby repealed and re-created to read as follows:

SEX OFFENDER RESIDENCY AND ACTIVITY RESTRICTIONS

(1) FINDINGS AND INTENT.

- (a) This section is a non-punitive civil regulatory measure aimed at protecting the public health, safety and welfare of the children and citizens of the Town of Lisbon from the risk that convicted sex offenders may re-offend in locations close to their residences. The Town Board has closely considered this question and has 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 Town Board finds and declares that sex offenders who prey upon children are a serious threat to public safety and it is necessary for the Town to enact reasonable measures to reduce the opportunity and minimize the risk of re-offense by protecting children where they congregate or play in addition to the protections afforded by State law.

- (b) It is the intent of this ordinance not to impose a criminal penalty but, instead, to serve the Town's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Town by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sex offenders and sex predators are prohibited from establishing temporary or permanent residence or loitering. The Town Board has closely considered this issue and has made numerous findings and expressions of intent within the preamble to the ordinance, which is incorporated herein by reference.

(2) DEFINITIONS. For purposes of this section:

- (a) Child means a person under the age of 18 years.
- (b) Children, unless otherwise indicated, means two or more persons under the age of 18.
- (c) Child Safety Zone shall mean any real property that supports or upon which there exists any facility used for or that supports a facility such as the facilities listed in subsections (3)(a) and (b) of this section.
- (d) 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.;
 3. Any person found not guilty by reason of disease or mental defect placed on lifetime supervision under §971.17(1j), Wis. Stats.
- (e) Permanent residence shall mean a place where a person abides, lodges or resides for 14 or more consecutive days.
- (f) Temporary residence shall mean a place where a 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 place where the person routinely abides, lodges or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent address.

(3) RESIDENCY RESTRICTIONS. An offender shall not establish a residence in any location on a parcel of which, in whole or in part, is within 1,500 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 §48.02(7), Wis. Stats.; a residential care center for children and youth as defined in §48.02(15d), Wis. Stats.; a shelter care facility as defined in §48.02(17), Wis. Stats.; a foster home as defined in §48.02(6), Wis. Stats.; a treatment foster home as defined in §48.02(17q), Wis. Stats.; a day care center licensed under §48.65, Wis. Stats.; a day care program established under §120.13(14), Wis. Stats.; a day care provider certified under §48.651, Wis. Stats.; or a youth center as defined in §961.01(22), Wis. Stats.; and/or
- (b) Any facility used for:
 - 1. A public park, parkway, parkland, park facility;
 - 2. A public swimming pool or swimming area;
 - 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 day care center;
 - 9. Any specialized school for children including, but not limited to, a gymnastics academy, dance academy or music school.

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).

- (c) Measurement of Distance. For the purposes of determining the minimum distance separation, the requirement shall be measured 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 uses enumerated in subsections (3)(a) and (b) where children regularly gather or licensed day care center or licensed group foster home.
- (d) Map. A map depicting the above resulting residency restriction distances shall be adopted by resolution of the Town Board, which map may be amended from time to time and is on file in the office of the Town Clerk and the Waukesha County Sheriff's Department for public inspection.

- (e) 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 1,000 feet of any of the uses enumerated in subsections (3)(a) and (b) 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. (Am. #17-0928)

(4) PROHIBITION. It shall be unlawful for any sex offender to enter into, congregate, loiter, wander, stroll, stand or play in or near a Child Safety Zone as defined in subsection (2)(b) under circumstances that warrant alarm for the safety of persons 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 police or peace officer, refuses to identify himself or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstances makes it impracticable, a police or peace 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 to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this subsection if the police or 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 police officer or peace officer at the time, would have dispelled the alarm.

(5) PARTICIPATION IN HALLOWEEN ACTIVITIES INVOLVING CHILDREN. It shall be unlawful for any offender, as defined in this chapter, to participate either directly or indirectly in distribution of candy or any other items to children on Halloween. Registered offenders shall remain indoors or shall remain away from their residence a minimum of one-half hour before locally scheduled trick-or-treat event(s) to one-half hour after locally scheduled trick-or-treat event(s). Registered offenders or other occupants of their residence shall not give any indication to the public that they are participating in trick-or-treat activities.

