

ORDINANCE NO. 2006- 1902

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE
AS IT PERTAINS IN PART TO THE DEFINITION OF FAMILY AND TO
PROVIDE REGULATIONS FOR WISCONSIN STATUTES
CHAPTER 980 SUPERVISED RELEASE AND CERTAIN
CRIMES AGAINST CHILDREN SEX OFFENDER USES

WHEREAS, the Wisconsin Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for 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 §980.08, Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

WHEREAS, the City of Franklin 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 most likely to reoffend and prey on the most innocent members of our society, and 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 a number of the Legislatures of these United States, including Wisconsin, and including, but not limited to Pennsylvania, Alabama, Iowa, Florida, Maine and Louisiana, as they pertain to laws adopted which relate to and in part impose restrictions upon sex offenders with respect to residency; and

WHEREAS, the Common Council having also reviewed the decision of the United States 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 reoffense. Even experts in the field could not predict with confidence whether a particular sex offender will reoffend, 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 reoffense 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, the Common Council intending to codify in the Unified Development Ordinance in furtherance of the protection of the safety of its citizens and for the proposition that municipalities be responsible for as well as to their own citizens, the declaration by the Secretary of the Wisconsin Department of Health and Family Services and the Secretary of the Wisconsin Department of Corrections dated October 27, 2006, that Wisconsin “law is now explicit, no sexually violent person may be placed on supervised release in a residence in the City of Franklin unless that individual is from the City of Franklin”; and

WHEREAS, a public hearing was held before the City of Franklin Plan Commission on the 30th day of November, 2006, upon proposed amendments to the Unified Development Ordinance pertaining to the definition of family and to provide regulations for Wisconsin Statutes Chapter 980 supervised release and certain crimes against children sex offender uses, amongst other amendments being concerned with the protection of the public and children in the Community and the Plan Commission thereafter having determined that the proposed zoning text amendments would promote the health, safety and welfare of the Community and having recommended approval thereof to the Common Council; and

WHEREAS, the Common Council having considered the proposed amendments and having concurred with the recommendation of the Plan Commission and having determined, upon such recommendation and upon all of the records and files and reports and proceedings pertaining to the subject matter, including the studies on file and the recommendations of the Community Safety Response Task Force, and all of the prior actions and experience of the City of Franklin in protecting the Community from sexually violent persons, that the proposed zoning text amendments as they pertain to the definition of “family”, generally in application to the administration and regulation of single-family, two-family and multi-family residential zoning districts; the creation of a definition of a “functional family unit”; and the more specific regulation of Chapter 980 Stats., supervised release and certain crimes against children sex offender uses, will serve to protect the health, safety and welfare of the Community.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: This Ordinance is a regulatory measure aimed at protecting the health and safety of children in Franklin from the risk that convicted sex offenders may reoffend in locations close to their residences. 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 re-arrested 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, day-care centers and other places children frequent. The City finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.

SECTION 2: Section 15-3.0602 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Residential Zoning Districts, be and the same is hereby amended to add a row entitled "Ch. 980 Stats. supervised release and crimes against children sex offender use" and to insert an "S" in each zoning district column for such row.

SECTION 3: Section 15-3.0602 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Residential Zoning Districts, be and the same is hereby amended to add a row entitled "Functional family unit" and to insert an "S" in each zoning district column for such row.

SECTION 4: Section 15-3.0602 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Residential Zoning Districts, be and the same is hereby amended to add a footnote, as follows: "Footnotes: (a) No foster family home, community living arrangement, housing for farm laborers or multiple-family residential housing for older persons as listed above, shall include any Ch. 980 Stats. supervised release and crimes against children sex offender use."

SECTION 5: Section 15-3.0702C. of the Unified Development Ordinance of the City of Franklin, Wisconsin, pertaining to detailed standards for special uses in residential districts, be and the same is hereby created to read as follows:

"C. Ch. 980 Stats. supervised release and crimes against children sex offender use. "Person" as used within this Subsection, shall have the meaning set forth within §167-2. of the Municipal Code. The following factors, in addition to the general standards for special uses to be established by an applicant under Section 15-3.0701 of this Ordinance, shall be established

by an applicant for a Ch. 980 Stats. supervised release and crimes against children sex offender use:

1. Residency restrictions. No Ch. 980 Stats. supervised release and crimes against children sex offender use may be established or exist within two thousand feet of the real property comprising any of the following:

