

LEWISTON CITY COUNCIL WORKSHOP AGENDA

CITY COUNCIL CHAMBERS, CITY HALL

TUESDAY, SEPTEMBER 12, 2017

6:00 p.m. Workshop

Pledge of Allegiance to the Flag.
Moment of Silence.

1. Review of proposed Noise Ordinance.
2. Review of proposed Nuisance Party Ordinance.
3. Review of proposed Ordinance Establishing Sex Offender Restricted Zones.

CITY COUNCIL SPECIAL MEETING

Immediately following workshop

1. Executive Session to discuss Disposition of Property of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

LEWISTON CITY COUNCIL
WORKSHOP AGENDA
TUESDAY, SEPTEMBER 12, 2017
6:00 PM

1. Noise Ordinance

As you are aware, noise issues have become an issue in certain neighborhoods, primarily related to social gatherings and parties. At the present time, the only noise regulations we have in our Code are in our land development code and are intended to regulate noise generated by given uses of properties. In addition, these restrictions do not apply to residential properties. This ordinance has been requested by the Police Department as one action that would assist them in addressing this problem. See attached draft.

2. Nuisance Party Ordinance

This is a related issue. We have received many complaints from neighborhoods near Bates College relating to noise and behavioral issues associated with parties. One of the recommendations generated by the neighbors was for the City to investigate adopting a nuisance party ordinance, similar to those adopted by other municipalities around the country. We have researched a number of these ordinances and have pulled elements of the proposed draft from a number of them. At this point, we would like to review this draft with the Council and receive input on how to proceed.

3. Ordinance Establishing Sex Offender Restricted Zones

State law permits municipalities to set aside locations within the municipal boundaries in which sex offenders cannot establish residence, for example, from an elementary or secondary school. The City of Auburn recently adopted such an ordinance. We have seen an increase in sex offenders locating in Lewiston given the availability of affordable rental units. Since Auburn recently established restricted zones, it is possible that we will see an additional influx. The Police Department has drafted an ordinance establishing restricted zones in Lewiston, see attached. At this point, we are seeking Council feedback and direction.

4. Executive Session – Land Disposition

NOISE ORDINANCE

Sec. 50-13. Unlawful Noise.

It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the City of Lewiston. The following acts are declared to be loud, disturbing, injurious, unnecessary, and unlawful noises in violation of this section, but this enumeration shall not be exclusive:

- (a) Radio, Phonograph, Amplified Sound, Musical Instruments, Television, and other Electronically Generated Sound. The playing of any radio, phonograph, television set, amplified or musical instruments, loudspeakers, tape recorder, or other electronic sound producing devices in such a manner or with volume at any time or place so as to annoy or disturb the reasonable quiet, comfort, or repose of persons in any dwelling, hotel, hospital, or other type of residence or in any office of any persons in the vicinity.
- (b) Shouting and Singing. Yelling, shouting, hooting, whistling, singing, or the making of any other loud noises on the public streets between the hours of 11:00 pm and 7:00 am, or the making of any such noise at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital, or other type of residence or in any office or of any person in the vicinity.
- (c) Animal Noises. The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the reasonable comfort or repose of any person.
- (d) Devices to Attract Attention. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise. This section shall not apply to any person who is a participant in a school band or a duly licensed parade or who has been otherwise authorized by the City to engage in such activity or to safety devices required for the safe operation of equipment or machinery and which are operated in accordance with manufacturers' instructions.

If the person or persons responsible for the activity that violates section 50-13 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee, or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

Sec. 50-14. Exemptions.

None of the terms or prohibitions of the previous sections shall apply or be enforced against:

- (a) Any police or fire vehicle or any ambulance while engaged in necessary emergency business.
- (b) Necessary excavation in or repairs of bridges, streets, or highways, or any utility installation by or on behalf of the City, the State of Maine, or any public utility.

- (c) The reasonable use of amplifiers or loud speakers for public addresses for which a city permit has been granted.
- (d) Noise caused by agricultural, farm-related, or forestry-related activities including but not limited to the operation of farm equipment, sawmills, harvesting equipment, noises from farm animals, and the like.

Sec. 50-15. Penalties.

