

Ordinance #19-05

An Ordinance creating a new Section, Section 130.07 – Residency Restrictions for Sexual Offenders, in Title XIII – Chapter 130: General Offenses of the City of Alma Code of Ordinances.

The City of Alma hereby ordains as follows:

Sec. 130.07 Residency Restrictions for Sexual Offenders

(1) **Findings and Intent.** The Common Council of the City of Alma finds that repeat sexual offenders who use physical violence and sexual offenders who prey on children, are sexual offenders 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 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.

It is not the intent of the Common Council to punish Sex Offenders, 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 of Alma by creating areas around locations where children regularly congregate in concentrated numbers, wherein, certain sexual offenders are prohibited from establishing temporary or permanent residence.

School bus stops are the locations where students are waiting for a school bus or are being dropped off by a school bus. Such locations are "school zones," as defined in Sec. 939.632(1)(d)3m Wis. Stats. The frequency of use, consistent timing and consistent location of these school bus stops makes them locations where children regularly congregate in concentrated numbers. The students who use them are subject to routine observation by nearby residents. The City of Alma seeks to create areas around these locations where certain sexual offenders are prohibited from establishing temporary or permanent residence.

Due to the high rate of recidivism for sexual offenders, and because reducing both opportunity and temptation would help minimize the risk of re-offense, there is a compelling need to protect children where they congregate or play in public places.

(2) **Definitions.** For purposes of this section:

- (a) "Child" means a person under the age of eighteen (18) years.
- (b) "Crime Against Children" means any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or federal government, having like elements necessary for conviction, respectively:

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| § 940.225(1) | First Degree Sexual Assault |
| § 940.225(2) | Second Degree Sexual Assault |
| § 940.225(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 |
| § 940.225 | Rape |
| § 944.06 | Incest |
| § 948.02 | Sexual Intercourse with a Child |
| § 948.02 | Indecent Behavior with a Child |
| § 948.07 | Enticing Child for Immoral Purposes |
| § 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 a 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 or an Included Offense |
| § 975.06 | Sex Crime Law Commitment |

(c) "Sex Offender" shall mean:

- (i) any person who is required to register under Sec. 301.45 Wis. Stats. and/or any person who is required to register under Sec. 301.45 Wis. Stats. and who is subject to the Special Bulletin Notification process set forth in Sec. 301.46(2) and (2m) Wis. Stats.;

- (ii) any person subject to the sex crimes commitment provisions of Sec. 975.06 Wis. Stats.
 - (iii) any person found not guilty by reason of disease or mental defect placed on lifetime supervision under Sec. 971.17 (1j).
 - (iv) any person who has been convicted of, or has been found not guilty by reason of disease or mental defect of, any "crime against children" as defined herein.
- (d) "Permanent residence" shall mean a place where a person abides, lodges or resides for fourteen (14) or more consecutive days.
- (e) "Temporary residence" shall mean a place where a 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 place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent address.

(3) Residency Restrictions.

- (a) In absence of a circuit court order specifically exempting a Sex Offender from the residency restriction in this subsection, a sexual offender shall not establish a permanent or temporary residence within one thousand (1,000) feet of any private or public school, churches, recreational trail, athletics fields used by children, playground or park where children regularly gather; licensed child care center as defined in Sec. 48.65 Wis. Stats. or group home as defined in Sec. 48.02(7). A map of such restricted areas shall be maintained, updated and available to the public at the City Hall.
- (b) It is unlawful to let or rent any place, structure, or part thereof with the knowledge that it will be used as a residence by a Sex Offender if such place, structure, or part hereof is located within one thousand (1,000) feet of any private or public school, churches, recreational trail, athletics fields used by children, playground or park where children regularly gather; licensed child care center as defined in Sec. 48.65 Wis. Stats. or group home as defined in Sec. 48.02(7). A person letting or renting a place or structure shall be deemed to have such knowledge if, at least ten (10) days prior to letting or renting the place, the Sex Offender's name appears on the Wisconsin Department of Corrections Sex Offender registry and the person letting or renting the place knew the Sex Offender would be residing at the subject place or structure.