- a. Any facility for children (which means a public or private school, a group home, as defined in §48.02 (7), Stats., a residential care center for children and youth, as defined in §48.02 (15d), Stats., a shelter care facility, as defined in §48.02 (17), Stats., a foster home, as defined in §48.02 (6), Stats., a treatment foster home, as defined in §48.02 (17q), Stats., a day care center licensed under §48.65, Stats., a day care program established under §120.13 (14), Stats., a day care provider certified under §48.651, Stats., or a youth center, as defined in §961.01 (22), Stats.);
- b. Any facility used for:
 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. athletic fields used by children;
 8. a movie theatre;
 9. a daycare center;
 10. the Milwaukee County Sports Complex and grounds;
 11. a ski hill open to the public;
 - 12.any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
 13. a public or private golf course or range; and
 14. 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 use(s). A map depicting the above enumerated uses and the resulting residency restriction distances, as amended from time to time, is on file in the Office of the City Clerk for public inspection.

2. Residency restriction exceptions. A person residing within or a Ch. 980 Stats. supervised release and crimes against

children sex offender use within two thousand feet of the real property comprising any of the uses enumerated in Subs. 1. above, does not commit a violation of this Subsection if any of the following apply:

- a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility or the use results therefrom.
- b. The person has established a residence/Ch. 980 Stats. supervised release and crimes against children sex offender use prior to the effective date of this Subsection on December 16, 2006, which is within two thousand feet of any of the uses enumerated in Subs. 1. above, or such enumerated use is newly established after such effective date and it is located within such two thousand feet of a residence of a person/Ch. 980 Stats. supervised release and crimes against children sex offender use, which was established prior to the effective date of this Chapter.
- c. The person residing in the Ch. 980 Stats. supervised release and crimes against children sex offender use is a minor or ward under guardianship.

3. Original domicile restriction. In addition to and notwithstanding the foregoing, but subject to Subs. 2. above, no person and no individual who has been convicted of a sexually violent offense and/or a crime against children, shall be permitted to reside in the City of Franklin and no such Ch. 980 Stats. supervised release and crimes against children sex offender use shall be established in the City of Franklin, unless such person was domiciled in the City of Franklin 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.

4. Child safety zones. No 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, as defined in §167-2. of the Municipal Code, shall enter or be present upon any real property upon which there exists any facility used for or which supports a use of:

- a. Any facility for children (which means a public or private school, a group home, as defined in §48.02 (7), Stats., a residential care center for children and youth, as defined in §48.02 (15d), Stats., a shelter care facility, as defined in §48.02 (17), Stats., a foster home, as defined in §48.02 (6), Stats., a treatment foster home, as defined in §48.02 (17q), Stats., a day care center licensed under

§48.65, Stats., a day care program established under §120.13 (14), Stats., a day care provider certified under §48.651, Stats., or a youth center, as defined in §961.01 (22), Stats.);

- b. Any facility used for:
 - 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. athletic fields used by children;
 - 8. a movie theatre;
 - 9. a daycare center;
 - 10. the Milwaukee County Sports Complex and grounds;
 - 11. a ski hill open to the public;
 - 12. any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
 - 13. a public or private golf course or range; and
 - 14. aquatic facilities open to the public;

and no such enumerated uses shall be used to allow such person upon the property supporting such use. A map depicting the locations of the real property supporting the above enumerated uses, as amended from time to time, is on file in the Office of the City Clerk for public inspection.

5. Child safety zone exceptions. A person does not commit a violation of Subs. 4. above and the enumerated uses may allow such person on the property supporting such use if any of the following apply:

- a. The property supporting an enumerated use under Subs. 4. 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 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

3. The person shall not participate in any religious education programs which include individuals under the age of 18.
- b. The property supporting an enumerated use under Subs. 4. also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person 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 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.
- c. The property supporting an enumerated use under Subs. 4. also supports a polling location in a local, state or federal election, subject to the following conditions:
 1. The person is eligible to vote;
 2. The designated polling place for the person is an enumerated use; and
 3. 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.
- d. The property supporting an enumerated use under Subs. 4. 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 supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.

6. Violations. Violations of this Subection shall be subject to those remedies and penalties as are set forth under §167-8. of the Municipal Code for violations of the residency restriction and child safety zone regulations, respectively, and those set forth under §15-9.0502 of this Ordinance.”

