

Sponsor: Brenda Tallent
First Reading: 6-1-2010
Second Reading: 7-6-2010

ORDINANCE NO. D21

AN ORDINANCE REGULATING WHERE SEX OFFENDERS MAY RESIDE AND LOITER IN
THE TOWN OF GREENWOOD

WHEREAS, the Town Council of the Town of Greenwood is authorized in Section 29 of the Town Charter to adopt ordinances "to provide for and preserve the health, peace, safety . . . and public welfare of the Town and its inhabitants";

WHEREAS, the State of Delaware has established a system of registering individuals convicted of sex offenses, and as part of that system has placed certain restrictions upon such persons;

WHEREAS, sex offenders pose a high risk of committing additional sexual offenses;

WHEREAS, the protection afforded to potential victims of sexual offenses under the current Laws of the State of Delaware and Town Code of the Town of Greenwood are insufficient; and

WHEREAS, the Town Council of the Town of Greenwood believes that placing limited restrictions on the places where sex offenders may reside and loiter within the Town of Greenwood will protect potential victims, thereby promoting the health and safety of the residents of Greenwood;

BE IT HEREBY ENACTED by the Town Council of the Town of Greenwood, a majority thereof concurring in Council duly met, that the ordinance be adopted as follows:

AN ORDINANCE REGULATING WHERE SEX OFFENDERS MAY RESIDE AND LOITER IN
THE TOWN OF GREENWOOD

Section 1. Definitions.

For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"500 feet" means a straight line from (a) the point on the outer property line of the property where the sex offender resides that is nearest to the school, park, library or child-care facility to (b) the point on the outer property line of the school, park, library, or child-care facility that is nearest to the property where the sex offender resides.

“Child-care Facility” means a licensed day-care center, licensed child-care facility, or any other child-care services facility exempt from licensing pursuant to the laws of the State of Delaware.

“Library” means any State, County, Town or educational facility which houses literary and artistic materials, such as books, periodicals, newspapers, pamphlets, prints, records, tapes, and other media of communication for reading, reference, or lending.

“Loiter” means

(a) Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around a school, park, library, or child-care facility, while not having reason or relationship involving custody of or responsibility for a pupil, minor child, library user or attendee or any other specific legitimate reason for being there; or

(b) Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around a school, park, library or child-care facility, for the purpose of engaging or soliciting another person to engage in sexual intercourse, sexual penetration, sexual contact, sexual harassment, sexual extortion, or indecent exposure.

“Park” means any land, or tract of land, or facility used for passive or active recreation, including, but not limited to, playgrounds, parks, skate parks, athletic fields, or any other facility owned or operated by the Town of Greenwood, the State of Delaware, or any school district.

“Reside” means to dwell within or to occupy a dwelling or home as a permanent or temporary place of abode.

“School” means any preschool, kindergarten, elementary school, secondary school, vocational technical school, or any other institution which has as its primary purpose the education or instruction of children under 16 years of age.

“Sexual Offender” means any person who:

(a) Has been convicted in this State of the commission or attempt to commit any sexual offense upon a child under 16 years of age under § 767, § 768, § 769, § 770, § 771, § 772, § 773, § 1108, § 1109, § 1111, and/or § 1112A of title 11 of the Delaware Code; or

(b) Has been discharged or paroled from a penal institution where that person was confined because of the commission or attempt to commit 1 or more of the offenses enumerated in paragraph (a) of this definition; or

(c) Has been adjudged guilty but mentally ill under § 401 or not guilty by reason of insanity under § 401 of title 11 of the Delaware Code for the commission or attempt to commit one or more of the offenses enumerated in paragraph (a) of this definition; or

(d) Has been convicted in any other state of any offense which, if committed or attempted in this State, would have been punishable as one or more of the offenses enumerated in paragraph (a) of this definition.

Section 2. Restrictions.

(a) It shall be unlawful for any sex offender to reside within 500 feet of any school, park, library, or child-care facility located within the Town of Greenwood.