- (c) In absence of a circuit court order specifically exempting a Sex Offender from the residency restriction in this subsection, a sexual offender shall not establish a permanent or temporary residence within two hundred (200) feet of any regularly used private or public school bus stop. A list of public school bus stops which are regularly used shall be maintained and updated by the City of Alma from information supplied by Alma Area Schools. A map of such restricted areas shall be maintained, updated and available to the public at the City Hall.
- (d) It is unlawful to let or rent any place, structure, or part thereof with the knowledge that it will be used as a residence by a Sex Offender if such place, structure, or part hereof is located within two hundred (200) feet of any private or public school bus stop. A person letting or renting a place or structure shall be deemed to have such knowledge if, at least ten (10) days prior to letting or renting the place, the Sex Offender's name appears on the Wisconsin Department of Corrections Sex Offender registry and the person letting or renting the place knew the Sex Offender would be residing at the subject place or structure.

(4) Residency Restrictions Exemptions. A Sex Offender residing within a prohibited area as described in sub. (3) herein does not commit a violation of this section if any of the following apply:

- (a) The person established a permanent residence or temporary residence and reported and registered the residence pursuant to Sec. 301.45 Wis. Stats., before the effective day of this section.
- (b) The person was under seventeen (17) years of age and is not required to register under Sec. 301.45 or 301.46, Wis. Stats.
- (c) The school, church, recreational trail, playground, athletics field, park, or licensed child care center, or group home, where children regularly gather within one thousand (1,000) feet of the person's permanent residence or temporary residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Sec. 301.45 Wis. Stats.
- (d) The person is required to serve a sentence at a jail, juvenile facility or other correctional institution or facility.
- (e) The person is a minor or ward under guardianship.

(5) Appeal.

- (a) The above 1,000-foot requirements for residency and rental may be waived upon approval of the Safety Committee and Common Council through appeal by the affected party. Such appeal shall be made in writing to the City Clerk's Office, who shall forward the request to the Common Council for referral to the Safety Committee, which shall receive reports from law enforcement agencies on such appeal. The Safety Committee shall convene and consider the public interest as well as the affected party's presentation and concerns. After deliberation, the Safety Committee shall forward its recommendation to the Common Council for consideration. The Common Council shall forward its decision in writing via the minutes or otherwise to the Alma Police Department for their information and action. A written copy of the decision shall be provided to the affected party.
- (b) The above 200-foot requirements for residency and rental may be waived upon approval of the Safety Committee and Common Council through appeal by the affected party. Such appeal shall be made in writing to the City Clerk's Office, who shall forward the request to the Common Council for referral to the Safety Committee, which shall receive reports from law enforcement agencies on such appeal. The Safety Committee shall convene and consider the public interest as well as the affected party's presentation and concerns. After deliberation, the Safety Committee shall forward its recommendation to the Common Council for consideration. The Common Council shall forward its decision in writing via the minutes or otherwise to the Alma Police Department for its information and action. A written copy of the decision shall be provided to the affected party.
- (c) The "Safety Committee" shall consist of five (5) citizens, three of whom shall constitute a quorum. The Mayor shall appoint the members of the Safety Committee.

(6) Loitering.

- (a) It shall be unlawful for any Sex Offender as designated in (2)(c) above, to loiter or prowl at any school or school property; recreational trail, playground or park; within 300 feet of a licensed child care center or group home; in a place, at a time, or a

manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object. Unless flight by the actor or other circumstances makes it impractical, a law enforcement officer shall prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by the law enforcement officer at the time, would have dispelled the alarm.

(b) **Exceptions.** The prohibitions set forth in (a) above shall not apply where the actor was with his or her parent or other adult person having his or her care, custody or control; or the actor was exercising First Amendment rights protected by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.

(7) **Prohibited Activities.** It shall be unlawful for any Sex Offender to participate in a holiday event involving children under al 8 years of age, including, but not limited to, for purposes of example: distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas or wearing an Easter Bunny costume on or preceding Easter. 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.

(8) **Measurement of Distance.** For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the closest outer property line of the permanent residence or temporary residence to closest outer property line of a private or public school, recreational trail, playground or park where children regularly gather or licensed day care center or licensed group foster home.

(9) **Penalty.** A person who violates provisions of this section shall be subject to a forfeiture of not less than \$500.00 and no more than \$1,000.00 for each violation. Each day a violation continues shall constitute a separate offense. The City may also seek equitable relief to gain compliance.

Passed this 5 day of July 2019 by the Common Council of the City of Alma with
6 members voting yes and 0 members voting no. 1 absent (Grisen)

_____/s/_____
Jim Wilkie, Mayor

Attest:

_____/s/_____
Linda M. Torgerson, City Clerk

Published: July 11, 2019