

★ **Roll Call Number**

Agenda Item Number

49

Date August 10, 2009

An Ordinance entitled, "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, as heretofore amended, by repealing Article VIII of Chapter 70 thereof regarding residency restrictions for sex offenders which has been preempted and nullified by state law",

which was considered and voted for the first time upon under Roll Call No. 09-1373 of July 27, 2009; again presented.

MOVED by _____ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

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| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | | | | |
| COLEMAN | | | | |
| HENSLEY | | | | |
| KIERNAN | | | | |
| MAHAFFEY | | | | |
| MEYER | | | | |
| VLASSIS | | | | |
| TOTAL | | | | |

MOTION CARRIED

APPROVED

.....
Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

09-1373
SB
49

CITY ATTORNEY
Bruce E. Bergman

DEPUTY CITY ATTORNEYS
Mark Godwin
Lawrence R. McDowell
Kathleen Vanderpool

ASSISTANT CITY ATTORNEYS
Angela T. Althoff
Roger K. Brown
Ann M. DiDonato
David A. Ferree
Glenna K. Frank
Gary D. Goudebeck, Jr.

Michael F. Kelley
Mary A. Laughlin
Vicky L. Long Hill
Steven C. Lussier
Katharine J. Massier
Carol J. Moser
Douglas P. Philip



July 17, 2009

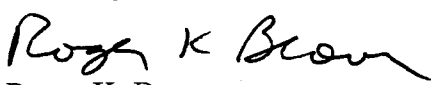
HONORABLE MAYOR AND MEMBERS OF
THE DES MOINES CITY COUNCIL

Re: Required amendments to the City Code to conform with Senate File 340; Repeal of City residency restrictions for sex offenders.

Senate File 304 (the "Act") was passed by the Iowa Legislature and became effective on July 1, 2009. It makes sweeping changes to the Iowa sex offender registry and related sex offender laws. A provision of the Act, codified at Section 692A.127 of the Iowa Code, preempts and nullifies all local ordinances concerning residency restrictions or exclusionary zones for sex offenders. This provision of the Act operates to preempt and nullify Article VIII, of Chapter 70, of the Des Moines City Code which imposed residency restrictions for sex offenders. The Legal Department recommends that Article VIII, of Chapter 70 be repealed, for the reason that the Article is no longer valid or enforceable under state law.

A more through discussion of the sweeping changes made by the Act is contained in the accompanying Des Moines Police Department Training Bulletin No. 09-4.

Sincerely,


Roger K. Brown
Assistant City Attorney
515-283-4541

cc: Rick Clark, City Manager
Bruce Bergman, City Attorney

enc: Training Bulletin No. 09-4

09-1373



TRAINING BULLETIN



Des Moines Police Department

Bulletin No. 09-4

Date: June 25, 2009

Subject : SEX OFFENDER REGISTRY AND OTHER SEX OFFENDER LAWS
Reference : SENATE FILE 340, 83RD General Assembly, 2009 Session,
IOWA CODE CHAPTER 692A.101 through 692A.130
Effective Date: July 1, 2009

Senate File 340 provides sweeping changes to the sex offender registry and related sex offender laws. It preempts and nullifies all county and city ordinances concerning residency restrictions or exclusionary zones for sex offenders. Due to the breadth and many details of the new law, this training bulletin will only provide a summary of the new law. For specific application of this law to any given situation or circumstance please consult with the Polk County Attorney's Office.

This bulletin divides the new law into nine main features for summary discussion; 1. offenses requiring registration, 2. registration duration, 3. verification requirements, 4. residency restrictions, 5. exclusionary zones, 6. prohibited employment, 7. modification of requirement to register, 8. extended jurisdiction of juvenile offenders, and 9. penalties for failure to comply.

1. Offenses Requiring Registration: The new law classifies sex offenses into tiers I, II, and III. The specific crimes included in each classification are listed at Iowa Code section 692A.102. Generally, tier I includes the less serious sex offenses such as indecent exposure, and obscene material offenses. Tier II includes more serious crimes such as incest and kiddie porn. Generally included in Tier II are offenses requiring more than one year incarceration, not involving force, threat of violence, or incapacitation of the victim. Tier III offenses include sex abuse 1st, 2nd, and 3rd and generally include the offenses requiring more than one year incarceration and involving force, threat of violence, or incapacitation of the victim.

Offenders in all tiers are required to register. This includes all the offenses requiring registration under the old law, plus certain other sexually motivated offenses committed against an adult. (These sexually motivated offenses committed against a minor were included under the old law.)

The requirement to register applies to anyone convicted of a sex offense and who lives, works, or goes to school in Iowa.

2. Registration Duration: A sex offender must remain on the registration for 10 years with the exception of those convicted of an "aggravated offense" who must remain on the list for life. The lifetime requirement now includes the aggravated offenses that occurred outside of Iowa, whereas under the old law all offenses occurring outside of Iowa regardless of severity required the 10 year registration.

