

ORDINANCE NO. 2017-001

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AN ORDINANCE ESTABLISHING CHAPTER 17 OF THE TOWN ORDINANCES REGARDING RESIDENCY RESTRICTION FOR SEX OFFENDERS AND DIRECTING ACTION FOR INJUNCTIVE RELIEF FOR VIOLATION THEREOF

WHEREAS, regulation of sex offender residency is not an issue unique to the Town of Ashippun; to the contrary, virtually all, if not literally all, of the municipalities in the greater Milwaukee area regulate sex offender residency, and this is consistent with comparable regulations that, while not universally adopted, are very common throughout the State of Wisconsin and nationwide; and

WHEREAS, the Town Board hereby intends to, and does, consider the whole issue of sex offender residency, from its most basic premises, to ensure that the regulations are tailored to the circumstances of Ashippun, while preserving the sole intent to protect children from potential recidivism of convicted child sex offenders; and

WHEREAS, The Town Board observes the risks posed by sex offenders against children, which risks 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

WHEREAS, the Town Board finds that the data concerning child sex offenders is horrific and demonstrates the need for action, including the following¹:

- “ 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.

¹Center 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".

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 action²:

"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, the Town Board is not inclined to sit idly by and do nothing to protect children within the Town when these most vulnerable members of our community face these documented threats from offenders who are highly prone to re-offend if given the opportunity to do so; and

WHEREAS, the Town Board has reviewed many studies and reports concerning recidivism of sex offenders and the effectiveness of sex offender residency restrictions³, 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

² U.S. Department of Justice, National Sex Offender Public Website "Facts and Statistics"

³ 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.

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, though this assessment of risks is not a perfect science and could give rise to equal protection or other enforcement concerns; and on the local level it is important to provide clear information to those who may want to locate in the Town, including a map of available residency locations; and the Town Board finds that this desire for uniformity and clarity outweighs the desire for individualized consideration at the Town level, in general; and

WHEREAS, in review of the residency restrictions of communities throughout Dodge 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 impacts ⁴; and

WHEREAS, if the Town of Ashippun 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 believes that for all but the most severe offenders, this risk of adverse impact declines as time passes following the date of a Designated Offender's offense, as the offender matures, recovers and reintegrates with society over time; and if this results in the offender being removed from the State registration list, the offender is thereby automatically removed from the Town residency restrictions; but even if State registration is required, once ten years has passed from the date of the most recent offense giving rise to the Designated Offender designation, provided it is not a Class A felony against a child, the Town Board finds it is appropriate to remove the original domicile restriction and allow such reformed citizen to move into the Town of Ashippun in compliance with this ordinance; and by opening this door the Town Board hopes that it is establishing a precedent for its surrounding communities to open their doors as well; and

⁴ 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 Town staff and resources, for every Designated Offender placement.

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 Ashippun; and

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

WHEREAS, in reconsidering the matter, having given the matter due consideration, and having based its determination on the effect of the Chapter 17 provisions on the health, safety and welfare of the community and the immediate neighborhoods affected and the current and future Town residents who are child sex offenders, and having given due consideration to the municipal problems involved, hereby determines that creating Chapter 17 will appropriately support the public health, safety and general welfare of the Town of Ashippun, will not be hazardous, harmful, noxious, offensive and will not for any other reason cause a substantial adverse effect on the property values and general desirability of the Town neighborhoods.

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Board of Trustees of the Town of Ashippun, Dodge County, Wisconsin that Chapter 17 of the Town of Ashippun Municipal Code is created as follows:

1. Purpose.

A. It is the purpose of this chapter not to impose a criminal penalty but rather to service the Town of Ashippun's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the Town of Ashippun by creating areas around locations where children regularly congregate in concentrated number wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residency.

B. 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 extremely likely to use physical violence and to repeat their offenses, and most sexual 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 sexual offender victimization to society at large while incalculable, clearly exorbitant.

2. Definitions.

In this chapter, the following words shall have the following meanings:

CHILD

A person under the age of 16 years, for purposes of this chapter.

DESIGNATED OFFENDER

Any person who is required to register under §301.45, Wis. Stats., for any sexual offense against a child, or any person who is required to register under §301.45, Wis. Stats., and who has been designated a special bulletin (SBX) sex offender pursuant to §301.46(2) and (2m), Wis. Stats.

MINOR

A person under the age of 18 years.

PERMANENT RESIDENCE

A place where the Designated Offender lodges or resides for 14 or more consecutive days.

