

ORDINANCE NO. 18-04

AN ORDINANCE REPEAL AND RE-CREATE TOWN OF EAGLE
ORDINANCE NUMBER 12-02 CONCERNING
ESTABLISHMENT OF SEX OFFENDER RESIDENCY RESTRICTIONS
AND ESTABLISHING PROHIBITIONS AGAINST CERTAIN ACTIVITIES
BY SEX OFFENDERS WITHIN THE TOWN OF EAGLE

WHEREAS, the Town of Eagle Town Board adopted Ordinance Number 12-02 on or about March 21, 2012 to establish sex offender residency restrictions and establish prohibitions against certain activities by sex offenders within the Town of Eagle, and

WHEREAS, the Town of Eagle Town 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, the Town Board of the Town of Eagle, 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, 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

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.

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

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".

⁵U.S. Department of Justice, National Sex Offender Public Website "Facts and Statistics"

⁶Joseph 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 Eagle 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, 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 to ensure that the ordinance does not banish sex offenders from the Town; 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.

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 Eagle; and

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

NOW, THEREFORE, the Town Board of the Town of Eagle, Waukesha County, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. An ordinance for the Town of Eagle 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) The Town Board finds that repeat sex offenders, sex offenders who use physical violence, and sex offenders who prey on children are sex predators who present an extreme threat to the public safety. Sex offenders are extremely likely to use physical violence and to repeat their offenses; and most sex offenders commit many offenses, have many more victims that are never reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offenders' victimization to society at large, while incalculable, clearly exorbitant.
- (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.

- (a) Child, unless otherwise indicated, means a person under the age of 18.
- (b) Children, unless otherwise indicated, means two or more persons under the age of 18.
- (c) Child Day Care means any facility that provides care and supervision for compensation to four or more children for less than 24 hours a day where a

license is required under Wisconsin Statute §48.65(1) for the operation of such facility.

- (d) Designated Sex Offender means any person who is required to register under Wis. Stats. Sec. 301.45 for any sexual offense against a child or any person who is required to register under Wis. Stats. Sec. 301.45 and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Wis. Stat. Sec. 301.46(2) and (2m). The term "designated sex offender" also includes any person subject to the Sex Crimes Commitment Provisions of Section 975.06, Wisconsin Statutes, and any person found not guilty by reason of disease or mental defect placed on lifetime supervision under Section 971.17(1j), Wis. Stats.
- (e) Library means any library that is held open for use by the public where such library includes a collection of material specifically intended for use by children.
- (f) Minor means a person under the age of 17.
- (g) Parcel of Property means all real property, whether platted or unplatted, having the same tax key number irrespective of whether such real property is divided into two or more parts by reason of any public right-of-way, mil tax road, stream, or other body of water.
- (h) Park/Conservation Area means any park, beach, playground, conservation area, or recreational trail that is held open for use by the public.
- (i) Permanent Residence means a place where the person abides, lodges, or resides for 14 or more consecutive days.
- (j) Public/Private School means any public or private elementary or secondary school.
- (k) Specialty School means any specialized school for children, including, but not limited to, a gymnastics academy, dance academy, or music school.
- (l) Swimming Pool means any swimming pool, wading pool, or aquatic facility held open for use by the public.
- (m) Temporary Residence means a 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 four or more consecutive or non-consecutive days in any month and which is not the person's permanent address.

3. Designated Sex Offender Residency Prohibitions, Distance Calculations, and Exceptions.

(a) Prohibited Location of Residence. It is unlawful for any designated sex offender to establish a permanent residence or temporary residence on any parcel of property within the Town of Eagle that is less than one thousand five hundred feet (1,500') of real property used for any of the following described uses:

1. Public/Private School
2. Specialty School
3. Child Day Care
4. Library
5. Park/Conservation Area
6. Swimming Pool
7. Golf Course

(b) Distance Calculations. Distances for purposes of this Ordinance shall be measured in a straight line from the closest boundary line of the real property supporting the residence of a person 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, is on file in the Office of the Town Clerk for public inspection pursuant to Section 5 of this Ordinance.

(c) Exceptions. A designated sex offender does not commit a violation of this Section (3) if one or more of the following exceptions apply:

1. The permanent residence was established at the location prior to the date of the violation that resulted in a conviction as a designated sex offender.
2. The permanent residence or temporary residence was established at the location and reported and registered the residence pursuant to Wis. Stat. Sec. 301.45 before the effective date of this Ordinance.
3. The person is a minor and is not required to register under Wis. Stat. Sec. 301.45 or Sec. 301.46.
4. The property use listed under Section 3(a)(1)-(7) of this Ordinance was commenced/established after the designated sex offender both: (a) established the permanent residence or temporary residence and, (b) the designated sex offender reported and registered said residence pursuant to Wis. Stats. Sec. 301.45.
5. The residence is also the primary residence of the designated sex offender's parents, grandparents, siblings, spouse, or the designated sex offender's child or children provided that such parent, grandparent, sibling, spouse or child established the residence at least two years before the

designated offender established residency at the location. For purposes of this sub. (5), the designated sex offender's "child" and/or "children" refers to the biological or adopted relationship with the designated sex offender without regard to the age of the child or children provided that such relationship existed prior to the date of the violation which resulted in a conviction as a designated sex offender.

