

**AN ORDINANCE TO CREATE
CHAPTER 8.48 OF THE CODE OF
GENERAL ORDINANCES OF THE
TOWN OF BURLINGTON, RACINE
COUNTY RELATING TO SEX
OFFENDER RESIDENCY
RESTRICTIONS.**

The Town Board of the Town of Burlington, Racine County, Wisconsin does hereby create Chapter 8.48 to read as follows:

Chapter 8.48

8.48.010 Purpose, Findings.

8.48.020 Definitions.

8.48.030 Residency Restrictions.

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8.48.010 Purpose, Findings.

This article is a regulatory measure aimed at protecting the health and safety of children in the Town of Burlington from the risk that convicted sex offenders may reoffend in locations close to their residences. The Town finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new sexual assault. Given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of recidivism, there is a need to protect children 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 frequent. The Town finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.

8.48.020 Definitions.

As used in this article and unless the context otherwise requires, the following terms shall have the meanings indicated: *CRIME AGAINST CHILDREN* 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 when the victim is a child:

Wis. Stats. Section

§ 940.22(2), Sexual exploitation by therapist

§ 940.225(1), First degree sexual assault

§ 940.225(2), Second degree sexual assault

§ 940.225(3), Third degree sexual assault

§ 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 child by a school staff person or a person who works or volunteers with children

§ 948.10, Exposing genitals, pubic area, or intimate parts.

§ 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

OFFENDER An offender who has been convicted of or has been found delinquent of or has been found not guilty by reason of disease or mental defect of a sexually violent crime and/or a crime against children.

RESIDENCE (RESIDE) The place where an offender sleeps, which may include more than one location and may be mobile or transitory.

SEXUALLY VIOLENT Shall have the meaning as set forth in § 980.01(6), Wis. Stats., as amended from time to time.

8.48.030 Residency Restrictions.

A. An offender shall not reside within 1,500 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 § 48.02(7), Wis. Stats., a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats., a shelter care facility, as defined in § 48.02(17), Wis. Stats., a foster home, as defined in § 48.02(6), Wis. Stats., a treatment foster home, as defined in § 48.02(17q), Wis. Stats., a day-care center licensed under § 48.65, Wis. Stats., a day-care program established under § 120.13(14), Wis. Stats., a day-care provider certified under § 48.651, Wis. Stats., or a youth center, as defined in § 961.01(22), Wis. Stats.]; and/or

(2) Any facility used for:

- (a) A public park, parkway, parkland or park facility;
- (b) A public swimming pool;
- (c) A public library;
- (d) A recreational trail;
- (e) A public playground;
- (f) A school for children;
- (g) A publicly owned athletic field used by children;
- (h) A movie theater;
- (i) A day-care center;
- (j) A ski hill open to the public;
- (k) Any specialized school for children, including but not limited to a gymnastics academy, dance academy or music school;
- (l) A public or private golf course or range;
- (m) Aquatic facilities open to the public;
- (n) Racine County Fairgrounds.

B. The distance shall be measured from the closest boundary line of the real property supporting the residence of an

offender to the closest real property boundary line of the applicable above enumerated use(s). A map depicting the above-enumerated uses and the resulting residency restriction distances, as amended from time to time, shall be maintained in the office of the Town Clerk for public inspection.

8.48.040 Exceptions to Residency Restrictions.

An offender residing within 1,500 feet of the real property comprising any of the uses enumerated in 8.48.030 above does not commit a violation of this article if any of the following apply:

A. The offender is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.

B. The offender has established a residence prior to the effective date of this article on July 13, 2009, which is within 1,500 feet of any of the uses enumerated in 8.48.030 above, or such enumerated use is newly established after such effective date and it is located within such 1,500 feet of a residence of an offender which was established prior to the effective date of this article.

C. The offender is a minor or ward under guardianship.

8.48.050 Application for an Exemption.

A. An offender may seek an exemption from the provisions of this Chapter 8.48 by applying to the Town Board.

B. Each offender seeking an exemption shall complete in full and execute under oath, an exemption request using a form approved by the Town Board and provide such supporting documents or other information as required by the Town Board. The completed form shall be filed with the Town Clerk. Upon the

filing of an exemption request, the Town Board shall schedule and conduct a hearing on the request within twenty (20) days. During the hearing, the Board may review any information it deems pertinent and may accept oral and written statements from any person. The Board shall consider the public interest in protecting children as well as the interests of the offender seeking exemption. In making its determination under this provision, the Board may consider the circumstances which resulted in offender status, including:

- (1) Statutory provision(s) violated.
- (2) Relationship of offender and victim.
- (3) Presence or use of force.
- (4) Presence of enticement.
- (5) Proximity in time between the offense and the request for exemption.
- (6) Time out of incarceration.
- (7) Credibility of offender.
- (8) Remorse exhibited by the offender.
- (9) Proximity of proposed residence to a child safety zone.
- (10) Support network of offender.
- (11) Counseling and treatment history.