PROHIBITED ACTIVITY

Participation in a holiday event involving Minors. Holiday events in which the Designated Offender is the parent or guardian of the Minors involved, and no non-familial Minors are present, are exempt from the definition of Prohibited Activity. A Designated Offender participates in a Prohibited Activity by taking part in the event which shall include, without limitation, distributing candy or other items to children on Halloween, wearing a Santa Clause costume on or preceding Christmas, or wearing an Easter Bunny costume on or preceding Easter.

PROHIBITED LOCATION

Any school, licensed day-care center, park, trail, playground, or place of worship. The Town Administrator shall maintain an official map showing the prohibited locations and safety zones within the Town. The Town Administrator shall update the map at least annually to reflect any changes in the prohibited locations and safety zones. The map shall be available in the office of the Town Clerk and posted on the Town website.

SAFETY ZONE

A Safety Zone is any real property that supports or upon which there exists any facility used for or that supports a school for Minors, a public park, a park facility, a trail or any other Prohibited Location, including any sidewalks or lawn adjacent to such Prohibited Location.

TEMPORARY RESIDENCE

Either:

- A. 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
- B. A place where the person routinely abides, lodges or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's Permanent Residence.

TOWN

The Town of Ashippun, Wisconsin

3. Sexual Offender and Sexual Predator Residence Prohibitions; Exceptions.

A. Prohibited Location of Residence. It shall be unlawful for any Designated Offender to establish a Permanent Residence or Temporary Residence on any parcel of property in the Town of Ashippun that is contiguous to a Prohibited Location.

B. Original Domicile Restriction. It shall be unlawful for any Designated Offender to establish a Permanent Residence or Temporary Residence within the Town unless the Designated Offender was legally domiciled in the Town at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime, subject to the following. This restriction does not apply if the Designated Offender's most recent conviction of an offense that is within the definition of Designated Offender occurred 10 years or more prior to taking occupancy within the Town, provided the Designated Offender has not been convicted of a Class A felony against a child.

C. Determination of Contiguity. For purposes of determining whether a property is contiguous under this chapter, the requirement shall be measured from the outer property line of the Permanent Residence or Temporary Residence of a Designated Offender to the nearest outer property line of a Prohibited Location. If any portion of a tax parcel contains a Prohibited Location, the entire tax parcel shall be considered a Prohibited Location. If any portion of a tax parcel would constitute a Prohibited Location of Residence under Section 3A, the entire tax parcel shall be considered a Prohibited Location of Residence.

D. Exceptions. A Designated Offender residing within a Prohibited Location of a Residence as described in §3A and 3B shall not be in violation of this chapter if any of the following apply:

- (1) Subject to §SA below, The Designated Offender established the Permanent Residence or Temporary Residence and reported and registered the residence pursuant to §301.45, Wis. Stats., before the initial effective date of the relevant provision of this chapter, and the Designated Offender has resided in such Permanent Residence or Temporary Residence continuously since the effective date of this chapter, except for temporary absences of no more than thirty (30) consecutive days.
- (2) The Designated Offender is a Minor and is not required to register under §§ 301.45 and 301.46, Wis. Stats.

- (3) The Prohibited Location contiguous to the person's Permanent Residence was opened or established after the Designated Offender established the Permanent Residence and reported and registered the residence pursuant to §301.45, Wis. Stats.
- (4) The residence is also the primary residence of the Designated Offender's parents, grandparents, siblings, spouse or children, provided that such parent, grandparent, sibling, spouse or child established the residence at least two years before the Designated Offender established residence at that location, subject to the following. The Designated Offender is prohibited from residing in such location if a victim of an offense giving rise to the Designated Offender's designation also resides in the residence and is a Minor, unless the Designated Offender is on probation or parole and residing with the victim is approved in writing by the probation or parole officer; and if not on probation or parole, such location is prohibited unless approved in writing by the Ashippun Chief of Police, based upon a finding that the circumstances of the offense, the Designated Offender, the victim, and all relevant information in the matter substantially eliminates the risk of re-offense against the victim.

4. Sexual Offender and Sexual Predator Prohibited Activity Restrictions.

A. Safety Zone Prohibition. A Designated Offender shall not enter upon or be present upon or within a Safety Zone, except as set forth below in §4.B.

