

ORDINANCE NO. 14,500

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by adding and enacting a new Article VIII. Residency Restrictions for Sex Offenders, Sections 70-307 through Section 70-311, relating to residency restrictions for sex offenders.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by adding and enacting a new Article VIII. Residency Restrictions for Sex Offenders, Sections 70-307 through Section 70-311, relating to residency restrictions for sex offenders as follows:

ARTICLE VIII. RESIDENCY RESTRICTIONS FOR SEX OFFENDERS

Sec. 70-307. PURPOSE.

This article is a regulatory measure aimed at protecting the health and safety of children in Des Moines from the risk that convicted sex offenders may reoffend in locations close to their residences. As recognized by the Eighth Circuit United States Court of Appeals in its April 29, 2005 decision of Doe v. Miller, and as recognized by the Iowa Supreme Court in State v. Seering, decided on July 29, 2005, 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 and day care centers. The city finds and declares that in addition to schools and daycare centers, children congregate

or play at child-oriented facilities identified in section 70-309(1).

Sec. 70-308. Definitions.

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

1. *"Aggravated offense"* means a conviction for any of the following offenses:

- (a) Sexual abuse in the first degree in violation of Iowa Code section 709.2.
- (b) Sexual abuse in the second degree in violation of Iowa Code section 709.3.
- (c) Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.
- (d) Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1.
- (e) Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- (f) Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph "d".
- (g) Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
- (h) Murder, if sexual abuse as defined in Iowa code section 709.1 is committed during the offense.
- (i) Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph "a".

2. *"Criminal offense against a minor"* means any of the following criminal offenses or conduct:

- (a) Kidnapping of a minor, except for the kidnapping of a minor in the third degree committed by a parent.
- (b) False imprisonment of a minor, except if committed by a parent.
- (c) Any indictable offense involving sexual conduct directed toward a minor.
- (d) Solicitation of a minor to engage in an illegal sex act.
- (e) Use of a minor in a sexual performance.
- (f) Solicitation of a minor to practice prostitution.
- (g) Any indictable offense against a minor involving sexual contact with the minor.

- (h) An attempt to commit an offense enumerated in this subsection.
- (i) Incest committed against a minor.
- (j) Dissemination and exhibition of obscene material to minors in violation of Iowa Code section 728.2.
- (k) Admitting minors to premises where obscene material is exhibited in violation of Iowa Code section 728.3.
- (l) Stalking in violation of Iowa Code section 708.11, subsection 3, paragraph "b", subparagraph (3), if the fact-finder determines by clear and convincing evidence that the offense was sexually motivated.
- (m) Sexual exploitation of a minor in violation of Iowa Code section 728.12.
- (n) Enticing away a minor in violation of Iowa Code section 710.10, subsection 1.
- (o) An indictable offense committed in another jurisdiction which would constitute an indictable offense under paragraphs (a) through (n).

3. *"Other relevant offense"* means any of the following offenses:

- (a) Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.
- (b) Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.
- (c) Indecent exposure in violation of Iowa Code section 709.9.
- (d) Incest committed against a dependent adult as defined in Iowa Code section 235B.2 in violation of Iowa Code section 726.2.
- (e) A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs (a) through (d) if committed in this state.

4. *"Person"* means a person who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor.

5. *"Residence"* means the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

6. *"Sexually violent offense"* means any of the following indictable offenses:

- (a) Sexual abuse as defined under Iowa Code section 709.1.
- (b) Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- (c) Sexual misconduct with offenders in violation of Iowa Code section 709.16.
- (d) Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.
- (e) A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs (a) through (d) if committed in this state.

Sec. 70-309. Residency Restriction.

- (1) A person shall not reside within two thousand feet of the real property comprising any of the following child oriented facilities:
 - (a) a public park;
 - (b) a public swimming pool;
 - (c) a public library; or
 - (d) a multi-use recreational trail.
- (2) The distance shall be measured from the closest boundary line of the residence to the closest boundary line of the child oriented facilities identified in subsection (1).

Sec. 70-310. Residency Exception.

A person residing within two thousand feet of the real property comprising a child oriented facility identified in section 70-309(1) does not commit a violation of this article 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.
- (b) The person is subject to an order of commitment under chapter 229A of the Iowa Code.
- (c) The person has established a residence prior to the effective date of this ordinance, or a child oriented facility as identified in section 70-309(1) is newly located on or after the effective date of this ordinance and the person has established a residence prior to the date of the start of construction of such newly located child oriented facility.
- (d) The person is a minor or a ward under a guardianship.

Sec. 70-311. Violations.

Any person who resides within two thousand feet of the real property comprising a child oriented facility identified in section 70-309(1) in violation of this article shall be guilty of a misdemeanor punishable by fine or imprisonment as provided by section 1-15 or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Douglas P. Philip, Assistant City Attorney

T.M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 05-2475), passed by the City Council of said City at a meeting held October 10, 2005 signed by the Mayor on October 10, 2005 and published as provided by law in the Business Record on October 17, 2005. Authorized by Publication Order No. 4957.

Diane Rauh, City Clerk