



Town of Shirley

TOWN BYLAW ARTICLE XXVIII **SEX OFFENDER RESIDENCY BYLAW**

FINDINGS AND INTENT

A. It is the intent of this by-law to serve and to protect the Town's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the Town by creating areas around locations where children, or the elderly regularly congregate in concentrated numbers wherein certain registered sex offenders are prohibited from loitering and establishing temporary or permanent residence.

B. After careful consideration, the Town finds that this by-law is the most narrowly tailored means of limiting, to the fullest extent possible, the opportunity for registered sex offenders to approach or otherwise come in contact with children, or the elderly in places where children, or the elderly would naturally congregate, and that the protection of the health and safety of our children, and elderly is a compelling governmental interest.

C. By the enactment of this or any other by-law, the Town understands that it cannot remove the threat posed to or guarantee the safety of children, or the elderly, or assure the public that registered sex offenders will comply with the mandates of this statute. This legislation is intended to create a civil, non-punitive regulatory scheme in order to protect children, and the elderly to the extent possible under the circumstances and not as a punitive measure of any kind.

D. Registered sex offenders pose a clear threat to the children, and the elderly residing or visiting in the community. Because registered sex offenders are more likely than any other type of offender to reoffend for another sexual offense, the Town desires to impose safety precautions in furtherance of the goal of protecting the children and elderly. The purpose of this by-law is to reduce the potential risk of harm to children and the elderly the community by impacting the ability for registered sex offenders to be in contact with unsuspecting children and the elderly in locations that are primarily designed for use by or are primarily used by children and the elderly, the grounds of a public or private school for children, a center or facility that provides day care or children's services, a park, other public recreational facility, elderly housing facilities or the Senior Citizens Center. The Town desires to add location restrictions to such offenders to the extent state law is silent.

DEFINITIONS

The following words, terms and phrases, when used in this by-law, shall have the meanings ascribed to them in this by-law, except where the context clearly indicates a different meaning:

CHILD or CHILDREN: Person or persons under 18 years of age.

DAY-CARE CENTER: Any establishment, whether public, private or parochial, which provides care for children and is registered with and licensed pursuant to the laws of the Commonwealth of Massachusetts by the Department of Early Education and Care.

ELDER or ELDERLY: Person or persons over 60 years of age.

ELDERLY HOUSING FACILITY/SENIOR CITIZENS CENTER/OVER 55

COMMUNITY: Includes any building or buildings which provides a group residence for



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the elderly or a location where the elderly gather and/or reside and is located within the Town of Shirley.

ESTABLISHING A RESIDENCE : To set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location, and may be mobile or transitory, by means of purchasing real property or entering into a lease or rental agreement for real property (including a renewal or extension of a prior agreement whether through written execution or automatic renewal).

LOITERING: To remain for more than fifteen (15) minutes within a five hundred (500) foot distance of the location in question.

PARK: Includes active and passive public land designated for recreational or athletic use by the Town of Shirley and located within the Town of Shirley.

PERMANENT RESIDENCE: A place where a person lives, abides, lodges or resides for 14 or more consecutive days.

RECREATIONAL FACILITY: Includes, but is not limited to, a playground, a forest preserve, conservation area, jogging trail or running track, hiking trail, beach, water park, wading pool, soccer field, baseball field, football field, basketball court or hockey rink, whether publicly or privately owned, to which the public has a right of access as an invitee and which is located within the Town of Shirley.

REGISTERED SEX OFFENDER: For the purposes of this by-law shall mean: a) any person who is designated as a sexually violent predator pursuant to Chapter 6, § 178K(2)(c), of the Massachusetts General Laws and who is required to register as a sex offender pursuant to the guidelines of the Sex Offender Registry Board; b) any person who is required to register as a sex offender pursuant to Chapter 6, § 178C of the Massachusetts General Laws and for so long as such person is finally classified as a Level 3 offender pursuant to the guidelines of the Sex Offender Registry Board; and c) any person who is required to register as a sex offender pursuant to Chapter 6, § 178C of the Massachusetts General Laws, for so long as such person is finally classified as a Level 2 offender pursuant to the guidelines of the Sex Offender Registry Board, and who has committed a sex offense against a child, an elder and/or a mentally retarded person.