B. Exceptions. A Designated Offender who enters upon or who is present upon or within a Safety Zone does not commit a violation of this §4 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 Designated Offender's entrance and presence upon the property occurs only during hours of worship or other religious programs/services as posted to the public; and
 - b. The Designated Offender shall not participate in any religious education programs that include Minors.
2. The property also supports a use lawfully attended by a Designated Offender's natural or adopted child, for which a child's use reasonably requires the attendance of the Designated Offender as the child's parent upon the property, subject to the following condition:

- a. The Designated Offender's entrance and presence upon the property occurs only during hours of activity related to the use, as posted to the public, and only as reasonably necessary in connection with such activity.
- 3. The property also supports a polling location in a local, state or federal election, subject to all of the following conditions:
 - a. The Designated Offender is eligible to vote;
 - b. The property is the designated polling place for the Designated Offender; and
 - c. The Designated Offender enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is available to any member of the electorate, and vacates the property immediately after the voting.
- 4. The property also supports a school lawfully attended by a Designated Offender as a student under which circumstances the Designated Offender may enter upon the property supporting the school at which the Designated 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 Designated Offender is on the property only to transact business at the government office or place of business, other than a public library, or to attend an official meeting of a governmental body; and
 - b. The Designated Offender leaves the property immediately upon completion of the business or meeting.

C. Prohibited Activity. It is unlawful for a Designated Offender to participate in a Prohibited Activity.

5. Property Owners Prohibited from Renting Real Property to Certain Offenders and Sexual Predators; Notification Requirements.

A. Property Owner Restrictions. It shall be unlawful for any property owner to lease or rent any place, structure, mobile home, trailer or any part thereof, with the knowledge that it will be used as a Permanent Residence or Temporary Residence by any person prohibited from establishing a Permanent Residence or Temporary Residence therein pursuant to this chapter,

if such place, structure, mobile home, trailer or any part thereof is located within a Prohibited Location of a Residence as defined in 3A.

B. Notice to Chief of Police. A Designated Offender, and any property owner who leases or rents any place, structure, mobile home, trailer or any part thereof, with the knowledge that it will be used as a Permanent Residence or Temporary Residence by any person who is a Designated Offender, must each notify the Town Police Chief in writing a minimum of twenty-eight (28) days prior to establishing either a Permanent Residence or Temporary Residence within the Town. In addition, any property owner who has leased or rented any place, structure, mobile home, trailer or any part thereof as a Permanent Residence or Temporary Residence by any person who is a Designated Offender, at any time during a calendar year, shall report in writing to the Town Police Chief as to the status of the leasing or renting by the Designated Offender, including without limitation, the names of all Designated Offenders who lease or rent any portion of such place, structure, mobile home, trailer or any part thereof as of December 1 of such calendar year, the remaining lease term under the current lease for each Designated Offender, and if a Designated Offender no longer leases or rents such place, structure, mobile home, trailer or any part thereof, the date said Designated Offender no longer leased or rented such place. All such information shall be provided in writing to the Town Police Chief on or before December 31 of each calendar year.

C. Notice to Property Owner. A Designated Offender shall tell any property owner from whom the Designated Offender intends to lease or rent any place, structure, mobile home, trailer or any part thereof, that the Designated Offender is a Designated Offender as defined in 2, prior to entering into any lease or rental arrangement.

6.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 Ashippun 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 compliance with all court orders issued under Chapter 980 of the Wisconsin Statutes.

7. Severability.

Should any section, paragraph, sentence, clause or phrase of this chapter be declared unconstitutional or invalid for any reason, or be repealed, it shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be invalid or repealed.

8. Injunction.

If a Designated Offender or property owner violates any provision of this chapter the Town may, in addition to all other rights and remedies allowed by law or this chapter, refer the matter to an attorney chosen by the Town Administrator to bring an action in the name of the Town in circuit court to seek a temporary restraining order, temporary injunction or permanent injunction against such Designated Offender or property owner to prevent them from violating the terms of this chapter or to take any action, or prevent any action, necessary for compliance with the terms of this chapter.

9. Penalties.

Any person, firm or entity who violates any provisions of this chapter shall, upon conviction thereof, be subject to a forfeiture not to exceed One Thousand Dollars (\$1,000.00), together with the costs of prosecution, and in default of payment thereof, shall be committed to jail for a period not to exceed ninety (90) days. Each violation and each day such violation continues shall be considered a separate offense. Neither the issuance of a citation nor the imposition of a forfeiture hereunder shall preclude the Town from seeking or obtaining any and all legal and equitable remedies available by law or this chapter.

10. Effective Date.

This chapter, as created above, shall take effect upon its passage on this 10th day of August, 2017.

Passed and adopted this 10th day of August, 2017.

TOWN OF ASHIPPUN

S/S

Steve Panozzo, Chairperson

ATTEST:

S/S

Michelle Liesener, Town Clerk/Treasurer

Posted: 8/17/2017