

TOWN OF PORT WASHINGTON

ORDINANCE NO. 2016-1

The Town Board of the Town of Port Washington, Ozaukee County, Wisconsin, does hereby ordain as follows:

That section 250-11 of the Town Code of the Town of Port of Port Washington is created to read as follows:

AN ORDINANCE TO CREATE § 250-11 OF THE TOWN CODE WITH REGARD TO  
SEX OFFENDER RESIDING WITHIN 2,000 FEET OF SCHOOLS, DAY CARE  
CENTERS, PARKS AND OTHER SPECIFIED FACILITIES AND USES  
PROHIBITED, CHILD SAFETY ZONES

---

WHEREAS, the Wisconsin Statutes provide for 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 specifically, at Wis. Stat. § 980.08, following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

WHEREAS, according to a 1997 report titled *Sex Offenses and Offenders*, by the U.S. Department of Justice, the median age of the victims of imprisoned sexual assaulters was less than 13 years old and the median age of rape victims was 22 years; and 19% of those serving time for sexual assault and an estimated 24% of those serving time for rape had been on probation or parole at the time of the offense; and

WHEREAS, in 1994, it was estimated that 12% of imprisoned violent sex offenders had a prior conviction for rape or sexual assault while 61% had a prior felony for other crimes; and

WHEREAS, furthermore, the Town Board has reviewed the findings of a number of State Legislatures across the United States, including, Pennsylvania, Alabama, Iowa, Florida, Maine and Louisiana, as they pertain to laws enacted which relate to, and in part impose restrictions upon sex offenders with respect to residency; and

WHEREAS, the Town Board has reviewed the decision of the U. S. 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. [Citation omitted]. 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 re-offense. Even experts in the field could not predict with confidence whether a particular sex offender will re-offend, 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 re-offense 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. [Citation omitted]. 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, since 2007, there have been three Wisconsin court cases addressing the legality of sex offender residency restriction ordinances: *City of Franklin v. Steven R. Hanke*, 07-CV-9978 (Milw. County Cir. Ct. 2007), *Village of Menomonee Falls v. Jason R. Ferguson*, 2011 WI App 73 (Wis. Ct. App. 2011), and *City of South Milwaukee v. Kester*, 2013 WI App 50 (Wis. Ct. App. 2013); and

WHEREAS, in each of the three Wisconsin cases, the courts upheld the legality and enforceability of sex offender residency restriction ordinances; and

WHEREAS, the Town of Port Washington is a place of residence for families with children; and

WHEREAS, the Town Board has determined that the establishment of sex offender residency restrictions is reasonable and necessary to protect the health, safety and welfare of the residents and the Community;

NOW, THEREFORE, THE TOWN BOARD OF THE TOWN OF PORT WASHINGTON, OZAUKEE COUNTY, STATE OF WISCONSIN, DO ORDAIN AS FOLLOWS:



**250-11           SEX OFFENDER RESIDENCY RESTRICTIONS AND CHILD SAFETY ZONES**

(a)     PURPOSE. This Chapter is a regulatory measure aimed at protecting the health and safety of children and youth in the Town of Port Washington from the risk that convicted sex offenders may re-offend in locations close to their residences and against child victims. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. Given the high rate of recidivism for sex offenders, and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children and youth where they congregate or play in public places in addition to the protections afforded by state law near schools, day care centers and other places children and youth frequent. The Town also finds and declares that in addition to schools and day care centers, children and youth congregate or play at public parks, pools and other public and private places of enrichment activities, recreation, entertainment and amusement. Therefore, finding that sex offenders are a serious threat to public safety as indicated above, the Town hereby declares the residency or presence of sex offenders in proximity to public and private places where children and youth may congregate or frequent under circumstances proscribed in this ordinance to be a public nuisance.