4. **Prohibited Holiday-Related Activities.** It is unlawful for any designated offender to participate in a holiday event involving children under 18 years of age by means of distributing candy or other items to children on Halloween, wearing a Santa Claus costume in a public place on or preceding Christmas, or wearing an Easter Bunny costume in a public place on or preceding Easter, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a designated offender. Holiday events in which the offender is the parent or legal guardian of the children involved, and no non-familial children are present are exempt from this paragraph.

5. **Loitering by Designated Sex Offender Prohibited.**

(a) It shall be unlawful for any designated sex offender to loiter or prowl on any lake or river or on or within 200 feet of any property used for any of the following described uses in a place, at a time, or a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of the persons or property in the vicinity:

1. Public/Private School
2. Specialty School
3. Child Day Care
4. Library
5. Park/Conservation Area
6. Swimming Pool
7. Golf Course

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 law enforcement 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 law enforcement 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 or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement 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 law enforcement officer at the time, would have dispelled the alarm.

(b) The prohibitions set forth in this Section 5 shall not apply where the designated sex offender is a minor and was with one or both of his or her parents, guardians or other adult person having his or her care.

6. **Child Safety Zones.** The Town Clerk shall maintain an official map showing locations identified in Sections 3(a) and 5(a) of this Ordinance. The Town Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones. These locations shall be designated on the map as "child safety zones". The map is to be displayed in the office of the Town of Eagle Town Clerk. In the event of a conflict, the written terms of this Ordinance shall control.

7. **Property Owners Prohibited From Renting Real Property to Certain Sex Offenders and Sex Predators.** It is unlawful for any person to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to this ordinance, if such place, structure, or part thereof, trailer or other conveyance is located within a prohibited location zone described in Section 3(a) and/or Section 6.

8. **Penalties.**

(a) Any person who violates any provision of Section 3 of this Ordinance shall, upon conviction thereof, forfeit not less than \$1,000.00 and no more than \$2,000.00 plus the costs of prosecution for each violation.

(b) A person who violates any provision of Section 4 or Section 5 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.

(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 each 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 Chapter 980 of the Wisconsin Statutes.** To the extent required by Section 980.135 of the Wisconsin Statutes, and notwithstanding the foregoing provisions of this Chapter, the Town of Eagle 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 Wisconsin Statutes Section 980.08, or against a person who provides housing to such individual, so long as the individual is subject to

supervised release under Chapter 980 of the Wisconsin Statutes, the individual is residing where he or she is ordered to reside under Section 980.08 of the Wisconsin Statutes, and the individual is in compliances with all court orders issued under Chapter 980 of the Wisconsin Statutes.

10. Petition for Exemption

- (a) Designated Offender may seek an exemption from this Ordinance by petitioning to the Sex Offender Residence Board ("Residence Board").
- (b) The Residence Board shall consist of three citizens residing in the Town. Members shall be selected by the Town Board. Members shall serve for a term of five (5) years and shall serve no more than two (2) consecutive terms. The terms for the initial members of the Residence Board shall be staggered with one member serving one (1) year, a second serving three (3) years and the third serving five (5) years.
- (c) 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:
 - i. Nature of the offense that resulted in sex offender status
 - ii. Date of offense
 - iii. Age at time of offense
 - iv. Recommendation of probation or parole officer
 - v. Recommendation of Police Department
 - vi. Recommendation of any treating practitioner
 - vii. Counseling, treatment and rehabilitation status of sex offender
 - viii. Remorse of sex offender
 - ix. Duration of time since sex offender's incarceration
 - x. Support network of sex offender
 - xi. Relationship of sex offender and victim(s)
 - xii. Presence or use of force in offense(s)
 - xiii. Adherence to terms of probation or parole
 - xiv. Proposals for safety assurances of sex offender
 - xv. Conditions to be placed on any exception from the requirements of this Ordinance
- (d) 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. The Residence Board's decision shall be final for purposes

of appeal. A written copy of the decision shall be provided to the Sex Offender.

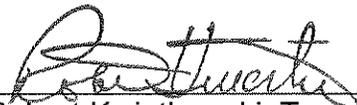
SECTION 2. SEVERABILITY. The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly 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.

SECTION 3. 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.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect upon passage and publication or posting as provided by law.

Dated this 16th day of May, 2018.

TOWN OF EAGLE:

By: 
Robert Kwiatkowski, Town Chair

Attest: 
Lynn M. Pepper, Clerk

Published and/or posted this 17th day of May, 2018.