

REQUEST FOR COUNCIL ACTION

DATE: September 26, 2016
ITEM NO: 8

Department Approval:	Administrator Reviewed:	Agenda Section:
Name Jeremy Barnhart	<i>JML</i>	Planning
Title Community Development Director		

Item Description: Sex Offender Issue

Application Summary

Presented for information and Council direction only.

Issue

At the Council meeting on August 22, 2016, the Council requested additional information from Police Chief Farniok regarding the sex offender registration program, including what does the state do in administering the location of sex offenders, the notice requirements, and what is the purpose of the meetings associated with the location of sex offenders.

The Police Chiefs memo is attached, and provides some additional background and resources.

Action Requested:

Provide Staff direction.

EXHIBIT A
Big Lake City Code
Section 596 – Sexual Predator Residency Restrictions

596.01 Findings and Intent.

- A. Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses. Most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.
- B. It is the intent of this chapter to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of its citizens by establishing areas around locations where children regularly congregate in concentrated numbers, wherein certain sexual predators are prohibited from establishing temporary or permanent residence.

596.02 Definitions. The following words and terms when used in the Section shall have the following meanings, unless the context clearly indicates otherwise:

- A. "Day Care Center" – A facility licensed by the State of Minnesota in which care, supervision and training for individuals under the age of 18 is provided for part of a 24-hour period.
- B. "Designated Offender" – Any person who has been categorized as a Level III predatory offender under Minnesota Statutes Section 244.052, a successor statute, or a similar statute from another state.
- C. "Park or Playground" – Any land, including improvements, operated by the city for the use by the general public as a recreational area.
- D. "Permanent Residence" – A place where a person abides, lodges or resides for 14 or more consecutive days.
- E. "School" – Any public or non-public educational institution that offers educational instruction to individuals under the age of 18.
- F. "Temporary Residence" – A place, other than a person's permanent residence, where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year or four or more consecutive or non-consecutive days during any month.

596.03 Residency Prohibition; Penalties; Exception.

Subd. 1 Residency Prohibition.

- A. It is unlawful for any designated offender to establish a permanent residence or temporary residence within 2,000 feet of any school, day care center, park or playground.
- B. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence of the

designated offender to the nearest outer property line of a school, day care center, park or playground.

Subd. 2 Penalties. A person who violates this section shall be punished by a fine not exceeding \$1,000, or by confinement for a term not exceeding 90 days, or by both such fine and confinement. Each day a person maintains a residence in violation of this chapter constitutes a separate violation.

Subd. 3 Exceptions.

- A. A designated offender residing within a prohibited area as described in Subdivision 1 does not commit a violation of this section if any of the following apply:
- i. The designated offender established the permanent residence or temporary residence and reported and registered the residence pursuant to M.S. § 243.166, § 243.167, or successor statute, prior to the effective date of this section.
 - ii. The designated offender was a minor when he or she committed the offense and was not convicted as an adult.
 - iii. The designated offender is a minor.
 - iv. The school, day care center, park or playground within 2,000 feet of the designated offender's permanent residence or temporary residence was designated or opened after the designated offender established the permanent residence or temporary residence and reported and registered the residence pursuant to M.S. § 243.166 or § 243.167, or successor statute.

EXHIBIT B
Lindstrom City Code
Chapter 96: Sexual Offenders and Sexual Predators

§ 96.01 FINDINGS AND INTENT.

(A) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses. Most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(B) It is the intent of this chapter to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of its citizens by creating a civil, non-punitive regulatory scheme, establishing areas around locations where children regularly congregate in concentrated numbers, wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.

§ 96.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHILDREN. Persons age 16 and younger.

DAY CARE CENTER. A facility licensed by the State of Minnesota in which care, supervision and training for children is provided for part of a 24-hour period.

DESIGNATED OFFENDER. Any person who has been convicted of a designated sexual offense, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, or has been categorized as a Level III sex offender under M.S. § 244.052 or successor statute.

DESIGNATED SEXUAL OFFENSE. A conviction, adjudication of delinquency, commitment under M.S. Chapter 253B, or admission of guilt under oath without adjudication involving any of the following offenses: M.S. §§ 609.342; 609.343; 609.344; 609.345; 609.352; 609.365; 617.23; 617.246; 617.247; 617.293; successor statutes; or a similar offense from another state.

PARK or PLAYGROUND. Any land, including improvements, operated by the city for the use by the general public as a recreational area.

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

SCHOOL. Any public, private or parochial educational institution that offers educational instruction to individuals under the age of 18.

TEMPORARY RESIDENCE. A place where the person abides, lodges or resides for a period of 14 or more days in the aggregate during any calendar year, and which is not the person's permanent address or a place where the person routinely abides, lodges or resides for a period of four or more consecutive or on consecutive days in any month, and which is not the person's permanent residence.

(Ord. 11-11-01, passed 11-17-11)

§ 96.03 SEXUAL OFFENDER AND SEXUAL PREDATOR RESIDENCE PROHIBITION; PENALTIES; EXCEPTIONS.

