

Town of Mosel, Sheboygan County, Wisconsin

**AN ORDINANCE CREATING SECTION 5.12 OF
THE TOWN OF MOSEL MUNICIPAL CODE
ESTABLISHING SEXUAL OFFENDER RESIDENCY RESTRICTIONS**

WHEREAS, the Wisconsin State Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community; and

WHEREAS, Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and Wis. Stat. § 980.08, specifically provides, under certain conditions, for the supervised release into the community of such persons following commitment; and

WHEREAS, the Town is authorized to enact general regulations to promote the public health, safety and general welfare of the Town and its residents, pursuant to Wisconsin Statute §§ 60.10(2)(c), 60.22(3), 61.34 and 62.23; and

WHEREAS, the Town of Mosel places a high priority on maintaining public safety, in part through laws that deter and punish criminal behavior; and

WHEREAS, sex offenders have dramatically higher recidivism rates than any other type of violent felon, and according to 1997 and 2003 reports by the U. S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend and prey on the most innocent members of our society, and more than two-thirds of the victims of rape and sexual assault are under the age of 18; and

WHEREAS, the Town Board is aware of, and has been informed of, a number of Legislatures of these United States, including Wisconsin, Alabama, Iowa, Florida, Missouri, Louisiana and Ohio, which have adopted laws which relate to and in part impose restrictions upon sex-offenders with respect to residency; and

WHEREAS, the Town Board has considered the decision of the United States Court of Appeals for the 8th Circuit, in *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005), providing in part:

"The record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward, fear of, or a bare desire to harm a politically unpopular group. Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the risk of reoffense. Even experts in the field could not predict with confidence whether a particular sex offender will reoffend, whether an offender convicted of an offense against a teenager will be among those who 'cross over' to offend

against a younger child, or the degree to which regular proximity to a place where children are located enhances the risk of reoffense against children. One expert in the district court opined that it is just 'common sense' that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense. The policymakers of Iowa are entitled to employ such 'common sense,' and we are not persuaded that the means selected to pursue the State's legitimate interest are without rational basis."

and

WHEREAS, the Town Board has considered this proposed Ordinance to provide residency and other restrictions for sexual offenders to further protect children, and upon all of the records, files, reports and proceedings pertaining to the subject matter, and all of the prior actions and experience of the Town of Mosel in protecting the community from sexually violent persons, finds this Ordinance will serve to protect the health, safety and welfare of the community.

NOW, THEREFORE, the Town Board of the Town of Mosel, Sheboygan County, Wisconsin, does hereby ordain as follows:

Section 1. Creating Code Section. Section 5.12 of the Municipal Code of the Town of Mosel is hereby created to read as follows:

"5.12 Sexual Offender Residency Restrictions.

(1) Finding and Issue.

- (a) 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 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 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.
- (b) It is the intent of this section not to impose a criminal penalty but rather 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 sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence, and by preventing an undue number of sexual offenders who had no prior connections with the Town and who had not previously lived in the vicinity from being placed within the Town.

- (2) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed below, except when the context clearly indicates a different meaning:

- (a) Child or Children means a person or persons under the age of 18.
- (b) Designated Offender means: A person who is required to register under Wis. Stat. § 301.45 for any sexual offense against a child or a person who is required to register under Wis. Stat. § 301.45 for whom a bulletin to law enforcement agencies has been issued under Wis. Stat. § 301.46(2m).
- (c) Permanent Residence means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.
- (d) Temporary Residence means a place where the person abides, lodges, or resides for a period of fourteen (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 residence.

(3) **Sexual Offender and Sexual Predator Residence; Prohibition; Penalties; Exceptions**

- (a) Prohibited Location of Residence. It is unlawful for any designated offender to establish a permanent residence or temporary residence within 2,000 feet of any school, licensed day care center, park, recreational trail, playground or place of worship.
- (b) Prohibited Relocation. It is unlawful for any designated offender to establish a permanent residence or temporary residence within the Town if that person had never previously been a permanent resident of Sheboygan County, Wisconsin.
- (c) Prohibited Activity. It is unlawful for any designated offender to participate in a holiday event involving children, such as distributing candy or other items to children. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this paragraph. Participation is to be defined as actively taking part in the event.
- (d) Measurement of Distance.
 - 1. 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 a school, licensed day care center, park, recreational trail, playground or place of worship.

2. The Town Clerk/Treasurer shall prepare an official map showing prohibited locations as defined by this section. The Town Clerk/Treasurer shall maintain the map on file at the Town Hall and update it at least annually to reflect any changes in the location of prohibited zones, designated "Child Safety Zones".

(e) Penalties. A person who violates any provision of this section shall be punished by a forfeiture not exceeding \$500.00. Each day a person maintains a residence in violation of this section constitutes a separate violation. The Town of Mosel may also seek equitable relief.

(f) Exceptions. A designated offender residing within a prohibited area as described herein does not commit a violation of this section if any of the following apply:

1. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. § 301.45 before the effective date of this section.
2. The school, licensed day care center, park, recreational trail or playground within 2,000 feet of the person's permanent residence was opened after the person established and the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. § 301.45.
3. The residence is also the primary residence of the person's parents, grandparents, siblings, spouse or children, provided that such parent, grandparent, sibling, spouse or child established the residence at least two (2) years before the designated offender established residence at the location.

(4) **Prohibition Against Renting to Certain Sexual Offenders and Sexual Predators; Penalties.**

- (a) It is unlawful to let or rent any place, trailer, other structure, or part thereof, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such residence pursuant to this section, if such place, trailer, other structure, or part thereof, is located within a prohibited location zone described in Paragraphs 3(a) and 3(b), and not subject to an exception set forth in Paragraph 3(f) above.

(b) A property owner's failure to comply with this subsection shall constitute a violation of this section and shall subject the property owner to the penalties set forth in Paragraph 3(e).

(5) **Appeal.** The restrictions in Paragraphs 3(a) and 3(b) may be waived by the Town Board through appeal by the affected party. Such appeal shall be made in writing to the Town Clerk/Treasurer, who shall forward the request to the Town Board, which shall receive reports from the Sheriff's Department on such appeal. The Town Board shall consider the public interest, as well as the affected party's presentation and concerns. After deliberation, the Town Board shall forward copies of its decision in writing via the minutes or otherwise to the Sheboygan County Sheriff for information and action, and to the affected party."

Section 2. Severability. The provisions of this Ordinance shall be deemed severable and it is expressly declared that the Town Board would have passed the other provisions of this Ordinance irrespective of whether or not one or more provisions may be declared invalid. If any provisions of this Ordinance or the application to any person or circumstance are held invalid, the remainder of this Ordinance or the application of such other provisions to other persons or circumstances shall not be affected.

Section 3. Effective Date. This Ordinance shall take effect the day after its publication or posting.

Enacted: February 17, 2016.

TOWN OF MOSEL

By: Dirk J Zylman
Dirk Zylman, Town Chair

CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing Ordinance was duly enacted by the Board of Supervisors of the Town of Mosel on the date indicated above.

Dated: 2/17, 2016

Sue Born
Sue Born, Town Clerk/Treasurer

Posted on 3/8/16, 2016 by Sue Born

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