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Gen. Ord. No. 21 - 18 - 19. By Alderpersons Donohue and Rindfleisch.
October 15, 2018.

AN ORDINANCE repealing and recreating Article VIII of Chapter 70 of the Municipal Code entitled "Sexual Offender Residency Restrictions."

WHEREAS, in recent years, several communities in Wisconsin have had their Sexual Offender Residency Restrictions ruled unconstitutional or otherwise unenforceable by state and federal courts because of concerns that such ordinances do not provide clear evidence that the restrictions protect citizens and concerns regarding due process; and

WHEREAS, the Wisconsin Legislature has pre-empted municipalities from regulating the residency of the most dangerous sexual offenders, instead imposing its own restrictions; and

WHEREAS, the primary purpose of Sheboygan's current restrictions are to provide notice to neighbors regarding offenders who are moving to their neighborhood, and current statutes already provide neighbors and potential neighbors with such information; and

WHEREAS, an all-too-common effect of denial of residency is homelessness, a circumstance that is more dangerous not only for convicted offenders but for all citizens; and

WHEREAS, it is the sense of the council that it would be better to allow the Sheboygan Police Department to focus on informing and protecting neighbors and allowing the professionals with the Department of Corrections to focus on providing the best and safest alternative residences for those who would be affected by Sheboygan's restrictions; and

WHEREAS, it is the sense of the council that a limited and appropriate level of residency restrictions and review thereof by elected officials should still remain aimed at those most likely to be dangerous to the general public.

THEREFORE, THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Article VIII of Chapter 70 of the Municipal Code is hereby repealed and recreated to read as follows:



"ARTICLE VIII. - SEXUAL OFFENDER RESIDENCY RESTRICTIONS

Sec. 70-261. - Finding and intent.

- (a) Sexual offenders who prey on strangers, including children, are sexual predators who present a threat to public safety that cannot easily be mitigated via notification provisions. Such offenders are likely to use physical violence and to repeat their offenses. This makes the cost of sexual offender victimization to society at large in such situations, while incalculable, clearly exorbitant.
- (b) It is the intent of this article not to impose a criminal penalty but rather to serve the city's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the city by creating areas around locations where children regularly congregate in concentrated numbers wherein sexual offenders and sexual predators who prey on strangers are prohibited from establishing temporary or permanent residence.

Sec. 70-262. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

Child means a person under the age of 16 for the purposes of this article.

Designated offender means any person who is required to register under Wis. Stat. § 301.45 for any sexual offense against a child or any person who is required to register under Wis. Stat. § 301.45 and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Wis. Stat. §§ 301.46(2) and (2m).

Minor means a person under the age of 17.

Permanent residence means a place where the person abides, lodges, or resides for 14 or more consecutive days.

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 residence.

Sec. 70-263. - 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 1,000 feet of any school, licensed day care center, park, recreational trail, playground or place of worship unless that person meets one or more of the exceptions contained in subsection (e), or has received a waiver pursuant to section 70-265.
- (b) *Prohibited activity.* It is unlawful for any designated offender to participate in a holiday event involving children less than 18 years of age, 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.
- (c) *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 nearest outer property line of a school, licensed day care center, park, recreational trail, playground or place of worship.
 - (2) The city engineer shall prepare, maintain and file with the city clerk an official map showing prohibited locations as defined by this article. The engineer shall update the map at least annually to reflect any changes in the location of prohibited zones and file said updated map with the city clerk. These shall be designated on the map as child safety zones.
- (d) *Penalties.* A person who violates any provision of this article shall be punished by a forfeiture not exceeding \$500.00. Each day a person maintains a residence in violation of this article constitutes a separate violation. The City of Sheboygan may also seek equitable relief.

(e) *Exceptions.* A designated offender residing within a prohibited area as described in subsection (a) 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 article.
- (2) The person is a minor and is not required to register under Wis. Stat. § 301.45 or § 301.46.
- (3) The school, licensed day care center, park, recreational trail or playground within 1,000 feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. §301.45.
- (4) 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 years before the designated offender established residence at the location.
- (5) The person is residing at a transitional living program (TLP) facility funded by the department of corrections/ community corrections within the city.

Sec. 70-264. - Property owners prohibited from renting real property to certain sexual offenders and sexual predators; penalties.

- (a) It is unlawful 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 article, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in section 70-263(a), and not subject to an exception set forth in section 70-263(e) above or a waiver pursuant to section 70-265.
- (b) A property owner's failure to comply with this section shall constitute a violation of this article, and shall subject the property owner to the penalties set forth in section 70-263(d).

Sec. 70-265. - Waiver.

- (a) The above 1,000-foot requirements may be waived upon approval by the chief of police or his/her designee (hereafter, "the chief") through appeal by the designated offender affected. Such appeal shall be made in writing to the chief.
- (b) The chief shall consider the public interest, all relevant statutes and ordinances, and the designated offender's concerns. The chief shall also consider the nature of the designated offender's sexual offenses, denying waivers only in circumstances where the applicant's offenses involved strangers. The chief shall inform the designated offender in writing of the results of his or her review of the waiver. If the chief denies the waiver, he or she shall inform the designated offender that the offender may appeal the denial of the waiver by so indicating to the chief in writing within fourteen days after the chief's denial.
- (c) If any offender appeals the denial of a waiver pursuant to subsection (b) above, the chief shall immediately notify the city clerk and chair of the licensing, hearings, and public safety committee of such appeal, the name of the designated offender, and the address at which the offender wishes to reside. The chair shall then place the matter on the agenda of a committee meeting for the purposes of an appeal hearing. Said hearing shall take place between seven and thirty days after the chief receives notice of the appeal from the offender. Said time limits may be waived by the offender.
- (d) At the hearing, the committee shall hear evidence from the chief and from the offender or his or her representative, as well as any other person whose testimony it deems relevant. The committee, in its deliberation, shall consider the nature of the sexual offenses committed by the offender, the needs of the offender in order to reintegrate as a productive member of the community, the public interest in safety, and all relevant statutes and ordinances. After deliberation, the committee shall forward its decision in writing via the minutes or otherwise to the chief and to the offender."

Section 2. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

My Lynne Youde
[Signature]

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the 5th day of November, 2018.

Dated November 7, 2018. [Signature], City Clerk

Approved November 7, 2018. [Signature] Mayor

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