SECTION 6:

Section 15-3.0603 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special

Uses in All Nonresidential Zoning Districts, be and the same is hereby amended to add a row under “Other uses not classified under SIC Code” entitled “Ch. 980 Stats. supervised release and crimes against children sex offender use” and to insert an “S” in the A-1 and the A-2 zoning district columns, and to leave all remaining columns blank, for such row.

SECTION 7: Section 15-3.0602 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Residential Zoning Districts, be and the same is hereby amended, at “Community living arrangement (serving 15 or fewer persons)” only, to delete “P” in the R-8 column.

SECTION 8: Section 15-3.0603 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for a Table of Permitted and Special Uses in All Nonresidential Zoning Districts, be and the same is hereby amended, at Title 8361 “Residential Care” only, to delete “P” in the B-3 column, and amended to add a footnote, as follows: “Footnotes: (a) No “Hotels and Other Lodging Places” or like use as listed above, shall include any Ch. 980 Stats. supervised release and crimes against children sex offender use.”.

SECTION 9: Section 15-11.0103 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for the definitions of specific words and phrases, be and the same is hereby amended to add the following definitions:

“Chapter 980 Stats. supervised release and crimes against children sex offender use. An occupancy use of a dwelling unit or a residential use unit pursuant to a plan of the Department of Health and Family Services, a Court order, or as may otherwise result from or be provided for under Chapter 980 of the Wisconsin Statutes, which occupancy use is the supervised release of a sexually violent person (a person having committed a sexually violent offense as those terms are defined in §167-2. of the Municipal Code) and/or a crimes against children sex offender, or a residential use with or without supervision, by a person now, then or previously a sexually violent person and/or a crimes against children sex offender. A “crimes against children sex offender use” is an occupancy use by an individual 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 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, respectively:

§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; and
 §975.06 Sex Crimes Law Commitment."

“Family. A family may consist of a person living alone or any of the following groups living together in a dwelling unit and sharing common living, sleeping, cooking and eating facilities:

1. Any number of people related by blood, marriage, adoption, guardianship or other duly authorized custodial relationships;
2. Two unrelated people;
3. Two unrelated people and any children related to either of them.

A family does not include:

1. Any society club, fraternity, sorority, association, lodge, combine, federation or other like organization;
2. Two or more individuals whose association to each other is temporary and/or seasonal in nature;

3. More than one person determined to be a sexually violent person under Chapter 980, Wisconsin Statutes and/or a crimes against children sex offender as defined within this Ordinance;
4. Three or more people who are granted a Special Use Permit as a Functional Family Unit, provided that a Special Use Permit for a Functional Family Unit shall be personal to the Functional Family Unit.”

“Functional Family Unit. In R-1, R-2, R-3, R-3E, R-4, R-5 and R-6 single-family residence zoning districts and in R-7 two-family, R-8 general residence, VR Village residence, residential planned development and A-1 and A-2 agricultural zoning districts, a functional family unit shall consist of a group of individuals living together in a single dwelling unit and functioning as a family with respect to those characteristics that are consistent with the purposes of zoning restrictions in single family residential neighborhoods. In determining whether or not a group of unrelated individuals is a functional family unit under this definition, the following criteria must be used.

1. The occupants must share the entire dwelling unit. A unit in which the various occupants act as separate roomers cannot be deemed to be occupied by a functional family unit.
2. The following factors shall be considered in determining whether a functional family exists:
 - a. The presence of minor dependent children regularly residing in the household;
 - b. Evidence of shared household expenses;
 - c. Whether or not different members of the household have the same address for the purposes of voter registrations, drivers’ licenses, motor vehicle registrations, summer or other residences and the filing of taxes;
 - d. Enrollment of dependent children in local schools and/or home schooled in relation thereto;
 - e. Any other evidence reasonably related to whether or not the group or persons have functioned as a family unit as defined in this ordinance.”

SECTION 10:

Section 15-11.0103 of the Unified Development Ordinance of the City of Franklin, Wisconsin, providing for the definitions of specific words and phrases, be and the same is hereby amended, as to the definition of “Community Living Arrangement” only, as follows: immediately

before "prisons", insert: "Chapter 980 Stats. supervised release and crimes against children sex offender uses"; delete: "and amendments thereto".

SECTION 11: 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.

SECTION 12: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 13: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this 5th day of December, 2006, by Alderman Solomon.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 5th day of December, 2006.

APPROVED:

/s/ Thomas M. Taylor, Mayor

ATTEST:

/s/ Sandra L. Wesolowski, City Clerk

AYES 6 NOES 0 ABSENT 0