(6) RESIDENCY RESTRICTION EXCEPTIONS. A sex offender residing within a prohibited area as described in subsection (3) above does not commit a violation of this section if any of the following apply:

- (a) The person established a permanent residence or temporary residence and reported and registered the residence pursuant to §301.45, Wis. Stats., before the effective date of this section.
- (b) The person was under 17 years of age and is not required to register under §301.45 or §301.46, Wis. Stats.

- (c) The uses enumerated in subsections (3)(a) and (b) where children regularly gather within 1,500 feet of the person's permanent residence or temporary residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to §301.45, Wis. Stats.
- (d) The person is required to serve a sentence at a jail, juvenile facility or other correctional institution or facility.
- (e) The person is a minor or ward under guardianship.

(7) ORIGINAL DOMICILE RESTRICTION.

- (a) In addition to the residence restrictions set forth herein and subject to subsection (4) above, no sex offender shall be permitted to reside in the Town of Lisbon unless such person was domiciled in the Town of Lisbon at the time of the most recent offense resulting in the person's most recent conviction, commitment or placement as a sex offender as set forth in subsections (2)(c)1., 2. and 3. above. "Domicile" shall mean 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, except that no individual may have more than one domicile at any time. Domicile is not a residence for any special or temporary purpose. A sex offender does not violate this subsection if the Residence Board has granted an exemption.

(b) PETITION FOR EXEMPTION.

1. A sex offender may seek an exemption from subsection (7)(a) by petitioning to the Residence Board.
2. The Town Board shall be, and shall have all of the powers and duties of the Residence Board described herein.
3. The Residence 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 Residence Board. The Residence Board shall hold a hearing on each petition, during which the Residence Board may review any pertinent information and accept oral or written

statements from any person. The Residence 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 Residence 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 Waukesha County Sheriff's 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.
- o. Conditions to be placed on any exception from the requirements of this section.

4. The Residence 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 Residence Board's decision shall be final for purposes of an appeal. A written copy of the decision shall be provided to the sex offender and the Waukesha County Sheriff's Department.

(8) PENALTY.

- (a) A person who violates provisions of subsections (3) or (7) shall be subject to a forfeiture of not less than \$300.00 and no more than \$1,000.00 for each violation.
- (b) Any person violating subsection (4) or (5) of this section shall forfeit not less than \$1,000.00 and no more than \$2,000.00 for each violation.
- (c) A person who violates provisions of Section 7 of this Ordinance shall, upon conviction thereof, be subject to a forfeiture of not less than \$500.00 and no more than \$1,000.00 plus the costs of prosecution for each violation.

- (d) Each day of violation of this Ordinance shall constitute a separate offense.
- (e) Violation of this Ordinance shall constitute a public nuisance, which, in addition to any monetary forfeiture imposed shall be subject to action by the Town to abate and enjoin such nuisance.

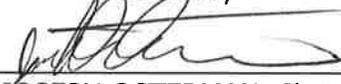
(9) EXCEPTION FOR PLACEMENTS UNDER CH. 980, WIS. STATS. To the extent required by §980.135, Wis. Stats., and notwithstanding the foregoing provisions of this chapter, the Town of Lisbon hereby exempts and may not enforce any portion thereof that restricts or prohibits a sex offender from residing at a certain location or that restricts or prohibits a person from providing housing to a sex offender against an individual who is released under §980.08, Wis. Stats., or against a person who provides housing to such individual, so long as the individual is subject to supervised release under Ch. 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 Ch. 980, Wis. Stats.

(10) SEVERABILITY. The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

(11) CONTINUATION OF EXISTING PROVISIONS. The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution or proceeding brought for the enforcement of any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provisions is stayed pending the final resolution of such actions, including appeals.

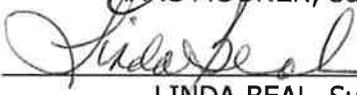
PASSED AND ADOPTED by the Town Board of the Town of Lisbon, Waukesha County, Wisconsin
this 24th day of September, 2018.

TOWN BOARD, TOWN OF LISBON
WAUKESHA COUNTY, WISCONSIN

BY: 
JOSEPH OSTERMAN, Chairman

BY: _____
TEDIA GAMIÑO, Supervisor

BY: 
MARC MOONEN, Supervisor

BY: 
LINDA BEAL, Supervisor

BY: 
REBECCA PLOTECHER, Supervisor

ATTEST:

BY: 
Dan Green, WCMC
Town Clerk