Level 1 Sex Offenders: Where the Sex Offender Registry Board determines that the risk of re-offense by an offender is low and the degree of dangerousness posed to the public by that offender is not such that a public safety interest is served by public availability, the Board shall give that offender a Level 1 designation. Information on Level 1 offenders will not be available to the public. Neither the police nor the Board have authority to disseminate information to the general public identifying a Level 1 offender. Information identifying Level 1 offenders may only be given to the Department of Correction, any county correctional facility, the Department of Youth Services, the Department of Social Services, the Parole Board, the Department of Probation and the Department of Mental Health, all city and town police departments and the Federal Bureau of Investigation for law enforcement purposes.



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Level 2 Sex Offenders: Where the Board determines that the risk of re-offense is moderate and the degree of dangerousness posed to the public is such that a public safety interest is served by public availability of registration information, it shall give a level 2 designation to the sex offender.

The public shall have access to the information regarding a level 2 offender through the Local Police Department and through the Sex Offender Registry Board.

Level 3 Sex Offenders: Where the Board determines that the risk of re-offense is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination, it shall give a level 3 designation to the sex offender.

The public shall have access to the information regarding a level 3 offender through the Local Police Departments and through the Sex Offender Registry Board.

SCHOOL : Any public or private educational facility that provides educational instruction to children in grades pre-K through 12.

SCHOOL BUS STOP: Any area designated by the public school district or by a private or parochial school within the Town of Shirley as a school bus stop.

SEX OFFENDER and SEX OFFENSE: The same meanings as provided for in MGL c. 6, § 178C.

TEMPORARY RESIDENCE: A place where a person lives, abides, lodges or resides for a period of less than 14 consecutive days or 14 days in the aggregate during any calendar year, which is not the person's permanent address or place where the person routinely lives, abides, lodges or resides and which is not the person's permanent residence; but "temporary residence," shall not include residence at a hospital or other health care or medical facility for less than 14 consecutive days or 14 days in the aggregate during any calendar year.

RESIDENCY RESTRICTIONS

A. Prohibition. A registered sex offender is prohibited from establishing a permanent residence or temporary residence within 1,000 feet of any school, day-care center, park, other recreational facility, elderly housing facility, over 55 Community or Senior Citizens Center; provided, however, that the prohibition contained in this by-law shall not apply to any level 3 offender, to the extent and in the manner such Level 3 offender is already governed by MGL c. 6, § 178K(2)(e).

B. Evidentiary matters; measurements. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest outer property line of any school, day-care center, park, recreational facility, elderly housing facility, over 55 Community or Senior Citizens Center.

C. Exceptions. A registered sex offender residing within 1,000 feet of any school, day-care center, park, recreational facility, elderly housing facility, over 55 Community or Senior Citizens Center does not commit a violation of this by-law if any of the following apply:



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(1) The registered sex offender established the permanent residence prior to the effective date of this by-law, and:

(a) Permanent residence was established by purchasing the real property where the residence is established, as long as the registered sex offender continues to reside in and does not move to another restricted location in Shirley different from the permanent residence established prior to the effective date of this by-law;

(b) Permanent residence was established through a valid, fixed-term, written lease or rental agreement, executed prior to the effective date of this by-law, as long as the registered sex offender continues to reside within and does not move to another restricted location in Shirley different from the permanent residence established prior to the effective date of this by-law; or

(c) Permanent residence was established through a verbal lease or rental agreement at the will of the landlord, as long as the registered sex offender continues to reside within and does not move to another restricted location in Shirley different from the permanent residence established prior to the effective date of this by-law.

(2) The registered sex offender is a minor living with his or her parent(s) or legal guardian(s), which parent(s) or legal guardian(s) has (have) established a permanent residence.

(3) The school, day-care center, park, recreational facility, elderly housing facility, over 55 Community or Senior Citizens Center within 1,000 feet of the registered sex offender's permanent residence was opened after the registered sex offender established the permanent residence.

D. Forfeiture of exception. If, either after the effective date of this by-law or after a new school, day-care center, park, recreational facility, elderly housing facility, over 55 Community or Senior Citizens Center opens, a complaint or an indictment is issued by a court against a registered sex offender otherwise enjoying an exception under Subsection C that such sex offender has committed another sex offense, he/she will immediately forfeit that exception and be required to comply with this by-law.

