

APPENDIX “B”

ORDINANCE NO. 2016-102

AN ORDINANCE CREATING CHAPTER 50-52 OF THE MUNICIPAL CODE OF THE CITY OF SEYMOUR RELATING TO SEX OFFENDER RESIDENCY RESTRICTIONS AND LOITERING

WHEREAS, the Wisconsin 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 provided for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically at Wis. Stats. Ss980.08 following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

WHEREAS, the City of Seymour places a high priority on maintaining public safety through highly skilled and trained law enforcement, as well as dependency upon laws that deter and punish criminal behavior; and

WHEREAS, sex offenders have very high recidivism rates, and according to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the more than two-thirds of the victims of rape and sexual assault are under the age of 18, and sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon; and

WHEREAS, the Common Council has reviewed the findings of other communities in Wisconsin as they pertain to ordinances adopted which relate to, and in part, impose restrictions upon sex offenders with respect to residency; and

WHEREAS, having considered the proposed amendment to the Municipal Code to create residency restrictions for sex offenders and additional provisions to further protect children; and upon all of the records, files, studies, reports and proceedings pertaining to the subject matter, the Common Council of the City of Seymour finds the proposed ordinance will serve to protect the health, safety and welfare of the community;

NOW THEREFORE, the Common Council of the City of Seymour do hereby ordain Chapter 50-52 to be created and read as follows:

Chapter 50-52

SEX OFFENDER RESIDENCY RESTRICTIONS-LOITERING

Sections:

- 50-52.01 Purpose and intent.
- 50-52.02 Definitions.
- 50-52.03 Residency restrictions.
- 50-52.04 Loitering.
- 50-52.05 Loitering exceptions.

50-52.06 Penalties and remedies.

50-52.01 Purpose and intent.

A. The City 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 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 reoffense, 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 and daycare centers. The City finds and declares that, in addition to schools and daycare centers, children congregate or play in a number of public places, including public parks and other facilities for children.

B. This chapter is a regulatory measure aimed at protecting the health and safety of children in the city of Seymour from the risk that convicted sex offenders may reoffend in locations close to their residences. It is the intent of this chapter 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 certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence; and by creating child safety zones where children regularly congregate in concentrated numbers wherein access by certain sexual offenders and sexual predators to such zones shall be restricted or excluded. (Ord. 2016-102)

50-52.02 Definitions.

As used in this chapter and unless the context otherwise requires:

“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 the federal government, having like elements necessary for conviction and involving a person under the age of eighteen (18) years, respectively:

Wisconsin Statute Sections	
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
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

“Facility for children” means a public or private school, a group home, as defined in Section 48.02(7), Wisconsin Statutes, a residential care center for children and youth, as defined in Section 48.02(15d), Wisconsin Statutes, a shelter care facility, as defined in Section 48.02(17), Wisconsin Statutes, a daycare center licensed under Section 48.65, Wisconsin Statutes, a daycare program established under Section 120.13(14), Wisconsin Statutes, a daycare provider certified under Section 48.651, Wisconsin Statutes, or a youth center, as defined in Section 961.01(22), Wisconsin Statutes.

“Offender” means a person 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 offense and/or a crime against children.

“Permanent residence” means the place where a person sleeps, abides, lodges or resides for fourteen (14) or more consecutive days or which qualifies as a residence under the holdings of the Wisconsin Supreme Court and which may include more than one location, and may be mobile or transitory.

“Recreational trail” means all parts and segments of the city of Seymour designated as the Newton Blackmour State Trail.

“Sexually violent offense” shall have the meaning as set forth in Section 980.01(6), Wisconsin Statutes, as amended from time to time.

“Temporary residence” means residence or premises meeting any of the following criteria:

1. A place where the person sleeps, abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not that person’s permanent residence as defined in this section;
2. A place where the person routinely sleeps, abides, lodges or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not that person’s permanent residence as defined in this section; or
3. A place where a person sleeps, or which qualifies as a temporary residence under the holdings of the Wisconsin Supreme Court, and which may include more than one location, and may be mobile or transitory. (Ord. 2016-102)

50-52.03 Residency restrictions.