C. The Board shall decide by majority vote whether to grant or deny an exemption. If granted, an exemption may be unconditional or restricted to a certain address or time. A written copy of the Board's decision shall be provided to the offender by certified mail or personal delivery. A copy shall also be provided to his or her parole or probation officer, if any, and to the Racine County Sheriff's Department. Any decision of the Board may be appealed to the Racine County Circuit Court by certiorari within 30 days of the offender's receipt of the decision.

8.48.060 Child Safety Zones.

A. No offender 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;
- (2) A public swimming pool;
- (3) A public library;
- (4) A recreational trail;
- (5) A public playground;
- (6) A school for children;
- (7) A publicly owned athletic field used by children;
- (8) A movie theater;
- (9) A day-care center;
- (10) A ski hill open to the public;
- (11) Any specialized school for children, including but not limited to a gymnastics academy, dance academy or music school;
- (12) A public or private golf course or range;
- (13) Aquatic facilities open to the public;
- (14) Racine County Fairgrounds;
- (15) Any facility for children

[which means a public or private school, a group home, as defined in § 48.02(7), Wis. Stats., a residential care center for children and youth, as defined in § 48.02(15d), Wis. Stats., a shelter care facility, as defined in § 48.02(17), Wis. Stats., a foster home, as defined in § 48.02(6), Wis. Stats., a treatment foster home, as defined in § 48.02(17q), Wis. Stats., a day-care center licensed under § 48.65, Wis. Stats., a day-care program established under § 120.13(14), Wis. Stats., a day-care provider certified under § 48.651, Wis. Stats., or a youth center, as defined in § 961.01(22), Wis. Stats.]

B. A map depicting the locations of the real property supporting the above-enumerated uses, as amended from time

to time, shall be maintained in the office of the Town Clerk for public inspection.

8.48.070 Exceptions to Child Safety Zones.

An offender does not commit a violation of 8.48.060 above and the enumerated uses may allow such offender on the property supporting such use if any of the following apply:

A. The property supporting an enumerated use under 8.48.060 also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:

(1) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and

(2) Written advance notice is made from the offender 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 offender; and

(3) The offender shall not participate in any religious education programs which include individuals under the age of 18.

B. The property supporting an enumerated use under 8.48.060 also supports a use lawfully attended by an offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the offender as the child's parent upon the property, subject to the following conditions:

(1) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and

(2) Written advance notice is made from the offender 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 offender.

C. The property supporting an enumerated use under 8.48.060 also supports a polling location in a local, state or federal election, subject to the following conditions:

- (1) The offender is eligible to vote;
- (2) The designated polling place for the offender is an enumerated use; and
- (3) The offender 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 offender vacates the property immediately after voting.

D. The property supporting an enumerated use under 8.48.060 also supports an elementary or secondary school lawfully attended by an offender as a student, under which circumstances the offender who is a student may enter upon that property supporting the school at which the offender is enrolled, as is reasonably required for the educational purposes of the school.

E. The offender has been continuously employed on a full-time, part-time or seasonal basis at a property supporting an enumerated use under 8.48.060, subject to the following conditions:

- (1) The offender continues employment which commenced on or before January 31, 2008;
- (2) The sexually violent and/or crime against children of which the offender has been convicted occurred prior to the commencement of the employment; and
- (3) The employer has taken reasonable measures to reduce the

opportunity and temptation of the offender to reoffend.

8.48.080 Violations and Penalties.

If an offender violates 8.48.030 above by establishing a residence or occupying residential premises within 1,500 feet of those premises as described therein, without any exception(s) as also set forth above, the Town Attorney, upon referral from a law enforcement officer and the written determination by the law enforcement officer that, upon all of the facts and circumstances and the purpose of this article, such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health or safety of another or others, may bring an action in the name of the Town in the Circuit Court for Racine County to permanently enjoin such residency as a public nuisance. If an offender violates 8.48.030 or 8.48.060 above, in addition to the aforesaid injunctive relief, such offender shall be subject to the general penalty provisions set forth under § 1-4 of this Code. Each day a violation continues shall constitute a separate violation. In addition, the Town may undertake all other legal and equitable remedies to prevent or remove a violation of this article.

8.48.090 Severability.

Each section, subsection, paragraph, sentence, clause, phrase and provision of the foregoing ordinance is and the same is hereby declared to be severable and if any portion or provision thereof is duly determined to be invalid for any reason, such determination shall not invalidate any other portion or provision thereof.

8.48.100 Effective Date.

This ordinance shall take effect and be enforced from and after publication and posting as required by law.