The term "aggravated offense" is defined at Iowa Code section 692A.101(1) and has been expanded from the old law to include lascivious acts with a child in violation of section

709.8(2) which is any offender 16 years old or more who causes a child to fondle the offender's genitals.

- 3. Verification:** The registration information has been widely expanded at Iowa Code section 692A.101(23) requiring 21 categories of personal information to include fingerprints, palm prints, DNA sample, residence and internet identifiers to name a few.

Information must be verified in person before the county sheriff for all tier offenses. Tier I offenses require annual verification, Tier II offenses require verification every 6 months, and Tier III offenses require verification every 3 months. The sheriff may require more frequent verifications for transients.

Also, any changes in information or residence shall be verified to the sheriff in person within 5 business days of the change. Also temporary absences of more than five days require personal notification to the sheriff in advance of the absence.

- 4. Residency Restriction:** This law substantially limits application of the old 2,000 foot rule. Under the new law the 2,000 foot rule applies to any sex offender who is required to be registered and whose victim was a minor and who was convicted for sex abuse in the 1st, 2nd or 3rd degree with the exception of the "status offense" involving consensual sex between the offender and a person 14 or 15 years old, if the age difference between the participants is four or more years.

The 2,000 foot residency restriction is limited to schools and child care facilities.

A "residence" is where a sex offender resides, sleeps, or habitually lives, or will reside, sleep, or habitually live, including a shelter or group home. If the offender's residence is not a fixed location, then the places where the offender is stationed with regularity, including mobile or transitory living quarters is the offender's residence.

- 5. Exclusionary Zones and the 300 Foot Rule:** This prohibits a sex offender who is required to be registered and whose victim was a minor from being present without permission on the property of child care facilities, libraries, and schools including being in or on a school bus when transporting children. This law also prohibits loitering within 300 feet of child care centers, schools, libraries, and places where minors play such as park playgrounds, sports facilities when used by minors, public pools when used by minors, wading ponds or beaches when used by minors.

"Loitering" means remaining in a place or circulating around a place under circumstances that would warrant a reasonable person to believe that the purpose or effect of the behavior is to enable a sex offender to become familiar with a location where a potential victim may be found, or to satisfy an unlawful sexual desire, or to locate, lure, or harass a potential victim.

- 6. Prohibited Employment:** A sex offender who is required to be registered whose victim was a minor is prohibited from being employed at schools, child care facilities, and libraries. A sex offender who is required to be registered whose victim was a minor is also prohibited from being employed at city, county, or state fairs or carnivals when minors are present. Nor can they be employed at a children's arcade, amusement center, or similar place when minors are present. Nor can they be employed at playgrounds, a minor's recreation or sport activity area, or at public pools, wading ponds or beaches.

09-1373
49 53

- 7. Modification of Requirement to Register:** This law has an "opt out" provision from the requirement to register. In order to qualify to be granted a modification and get off the registration early, a sex offender must:
- a. Not be incarcerated,
 - b. Be under supervision, i.e. on probation or parole,
 - c. Have successfully completed all required treatment,
 - d. Have been registered for 2 yrs. for tier I offender or 5 yrs. for tier II or Tier III offender,
 - e. Have been determined to be a low risk to re-offend according to a department of corrections approved risk assessment, and
 - f. Have the director of the judicial district department of correctional services stipulation to the modification with the stipulation attached to the application for modification.

If the sex offender was adjudicated of a sex offense as a juvenile all the above applies with the exception of having to be on probation or parole, and having to obtain the stipulation from the director of correctional services.

The court may conduct a hearing on the application and may modify with or without a hearing if all requirements have been met.

- 8. Extended Jurisdiction of Juvenile Offenders:** A dispositional order entered before the juvenile attains the age of 17 for an offense requiring registration may be extended 18 months after the juvenile attains the age of 18. The old law required a dispositional order to terminate at age 18. Dispositional orders entered after the juvenile attains age 17 terminate 18 months after the date of disposition. (same as before)

With respect to a dispositional order requiring a child to register as a sex offender, the juvenile court shall determine whether the child shall remain on the sex offender registry prior to termination of the dispositional order. (New subsection 8A of Iowa Code section 232.54.)

- 9. Penalties for Failure to Comply:** A sex offender who violates any registry requirements under this law commits an aggravated misdemeanor for a first offense and a class "D" felony for second and subsequent offenses. However, if the sex offender convicted of an aggravated offense against a minor, a sex offense against a minor, or a sexually violent offense committed while in violation of any of the registration requirements commits a class "C" felony.

Registration violations in other jurisdictions count toward second and subsequent offenses.