(b) It shall be unlawful for any sex offender to loiter within 500 feet of any school, park, library, or child-care facility located within the Town of Greenwood.

Section 3. Notification.

Any person in violation of section 2(a) of this ordinance shall have sixty (60) days to comply with this ordinance from the date the Town notifies the person of the violation. The person shall be deemed to have been notified of the violation when he or she has been personally delivered written notice by a member of the Police Department. If a person does not comply with this ordinance within the sixty-day period, he or she will be in violation of this ordinance.

Any person in violation of section 2(b) of this ordinance shall be required to immediately leave the area where the person is loitering after receiving verbal or written notice from a member of the Police Department. Any person so warned who fails to leave the area immediately or who is observed in violation of section 2(b) within one (1) year of such warning shall be taken into custody and charged with violating this ordinance.

It shall not be a defense to a prosecution for a violation of this ordinance that the person was unaware that the prohibited conduct took place on or within the restricted zone.

Section 4. Violations and Penalties.

The penalty for violation of this ordinance shall be a fine of up to \$1,000. Nothing herein shall prevent the Town from pursuing civil remedies, including injunctive relief.

Section 5. Applicability.

(a) Section 2(a) of this ordinance shall not apply to any individual who, at the time of the adoption of this ordinance, was a sex offender as defined by this ordinance and who resided in a location that would otherwise violate section 2(a); however, should such a sex offender cease to reside at that location after the adoption of this ordinance, the sex offender's new residence must comply with this ordinance.

(b) Subsection 2(a) of this ordinance shall not apply to any sex offender who resided in a location that would otherwise violate section 2(a) prior to the earlier of : (i) the establishment of the school, park, library, or child-care facility or (ii) the granting of preliminary planning approval for the school, park, library, or child-care facility.

(c) Section 2(b) shall apply regardless of a sex offender's place of residence.

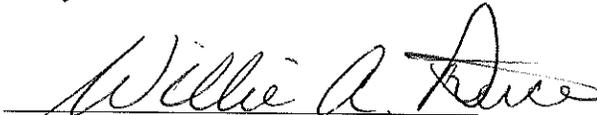
SYNOPSIS

This ordinance prohibits sex offenders from residing or loitering within 500 feet of any school, park, library, or child-care facility. This ordinance defines a sex offender as being anyone who 1) has been convicted of committing or attempting to commit certain crimes on individuals under the age of 16; 2) was discharged or paroled from a penal institution where the incarceration was a result of committing or attempting to commit one of the same crimes; 3) was adjudged guilty but mentally ill or not guilty by reason of insanity for committing or attempting to commit one of the same crimes; or 4) has been convicted in another state of committing or attempting to commit one of the same crimes. This ordinance gives a sex offender 60 days to comply with the residency requirements of the ordinance after being notified by the town of violating the ordinance. Under this ordinance, a sex offender who is observed loitering within 500 feet of a restricted area must first be issued a warning and given a chance to immediately leave before a citation can be issued. After a warning is given, a sex offender observed loitering within 500 feet of a restricted area within the following year may be charged with violating this ordinance without further warning being given. An individual may not avoid a violation of this ordinance by claiming that he or she was unaware that he or she was loitering in a restricted area. The penalty for violating this ordinance shall be a fine of up to \$1000, and the town may pursue injunctive relief. This ordinance shall not apply to any individual who, at the time this ordinance is adopted, is a sex offender and lives in a restricted area unless the sex offender subsequently moves from the place of residence at the time of the adoption of this ordinance. This ordinance shall also not apply to a sex offender who resided at a location prior to the establishment of a school, park, library, or child-care facility or prior to the granting of preliminary planning approval for a school, park, library, or child-care facility (whichever occurs first).

This shall certify that this is a true and correct copy of the Ordinance duly adopted by a majority vote to the Greenwood Town Council at a duly-noticed meeting held on the 6th day of July, 2010.



Mayor



Secretary

ATTEST:  (SEAL)