

CHAPTER 27

TOWN OF WILSON SHEBOYGAN COUNTY, WISCONSIN

SEX OFFENDER ORDINANCE

The Town Board of the Town of Wilson, at a duly-noticed public meeting with quorum present and voting, hereby ordains the following:

Section 1: Recitals.

The Wisconsin Statutes, including Chapters 940, 944, and 948 thereof, govern the punishment of individuals who commit sex crimes. The Wisconsin Statutes also govern the release into the community of such individuals. The Town is responsible to maintain the public health, safety, and welfare and finds that sex offenders have high recidivism rates that threaten the public health, safety, and welfare, especially that of children. In making this finding, the Town has reviewed a study by the U.S. Department of Justice finding that sex offenders are four times more likely than non-sex offenders to be arrested for another sex crime after discharge from prison. The study also found that 70 percent of all men in prison for a sex crime were men whose victims were children. The Town has also reviewed the findings of various legislatures related to sex offender residency as well as the decision of the United States Court of Appeals for the 8th Circuit in *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), in which the Court stated that it was “common sense” that limiting contact between sex offenders and areas where children are located is likely to reduce the risk of sex offenses against children.

Section 2: Purpose.

The purpose of this Ordinance is to protect the public health, safety, and welfare of children in the Town of Wilson by limiting contact between sex offenders and children to reduce the risk that sex offenders will re-offend.

Section 3: Definitions.

- (a) Sex Offender. A person who has been convicted of, has been found delinquent of, or has been found not guilty of by reason of disease or mental defect of a Sexually Violent Offense or a Crime Against Children.
- (b) Sexually Violent Offense. Shall have the meaning set forth in Wis. Stat. § 980.01(6).

(c) Crime Against Children. Shall mean any of the following offenses set forth in the Wisconsin Statutes, as amended, or in the laws of this or any other state or the federal government having like elements necessary for conviction, respectively:

Wis. Stat. § 940.225(1) First Degree Sexual Assault.

Wis. Stat. § 940.225(2) Second Degree Sexual Assault

Wis. Stat. § 940.225(3) Third Degree Sexual Assault

Wis. Stat. § 940.22(2) Sexual Exploitation by Therapist

Wis. Stat. § 940.30 False Imprisonment – Victim was Minor and Not Offender’s Child

Wis. Stat. § 940.31 Kidnapping – Victim was Minor and Not Offender’s Child

Wis. Stat. § 944.02 Rape (prior statute, now Wis. Stat. § 940.225)

Wis. Stat. § 944.06 Incest

Wis. Stat. § 944.10 Sexual Intercourse with a Child (prior statute, now Wis. Stat. § 948.02)

Wis. Stat. § 944.11 Indecent Behavior with a Child (prior statute, now Wis. Stat. § 948.02)

Wis. Stat. §944.12 Enticing Child for Immoral Purposes (prior statute, now Wis. Stat. § 948.07)

Wis. Stat. § 948.02(1) First Degree Sexual Assault of a Child

Wis. Stat. § 948.02(2) Second Degree Sexual Assault of a Child

Wis. Stat. § 948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child

Wis. Stat. § 948.05 Sexual Exploitation of a Child

Wis. Stat. § 948.055 Causing a Child to View or Listen to Sexual Activity

Wis. Stat. § 948.06 Incest with a Child

Wis. Stat. § 948.07 Child Enticement

Wis. Stat. § 948.075 Use of a Computer to Facilitate a Child Sex Crime

Wis. Stat. § 948.08 Soliciting a Child for Prostitution

Wis. Stat. § 948.095 Sexual Assault of a Student by School Instruction Staff

Wis. Stat. § 948.11(2)(a) or (am) Exposing a Child to Harmful Material

Wis. Stat. § 948.12 Possession of Child Pornography

Wis. Stat. § 948.13 Convicted Child Sex Offender Working with Children

Wis. Stat. § 948.30 Abduction of Another's Child

Wis. Stat. § 971.17 Not Guilty by Reason of Mental Disease or an Included Offense

Wis. Stat. § 975.06 Sex Crime Law Enforcement

- (d) Residence. A place where a person sleeps, abides, lodges, or resides on a permanent or regular basis. For purposes of this definition, a permanent basis means 14 or more consecutive days and a regular basis means 14 or more aggregate days during any calendar year and four or more days in any month. A person may have more than one residence.

Section 4: Residency Restriction.

- (a) Except as otherwise provided in this Ordinance, a Sex Offender may not reside within 2000 feet of any real property upon which there exists any of the following uses:
- (1) A school for children.
 - (2) A public park, park facility, or pathway.
 - (3) A daycare licensed by the State of Wisconsin.

- (4) A public library.
- (5) A public playground.
- (6) A public athletic field used by children.
- (7) A residential care center for children.
- (8) A public swimming pool.

- (b) For purposes of this section, distance is to be measured in a straight line from the closest boundary line of the real property upon which the Sex Offender's residence is located to the closest boundary line of the real property of the applicable use.

Section 5: Exception for placements under Chapter 980 of Wisconsin Statutes.