DOUGLAS P. PHILIPH,
POLICE LEGAL ADVISOR

53
49

ORDINANCE NO. _____

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, as heretofore amended, by repealing Article VIII of Chapter 70 thereof regarding residency restrictions for sex offenders which has been preempted and nullified by state law.

WHEREAS, Senate File 304 (the "Act") became effective on July 1, 2009, and makes sweeping changes to the sex offender registry and related sex offender laws; and,

WHEREAS, a provision of the Act, codified at Section 692A.127 of the Iowa Code, preempts and nullifies all local ordinances concerning residency restrictions or exclusionary zones for sex offenders; and,

WHEREAS, the Act preempts and nullifies Article VIII, of Chapter 70, of the Des Moines City Code which imposed residency restrictions for sex offenders.

NOW THEREFORE, 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, as amended by Ordinance No. 14,500 passed October 10, 2005, be and is hereby amended by repealing Article VIII of Chapter 70 thereof regarding 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(a).~~

Sec. 70-308. Definitions.

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

~~Aggravated offense means a conviction for any of the following offenses:~~

- ~~(1) Sexual abuse in the first degree in violation of Iowa Code section 709.2.~~
- ~~(2) Sexual abuse in the second degree in violation of Iowa Code section 709.3.~~
- ~~(3) Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.~~
- ~~(4) Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1.~~
- ~~(5) Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.~~
- ~~(6) Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph "d".~~
- ~~(7) Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.~~
- ~~(8) Murder, if sexual abuse as defined in Iowa code section 709.1 is committed during the offense.~~
- ~~(9) Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph "a".~~

~~Criminal offense against a minor means any of the following criminal offenses or conduct:~~

- ~~(1) Kidnapping of a minor, except for the kidnapping of a minor in the third degree committed by a parent.~~
- ~~(2) False imprisonment of a minor, except if committed by a parent.~~
- ~~(3) Any indictable offense involving sexual conduct directed toward a minor.~~
- ~~(4) Solicitation of a minor to engage in an illegal sex act.~~
- ~~(5) Use of a minor in a sexual performance.~~
- ~~(6) Solicitation of a minor to practice prostitution.~~
- ~~(7) Any indictable offense against a minor involving sexual contact with the minor.~~
- ~~(8) An attempt to commit an offense enumerated in this subsection.~~
- ~~(9) Incest committed against a minor.~~
- ~~(10) Dissemination and exhibition of obscene material to minors in violation of Iowa Code section 728.2.~~
- ~~(11) Admitting minors to premises where obscene material is exhibited in violation of Iowa Code section 728.3.~~
- ~~(12) 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.

- ~~(13) Sexual exploitation of a minor in violation of Iowa Code section 728.12.~~
- ~~(14) Enticing away a minor in violation of Iowa Code section 710.10, subsection 1.~~
- ~~(15) An indictable offense committed in another jurisdiction which would constitute an indictable offense under paragraphs (1) through (14).~~

Other relevant offense means any of the following offenses:

- ~~(1) Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.~~
- ~~(2) Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.~~
- ~~(3) Indecent exposure in violation of Iowa Code section 709.9.~~
- ~~(4) Incest committed against a dependent adult as defined in Iowa Code section 235B.2 in violation of Iowa Code section 726.2.~~
- ~~(5) A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs (1) through (4) if committed in this state.~~

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.

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

Sexually violent offense means any of the following indictable offenses:

- ~~(1) Sexual abuse as defined under Iowa Code section 709.1.~~
- ~~(2) Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.~~
- ~~(3) Sexual misconduct with offenders in violation of Iowa Code section 709.16.~~
- ~~(4) Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.~~
- ~~(5) A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs (1) through (4) if committed in this state.~~

Sec. 70-309. Residency restriction.

- ~~(a) A person shall not reside within 2,000 feet of the real property comprising any of the following child-oriented facilities:
 - ~~(1) A public park;~~
 - ~~(2) A public swimming pool;~~
 - ~~(3) A public library; or~~~~

- (4) ~~— A multi use recreational trail.~~
- (b) ~~— 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 (a).~~

Sec. 70-310. Residency exception.

~~A person residing within 2,000 feet of the real property comprising a child oriented facility identified in section 70-309(a) does not commit a violation of this article if any of the following apply:~~

- (1) ~~— The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.~~
- (2) ~~— The person is subject to an order of commitment under chapter 229A of the Iowa Code.~~
- (3) ~~— The person has established a residence prior to the effective date of this article, or a child oriented facility as identified in section 70-309(a) is newly located on or after the effective date of this article and the person has established a residence prior to the date of the start of construction of such newly located child oriented facility.~~
- (4) ~~— The person is a minor or a ward under a guardianship.~~

Sec. 70-311. Violations.

~~Any person who resides within 2,000 feet of the real property comprising a child oriented facility identified in section 70-309(a) 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:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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