A. An offender shall not reside within one thousand five hundred (1,500) feet of real property that supports or upon which there exists any of the following uses:

1. Any facility for children;
2. A public park, parkway, parkland, park facility;
3. A public swimming pool;
4. A public library;
5. A recreational trail;
6. A public playground;
7. A school for children;
8. Athletic fields used by children;
9. A daycare center;
10. Any specialized school for children, including, but not limited to, a gymnastics academy, dance academy or music school; or
11. Aquatic facilities open to the public.

B. Measurement of Distance. The distance shall be measured from the closest boundary line of the real property supporting the residence of an offender to the closest boundary line of the real property that supports or upon which there exists any of the uses enumerated in subsection A of this section.

C. Residency Restriction Exceptions. An offender residing within one thousand five hundred (1,500) feet of real property that supports or upon which there exists any of the uses enumerated in subsection A of this section does not commit a violation of this chapter if any of the following apply:

1. The offender is required to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental facility.
2. The offender has established a residence prior to the effective date of the ordinance codified in this chapter.
3. The use enumerated in subsection A of this section began after the offender established a residence.
4. The offender is a minor or ward under guardianship.

5. All of the following apply to the offender: he/she is released under Section 980.08 Wis. Stats.; he/she is subject to supervised release under Chapter 980 Wis. Stats.; the offender is residing where he/she is ordered to reside under Section 980.08 Wis. Stats.; and the offender is in compliance with all court orders issued under Chapter 980 Wis. Stats.

D. In addition to and notwithstanding the foregoing, but subject to subsection C of this section, no person, who has been convicted of a sexually violent offense and/or crime against children, shall be permitted to reside in the city of Seymour and no supervised release of such Wisconsin Statute Chapter 980 sexually violent person shall be established in the city of Seymour unless such person was domiciled in the city of Seymour 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. (Ord. 2016-102)

50-52.04 Loitering.

A. It is unlawful for any person defined as an offender pursuant to Section 50-36 (c) to loiter or prowl in the locations enumerated in Section 50-36 (c) 2-4, 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.

B. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person defined as an offender pursuant to Section 50-52.02 takes flight upon appearance of a peace officer, refuses to identify himself/herself or manifestly endeavors to conceal himself/herself or any object. Unless flight by said person or other circumstances make it impracticable, a peace officer shall prior to any arrest for an offense under this section, afford such person an opportunity to dispel any alarm which would otherwise be warranted, by requesting him/her to identify himself/herself and explain his/her presence and conduct at the locations enumerated in Section 50-36 (1). No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by such person was true and, if believed by the peace officer at the time, would have dispelled the alarm. (Ord. 2016-102)

50-52.05 Loitering exceptions.

The previous section shall not apply where the person defined as an offender pursuant to Section 50-52.02 was accompanied by his/her parent, guardian or other adult person having his/her care, custody or control, or where that person was exercising first amendment rights protected by the United States Constitution or Wisconsin Constitution, including freedom of speech, the free exercise of religion and the right of assembly. (2016-102)

50-52.06 Penalties and remedies.

A. Forfeitures. Any person found guilty of violating this chapter shall be subject to a forfeiture of not less than three hundred dollars (\$300.00) nor more than five hundred dollars (\$500.00) for each violation. Each violation and each day a violation continues or occurs shall constitute a separate offense. Neither the issuance of a citation nor the imposition of forfeiture hereunder

shall preclude the city from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this chapter.

B. Injunction-Violation of Residency Restrictions. If an offender establishes a permanent or temporary residence in violation of Section 50-52.03, the chief of police and/or his designee may refer the matter to the city attorney. The referral shall include a written determination by the chief of police and /or his designee that, upon all of the facts and circumstances and the purpose and intent of this chapter, such violation interferes substantially with the comfortable enjoyment of life, health, safety of another or others. Upon such referral, the city attorney shall bring an action in the name of the city in circuit court to permanently enjoin such residency as a public nuisance. (2016-102)

This ordinance shall take effect and be in full force from and after its passage and publication.

Adopted this _____ day of June, 2016.

Judith A. Schuette, Mayor

ATTEST:

Lori Thiel, Clerk-Treasurer