To the extent required by § 980.135 of the Wisconsin Statutes, and notwithstanding the foregoing provisions of this chapter, the Town of Wilson 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 §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 §980.08 of the Wisconsin Statutes, and the individual is in compliance with all court orders issued under Chapter 980 of the Wisconsin Statutes.

Section 6: Petition for Exemption; Sex Offender Residence Board.

- (a) A designated offender may seek an exemption from this chapter by petitioning to the Sex Offender Residence Board ("Residence Board").
- (b) The Residence Board shall consist of three citizens residing in the Town of Wilson. Members shall be selected by the Chairman subject to the approval of the Town of Wilson Board. Members shall serve for a term of five years and shall serve no more than two consecutive terms. The terms for the initial members of the Residence Board shall be staggered with one member serving one year, a second member serving three years, and the third member serving five years.

(c) The Residence Board shall approve an official petition form. The designated offender seeking an exemption must complete the petition and submit it to the Town of Wilson 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:

- 1) Nature of the offense that resulted in designated offender status.
- 2) Date of offense.
- 3) Age at time of offense.
- 4) Recommendation of probation or parole officer.
- 5) Recommendation of Police or Sheriff's Department.
- 6) Recommendation of any treating practitioner.
- 7) Counseling, treatment and rehabilitation status of designated offender.
- 8) Remorse of designated offender.
- 9) Duration of time since designated offender's incarceration.
- 10) Support network of designated offender.
- 11) Relationship of designated offender and victim(s).
- 12) Presence of use of force in offense(s).
- 13) Adherence to term of probation or parole.
- 14) Proposals for safety assurances of designated offender.
- 15) Conditions to be placed on any exception from the requirements of this chapter.

- (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, or subject to other reasonable conditions. The Residence Board's decision shall be final for purposes of any appeal. A written copy of the decision shall be provided to the designated offender and to the Sheriff's or Police Department.

Section 7: Residency Restriction Exceptions.

A Sex Offender residing within an area otherwise prohibited by Section 4 does not commit an offense if any of the following apply:

- (a) The person is required to serve a sentence at a jail, prison, juvenile facility, or other facility located at the otherwise prohibited location.
- (b) The person had established a residence at the location prior to the effective date of this Ordinance
- (c) The use enumerated in Section 4 was established after the Sex Offender established a residence at the location and registered that residence as required by law.
- (d) The Sex Offender is a minor or ward under guardianship.

Section 8: Safety Zones.

No Sex Offender may enter or be present on any real property upon which there exists any facility used for or which supports the use of:

- (a) A school for children.
- (b) A public park, park facility, or pathway.
- (c) A daycare licensed by the State of Wisconsin.
- (d) A public library.
- (e) A public playground.
- (f) A public athletic field used by children.
- (g) A residential care center for children.
- (h) A public swimming pool.

Section 9: Safety Zone Exceptions.

A Sex Offender present in an area otherwise prohibited by Section 6 does not commit an offense if any of the following apply:

- (a) The property supporting a use enumerated in Section 6 also supports a church, synagogue, mosque, temple, or other house of religious worship, subject to the following conditions:
 - (1) Entrance and presence on the property may occur only during hours of worship or other religious program or service.
 - (2) The person may not participate in any religious education programs that include individuals under the age of 18.
- (b) The property supporting a use enumerated in Section 6 also supports a use lawfully attended by the Sex Offender's natural or adopted child or children, which child's use reasonably requires the attendance of the Sex Offender, provided that entrance and presence on the property occurs only during hours of activity related to the use by the child or children.
- (c) The property supporting a use enumerated in Section 6 also supports a polling location in a local, state, or federal election, subject to the following conditions:
 - (1) The Sex Offender is eligible to vote.
 - (2) The polling location is the designated polling location for the Sex Offender.
 - (3) The Sex Offender casts his or her ballot with whatever usual and customary assistance is available and vacates the property immediately after voting.
- (d) The property supporting a use enumerated in Section 6 also supports a school lawfully attended by the Sex Offender as a student, provided that the Sex Offender may only remain on the property at such times that are reasonably required for his or her educational purposes.
- (e) The property supporting a use enumerated in Section 6 also supports a police station, Town Hall, or other governmental building, provided that the Sex

Offender vacates the property immediately after completing the activity that required his or her presence at the property.

Section 10: Enforcement.

A person violating this Ordinance shall be subject to forfeitures in an amount of not less than \$200 nor more than \$500 for each violation plus the costs of prosecution (including reasonable attorneys' fees). For purposes of calculating forfeitures, each day that a violation exists shall constitute a separate offense. Violations of this Ordinance are also deemed public nuisances, and the Town may bring an action in circuit court to enjoin or abate any violation.

Section 11: Severability.

The terms and provisions of this Ordinance are severable. Should any term or provision of this Ordinance be found invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

Section 12: Effective Date.

This ordinance shall be effective upon its adoption and publication.

Effective date: This ordinance shall be in effect on the day after posting or publication as required by law.

Enacted this 4th day of October 2018
Posted and Published October 3, 2018
Town of Wilson by John Ehmann, Town Chairman
Georgene Lubach, Clerk