(A) *Prohibited location of residence.* It is unlawful for any designated offender to establish a permanent residence or temporary residence within 2,000 feet of any school, licensed day care center, place of worship that provides regular educational programs, park or playground.

(B) *Prohibited activity.* It is unlawful for any designated offender to participate in a holiday event involving children under 16 years of age, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, or wearing an Easter Bunny costume on or preceding Easter. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this division.

(C) *Measurement of distance.* For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, day care center, park, playground, place of worship, or other place where children regularly congregate. The City Clerk shall maintain an official map showing prohibited locations as defined by this chapter. The Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones.

(D) *Penalties.* A person who violates this section shall be punished by a fine not exceeding \$1,000, or by confinement for a term not exceeding 90 days, or by both such fine and confinement. Each day a person maintains a residence in violation of this chapter constitutes a separate violation.

(E) *Exceptions.* A designated offender residing within a prohibited area as described in § 96.03(A) does not commit a violation of this section if any of the following apply:

(1) The person established the permanent residence or temporary residence and reported and registered the residence pursuant to M.S. § 243.166, § 243.167, or successor statute, prior to November 17, 2011.

(2) The person was a minor when he or she committed the offense and was not convicted as an adult.

(3) The person is a minor.

(4) The school, place of worship, park or day care center within 2,000 feet of the person's permanent residence was designated or opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to M.S. § 243.166 or § 243.167.

(5) The residence is also the primary residence of the person's parents, grandparents, siblings, spouse or children.

(6) The residence is a property owned by the Minnesota Department of Corrections.

(7) The person's conviction for the designated offense was reversed on appeal.

(8) Nothing in this provision shall require any person to sell or otherwise dispose of any real property acquired or owned prior to the conviction restricting residency under this chapter.

(Ord. 11-11-01, passed 11-17-11)

§ 96.04 PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO CERTAIN SEXUAL OFFENDERS AND SEXUAL PREDATORS; PENALTIES.

(A) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to this chapter, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in § 96.03(A).

(B) A property owner's failure to comply with provisions of this section shall constitute a violation of this section, and shall subject the property owner to the code enforcement provisions and procedures as provided in § 93.20 of this code.

(C) If a property owner discovers or is informed that a tenant is a designated offender after signing a lease or otherwise agreeing to let the offender reside on the property, the owner or property manager may evict the offender.

EXHIBIT C
Iowa Code
Section 692A.114. Residency restrictions

1. As used in this section:
 - a. "Minor" means a person who is under eighteen years of age or who is enrolled in a secondary school.
 - b. "School" means a public or nonpublic elementary or secondary school.
 - c. "Sex offender" means a person required to be registered under this chapter who has been convicted of an aggravated offense against a minor.
2. A sex offender shall not reside within two thousand feet of the real property comprising a school or a child care facility.
3. A sex offender residing within two thousand feet of the real property comprising a school or a child care facility does not commit a violation of this section if any of the following apply:
 - a. The sex offender is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
 - b. The sex offender is subject to an order of commitment under chapter 229A.
 - c. The sex offender has established a residence prior to July 1, 2002.
 - d. The sex offender has established a residence prior to any newly located school or child care facility being established.
 - e. The sex offender is a minor.
 - f. The sex offender is a ward in a guardianship, and a district judge or associate probate judge grants an exemption from the residency restriction.
 - g. The sex offender is a patient or resident at a health care facility as defined in section 135C.1 or a patient in a hospice program, and a district judge or associate probate judge grants an exemption from the residency restriction.

Memo

To: Jeremy Barnhart
From: Police Chief Correy Farniok
Date **September 21, 2016**
Re: Sex Offender Registry

Currently there are 8 individuals that in the City of Orono that are required to register with the Orono Police Department as part of the Minnesota Predatory Offender Registration (POR) program through the MN Bureau of Criminal Apprehension (BCA).

These 8 POR's all have a risk level of 1 or not assigned. Risk levels are assigned by the Minnesota Department of Corrections (DOC) not the Bureau of Criminal Apprehension (BCA). Risk Levels are assigned to registrants who are released from prison on or after January 1, 1997.

Risk level one indicates the least likelihood to re-offend. Risk level two indicates a moderate likelihood to re-offend. Risk level three indicates high likelihood to re-offend.

Information about Level 3 offenders is available on the DOC web site. www.doc.state.mn.us

According to a recent search on the DOC website, the closest Level 3 Offenders are in Crystal (2), New Hope (1) and Hopkins (2).

There are no provisions in M.S. § 243.166, Minnesota's registration law, which prohibit registered offenders from living in the vicinity of a school or daycare. Restricting a registrant's residency can be a condition of the registrant's probation or parole; however, if the person is no longer on probation or parole, those restrictions are no longer effective. While there is not a State law regarding residency restrictions for registered offenders, cities can pass local ordinances with restrictions.

The challenge that we face as a police department and as a community is that the most of the information regarding a POR is classified as private and we cannot release information to the public on POR's.