E. Notice to move. A registered sex offender who resides on a permanent or temporary basis within 1,000 feet of any new school, day-care center, park, recreational facility, elderly housing facility, over 55 Community or Senior Citizen Center shall be in violation of this by-law and shall, within 30 days of receipt of written notice of the registered sex offender's noncompliance with this by-law, move from said location to a new location, but said location may not be within 1,000 feet of any new school, day-care center, park, recreational facility, elderly housing facility, over 55 Community or Senior Citizens Center. It shall constitute a separate violation for each day beyond the 30 days the registered sex offender continues to reside within 1,000 feet of any new school, day-care center, park, recreational facility, elderly housing facility, over 55 Community or Senior Citizen Center. Furthermore, it shall be a separate violation each day that a registered sex offender shall move from one location in the Town to another that is within 1,000 feet of any new



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school, day-care center, park, recreational facility, elderly housing facility, over 55 Community or Senior Citizen Center.

F. Penalties. Any violation of this section shall be enforced by noncriminal disposition pursuant to MGL c. 40, § 21D, as follows:

- (1) First offense by registered sex offender: noncriminal fine of \$150 and notification to offender that he/she has 30 days to move.
- (2) Subsequent offense by registered sex offender: noncriminal fine of \$300 and notification to offender's parole officer and/or probation officer, and the commonwealth's Sex Offender Registry Board, that the sex offender has violated a municipal by-law.

SAFETY ZONES

A. Prohibitions.

- (1) A registered sex offender is prohibited from entering upon the premises of a school or day-care center unless previously authorized specifically in writing by the school administration or day-care center owner.
- (2) A registered sex offender is prohibited from entering upon the premises of an elderly housing facility, over 55 Community or Senior Citizens Center, unless previously authorized in writing by the on-site manager of the elderly housing facility, over 55 Community or Senior Citizen Center.
- (3) A registered sex offender is prohibited from entering upon the premises of a park or any recreational facility.
- (4) A registered sex offender, after having received notice from the Shirley Police Department that he/she is loitering by having remained for more than fifteen (15) minutes within five hundred (500) feet of a school, a day care center, a park, any recreational facility, elderly housing facility, over 55 Community or Senior Citizen Center, is prohibited from continuing to so loiter. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the registered sex offender to the outer property line of the school, a day-care center, a park, any recreational facility, elderly housing facility, over 55 Community or Senior Citizen Center.
- (5) A registered sex offender, after having received notice from the Shirley Police Department that he/she is loitering by having remained for more than fifteen (15) minutes within five hundred (500) feet of a school bus stop, is prohibited from continuing to so loiter; provided, however, that this prohibition shall not apply on days when the schools within the Town of Shirley are not in session.

B. Exceptions.



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(1) The prohibitions defined in this By-Law shall not be construed or enforced so as to prohibit a registered sex offender from exercising his or her right to vote in any federal, state or municipal election, conducting town and/or police business or from attending any religious service.

(2) The prohibitions defined in this By-Law do not apply to a registered sex offender's place of residence when such residence is excepted under this By-Law.

C. Penalties.

(1) Any violation of this section may be enforced by noncriminal disposition pursuant to MGL c. 40, § 21D, resulting in a noncriminal fine of \$150 for a first violation and a noncriminal fine of \$300 for each additional violation of this section. A registered sex offender commits a separate offense for each and every violation of this section.

EXEMPTIONS

The provisions of this by-law shall not be applicable to registered sex offenders incarcerated in any facilities owned, maintained and/or operated by the Town Of Shirley and/or the State of Massachusetts.

ENFORCEMENT

A. The Shirley Police Department shall be charged with the enforcement of this By-Law.

B. A written list describing the prohibited areas defined in this by-law inclusive of school bus stops, as well as a map depicting the residency restriction areas and a map depicting the safety zones exclusive of school bus stops, shall be created by the Town and maintained by the Shirley Police Department. As to school bus stops, the list and not the map depicting the safety zones shall govern. The Town shall review both the list and the maps no less than annually for changes. The list, the maps and a copy of this By-Law will be available to the public at the Shirley Police Department and Shirley Town Clerk's office, and on the Town of Shirley's website.