(b)     DEFINITIONS. As used in this section and unless the context otherwise requires:

- (1) Sexually Violent Offense. "Sexually Violent Offense" shall have the meaning as set forth in Wis. Stat. § 980.01(6), as amended from time to time.
- (2) Crime Against Children. "Crime Against Children" shall mean any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or the Federal government, having like elements necessary for conviction, and which offense was perpetrated against a victim under the age of majority, respectively:

TABLE INSET:

§ 940.225(1)	First Degree Sexual Assault
§ 940.225(2)	Second Degree Sexual Assault
§ 940.125(3)	Third Degree Sexual Assault
§ 940.22(2)	Sexual Exploitation by Therapist
§ 940.30	False Imprisonment – Victim was minor and not the offender's child
§ 940.31	Kidnapping – Victim was minor and not the offender's child
§ 944.01	Rape (prior Statute)

§ 944.06	Incest
§ 944.10	Sexual Intercourse with a Child (prior Statute)
§ 944.11	Indecent Behavior with a Child (prior Statute)
§ 944.12	Enticing Child for Immoral Purposes (prior Statute)
§ 948.02(1)	First Degree Sexual Assault of a Child
§ 948.02(2)	Second Degree Sexual Assault of a Child
§ 948.025	Engaging in Repeated Acts of Sexual Assault of the Same Child
§ 948.05	Sexual Exploitation of a Child
§ 948.055	Causing a Child to View or Listen to Sexual Activity
§ 948.06	Incest with a Child
§ 948.07	Child Enticement
§ 948.075	Use of a Computer to Facilitate a Child Sex Crime
§ 948.08	Soliciting a Child for Prostitution
§ 948.095	Sexual Assault of a Student by School Instructional Staff
§ 948.11(2)(a) or (am)	Exposing Child to Harmful Material (felony sections)
§ 948.12	Possession of Child Pornography
§ 948.13	Convicted Child Sex Offender Working with Children
§ 948.30	Abduction of Another's Child
§ 971.17	Not Guilty by Reason of Mental Disease (of an included offense)
§ 975.06	Sex Crimes Law Commitment

(3) Person. "Person" shall mean a person who has been convicted of or has been found delinquent of or has been found not guilty by reason of mental disease or defect of a Sexually Violent Offense and/or a Crime Against Children.

(4) Residence or Reside. "Residence" or "Reside" shall mean the place where a Person sleeps or otherwise qualifies as their residence under the law, and which may include more than one location, and may be mobile or transitory.

(c) RESIDENCY RESTRICTIONS. A Person shall not Reside within 2,000 feet of the real property comprising any of the following:

(1) Any facility for children, which means a public or private school, a group home as defined in Wis. Stat. § 48.02(7), a residential care center for children and youth as



defined in Wis. Stat. § 48.02(15d), a shelter care facility as defined in Wis. Stat. § 48.02(17), a foster home as defined in Wis. Stat. § 48.02(6), a treatment foster home as defined in Wis. Stat. § 48.02(17q), a day care center licensed under Wis. Stat. § 48.65, a day care program established under Wis. Stat. § 120.13(14), a day care provider certified under Wis. Stat. § 48.651, or a youth center as defined in Wis. Stat. § 961.01(22); and/or

(2) Any facility used for:

- A. A public park, parkway, parkland, park facility, or nature preserve;
- B. A public swimming pool;
- C. A public library;
- D. A recreational trail, multi-purpose trail or bike path;
- E. A public playground;
- F. A school for children;
- G. Athletic fields used by children;
- H. A movie theatre;
- I. A day care center;
- J. Any specialized school for children, including, but not limited to a gymnastics academy, dance academy, swimming school or music school;
- K. A public or private golf course or range; and
- L. Aquatic facilities open to the public;

The distance shall be measured 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 uses. A map depicting the above enumerated uses and the resulting residency restriction distances, as amended from time to time, shall be kept on file in the office of the Town Clerk for public inspection.

(d) RESIDENCY RESTRICTION EXCEPTIONS. A Person Residing within two thousand feet of the real property comprising any of the uses enumerated in subsection (c) above, does not commit a violation of this section if any of the following apply:

- (1) The Person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility located within 2,000 feet of a use enumerated in subsection (c) above.
  - (2) The Person has established a Residence prior to the effective date of this section which is within 2,000 feet of any of the uses enumerated in subsection (c) above, or such enumerated use is newly established after such effective date and it is located within such 2,000 feet of a Residence of a Person which was established prior to the effective date of this chapter.
  - (3) The Person is a minor Residing with a parent or legal guardian who serves as parent or legal guardian to no more than one Person or is a ward under guardianship.
  - (4) The Person is residing in a facility or residence actively supervised by, and operating under contract with, the Department of Corrections.
- (e) ORIGINAL DOMICILE RESTRICTION. In addition to and notwithstanding the foregoing, but subject to subsection (d) above, no Person shall be permitted to Reside in the Town of Port Washington, unless such Person was domiciled in the Town of Port Washington at the time of the offense resulting in the Person's most recent conviction for committing the Sexually Violent Offense and/or Crime Against Children.
- (f) CHILD SAFETY ZONES. No Person shall enter or be present upon any real property upon which there exists any facility used for or which supports a use of:
- (1) A public park, parkway, parkland, park facility, or nature preserve;
  - (2) A public swimming pool;
  - (3) A public library;
  - (4) A recreational or multi-purpose trail or bike path;
  - (5) A public playground;
  - (6) A school for children;
  - (7) Athletic fields used by children;
  - (8) A movie theatre;
  - (9) A day care center;
  - (10) Any specialized school for children, including, but not limited to a gymnastics academy, dance academy, swimming school or music school;
-

- (11) A public or private golf course or range;
- (12) Aquatic facilities open to the public; and
- (13) Any facility for children, which means a public or private school, a group home as defined in Wis. Stat. § 48.02(7), a residential care center for children and youth as defined in Wis. Stat. § 48.02(15d), a shelter care facility as defined in Wis. Stat. § 48.02(17), a foster home as defined in Wis. Stat. § 48.02(6), a treatment foster home as defined in Wis. Stat. § 48.02(17q), a day care center licensed under Wis. Stat. § 48.65, a day care program established under Wis. Stat. § 120.13(14), a day care provider certified under Wis. Stat. § 48.651, or a youth center as defined in Wis. Stat. § 961.01(22)

A map depicting the locations of the real property supporting the above enumerated uses, as amended from time to time, shall be kept on file in the office of the Town Clerk for public inspection.

(g) CHILD SAFETY ZONE EXCEPTIONS. A Person does not commit a violation of subsection (f) above and the enumerated uses may allow such Person on the property supporting such use if any of the following apply:

- (1) The property supporting an enumerated use under subsection (f) also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:
  - A. Entrance and presence upon the property occurs only during hours of worship or other religious program/service open to the public;
  - B. The individual or body in charge of the church permits such attendance or written advance notice is made from the Person to an individual in charge of the church and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the Person; and
  - C. The Person shall not participate in any religious education programs which include individuals under the age of 18.
- (2) The property supporting an enumerated use under subsection (f) also supports a use lawfully attended by a Person's natural or adopted child/children, which child's use reasonably requires the attendance of the Person as the child's parent upon the property, subject to the following conditions:
  - A. Entrance and presence upon the property occurs only during hours of activity related to the use open to the public; and



- B. Written advance notice is made from the Person to an individual in charge of the use upon the property and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the Person.
- (3) The property supporting an enumerated use under subsection (f) also supports a polling location in a local, State or Federal election, subject to the following conditions:
- A. The Person is eligible to vote;
  - B. The designated polling place for the Person is an enumerated use; and
  - C. The Person enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate; and the Person vacates the property immediately after voting.
- (4) The property supporting an enumerated use under subsection (f) also supports an elementary or secondary school lawfully attended by a Person as a student under which circumstances the Person who is a student may enter upon that property for the purpose of attendance at the school at which the Person is enrolled, as is reasonably required for the educational purposes of the school and the Person.
- (h) VIOLATIONS. If a Person violates any provision of this section, by establishing a Residence or occupying residential premises within 2,000 feet of those premises as described therein, without any exception(s) as also set forth above, the Town Attorney, upon referral from the Town Board and the written determination by the Town Board that upon all of the facts and circumstances and the purpose of this chapter, such Residence or occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others, shall bring an action in the name of the Town in the Ozaukee County Circuit Court to permanently enjoin such Residency as a public nuisance. If a Person violates any provision of this chapter, in addition to the aforesaid injunctive relief, such Person shall be subject to the general penalty provisions set forth under section 250-10 of the Town Code. Each day a violation continues shall constitute a separate offense. In addition, the Town may undertake all other legal and equitable remedies to prevent or remove a violation of this section.

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

All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.



This ordinance shall be in full force and effect upon its passage and on the day after its publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2016

Town of Port Washington, Ozaukee County, Wisconsin.

---

Jim Melichar, Town Chairman

Attestation:

---

Cheryl Karrels, Town Clerk

Published/Posted: \_\_\_\_\_