I have also attached pertinent sections of MN Statue 244.052. Which provides information and explains the process for review for Level 3 POR's, the notification required, and information that can be given out a community notification.

“Subdivision 4. Law enforcement agency; disclosure of information to the public.

The law enforcement agency shall employ the following guidelines in determining the scope of disclosure made under this subdivision:

(1) if the offender is assigned to risk level I, the agency may maintain information regarding the offender within the agency and may disclose it to other law enforcement agencies. Additionally, the agency may disclose the information to any victims of or witnesses to the offense committed by the offender. The agency shall disclose the information to victims of the offense committed by the offender who have requested disclosure and to adult members of the offender's immediate household;

(2) if the offender is assigned to risk level II, the agency also may disclose the information to agencies and groups that the offender is likely to encounter for the purpose of securing those institutions and protecting individuals in their care while they are on or near the premises of the institution. These agencies and groups include the staff members of public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender. The agency also may disclose the information to individuals the agency believes are likely to be victimized by the offender. The agency's belief shall be based on the offender's pattern of offending or victim preference as documented in the information provided by the department of corrections or human services;

(3) if the offender is assigned to risk level III, the agency shall disclose the information to the persons and entities described in clauses (1) and (2) and to other members of the community whom the offender is likely to encounter, unless the law enforcement agency determines that public safety would be compromised by the disclosure or that a more limited disclosure is necessary to protect the identity of the victim.”

Subdivision 4a. Indicates that during the review process for a Level 3 offender the agency responsible for the offender's supervision shall take into consideration the proximity of the offender's residence to that of other Level 3 offenders and proximity to schools.

**MINUTES OF THE
ORONO CITY COUNCIL MEETING
Monday, August 22, 2016
7:00 o'clock p.m.**

Council
Exhibit B

13. SEX OFFENDER PRELIMINARY DISCUSSION

Barnhart stated a couple of weeks ago the Council directed Staff to provide some preliminary background information associated with the location regulations relating to Level III sex offenders. The City Attorney and Staff have compiled some information, as well as some sample state statutes, for review by the City Council.

Barnhart stated Staff is looking for direction from the Council on how they would like Staff to move forward. Barnhart noted Staff is not providing any recommendation to adopt a specific ordinance.

Printup recommended the City move forward with this item and noted they have previously talked about creating a new ordinance. Printup stated even though it might not be pressing city business, it has become a very timely issue in the area with Tonka Bay having a Level III person move into their city and putting everybody on high alert. Printup stated while that person is not there any longer, it shows that it can happen at any time and that he is advocating for the ordinance to help prepare for the future. Printup stated the City Council now has a template that they can look at and that it has stood the test in court.

Printup stated as far as overkill, in his view the residents would appreciate the overkill and that it helps protect the City and gives some comfort to the citizens by the City being proactive.

McMillan noted it would not cover the entire City.

Printup stated he understands that but that the City can be proactive on this item.

Walsh stated he agrees with Council Member Printup. Walsh indicated he would like some clarification on Council Member Cornick's comment last meeting that the state ordinances were just fine. Walsh asked if the residency restrictions would be duplicating what the state has already or whether it would be more or less.

Mattick stated he would need to review it a little bit closer but that he does not believe they are duplicating anything statutorily. Mattick stated it is his understanding that when sex offenders are released, they typically have conditions of probation, such as avoiding certain areas, and they are monitored individually on a case-by-case basis. Mattick noted the terms of probation can be stricter or more lax than the sample ordinance.

Walsh stated the City would be codifying what the City believes is necessary for the protection of its citizens.

Mattick stated the sample ordinance is nothing more than a cut and paste from Iowa and that Staff has not included any language specific for Orono. Mattick stated there are legal concerns about whether the City can pass something like this. In the State of Iowa, the ordinance was implemented and tried, which is why it was included in the packet. Mattick noted it was just meant to be a launching point for discussion.

Walsh stated he did not understand where Council Member Cornick's comment was coming from.

Mattick stated depending on the level of offender, the City would have to notify the community and hold public hearings.

**MINUTES OF THE
ORONO CITY COUNCIL MEETING
Monday, August 22, 2016
7:00 o'clock p.m.**

McMillan stated she would like to hear from Police Chief Farniok and Council Member Cornick since they have law enforcement background.

Printup requested it be placed on a future City Council agenda.

McMillan asked whether there should be a public hearing.

Mattick stated since it likely would be placed in the public policy section of the City Code, a public hearing would not be necessary.

Levang stated for the sake of transparency, there should be a public hearing so the City Council can get some input on what they would like to see the City do.

McMillan stated she would like to see what protections are already in place and hear how police departments are currently handling things.

Printup indicated he is interested in creating some buffer areas and a system to notify residents.

Barnhart requested this item be pushed back one month since he already has seven items on the next Council agenda.

Printup commented it is important to have this conversation since this problem is not going to go away.

McMillan noted the Council will also be discussing the budget on September 12 but that this item can be placed on a future agenda.