A violation of this section shall be subject to a minimum fine as established by a policy adopted by the City Council. For purposes of Section 50-13, each such act, which either continues or is repeated more than on-half hour after issuance of a written notice of violation, shall be a separate offense and shall be subject to escalating penalties as established by the City Council.

The following is an addition to the City's Miscellaneous Fees and Penalties Policy establishing fines for violation of Section 50-13

First violation of Section 50-13	\$100
Second violation within 12 months	\$200
Further violations within 12 months	\$300

NUISANCE PARTY ORDINANCE

Sec. 50-16. Nuisance Parties.

- (a) A nuisance party is defined as a social gathering or party which is conducted on premises within the City and which, by reason of the conduct of the persons in attendance, results in any one or more of the following conditions or events occurring at the site of the party or social gathering, or on neighboring public or private property:
- (1) disorderly conduct;
 - (2) illegal open container;
 - (3) outdoor urination or defecation in a public place;
 - (4) unlawful sale, furnishing, dispensing or consumption of beer or intoxicating liquor to an underage person;
 - (5) illegal use of a controlled substance;
 - (6) public indecency;
 - (7) unlawful deposit of litter or refuse;
 - (8) damage or destruction of property without the consent of the property owner;
 - (9) unlawful pedestrian or vehicular traffic;
 - (10) standing or parking of vehicles that obstructs the free flow of traffic on the public streets and sidewalks or that impedes the ability to render emergency services;
 - (11) unlawfully loud noise;
 - (12) or any other conduct or condition that threatens injury, inconvenience, or alarm to persons or damage to property.

Such parties are hereby declared to be an unlawful public nuisance.

- (b) **Duty to Control Premises.** Any person who is an owner, occupant, tenant, or otherwise has rightful possession or possessory control, individually or jointly with others, of any premises, who either sponsors, conducts, hosts, invites, or permits a social gathering or party on said premises which is or becomes a nuisance party, as defined in part (a) of this Section, and which nuisance is either the intentional result of, or within the reasonable expectations of, the person or persons having such possessory control is deemed to be in violation of this Section.
- (c) **Persons Attending Nuisance Party.** Any person in attendance at a nuisance party as defined in part (a) of this section, whether or not such person has any possessory control, shall be deemed to have committed a violation of this section.
- (d) **Order to Cease and Disperse.** A party or social gathering that is or becomes a nuisance party, as defined in part (a) of this Section, shall cease upon the order of the Police Chief, or the Police Chief's designee; and all persons not residing in the site of such social gathering or party shall leave the premises immediately. Any person who fails or refuses to obey and abide by such an order shall be guilty of a violation of this section.
- (e) **Retaliation.** No person shall direct a verbal, physical, or electronic act against the person, family, or property of any individual who complains of or witnesses a violation of the Nuisance Party regulations for the purpose of intimidating or retaliating against that person for the exercise of the right to complain or testify to a violation of this code.

Sec. 50-17. Penalty.

A violation of section 50-16 shall be subject to a minimum fine as established by a policy adopted by the City Council.

Section 50-18. Owners Failure to Prevent a Second Nuisance Party.

- (a) Within ten (10) days of a nuisance party declaration, the police department shall send the premise owner a notice of nuisance party ordinance violation. The notice shall set for the the date, place, names of occupants/tenants involved, and nature of the violation and shall inform the premise owner of the necessity to take action to prevent future nuisance parties on the premises. Notice shall be given by first class mail using the premise owner's address on file with the City Assessor.
- (b) If a subsequent nuisance party is declared at the same premise within a six (6) month period and the same occupant(s)/tenant(s) are responsible for the second nuisance party, the police department shall send the premise owner a second notice of nuisance party ordinance violation within ten (10) days of the party and the premise owner shall be charged with violating this ordinance and shall be subject to a forfeiture established by the City Council.
 - 1. If the premise owner meets with the Chief of Police or his/her designee within ten (10) days of the issuance of the second notice of nuisance party violation and presents an acceptable abatement plan to abate future nuisance party activity at the premise, the premise owner will not be subject to a forfeiture for the nuisance party that was the subject of the meeting.
- (c) If a third or subsequent party is declared at the same premise within a six (6) month period and the same occupant(s)/tenant(s) are responsible for this party, the Police Chief or his/her designee shall send the premise owner a subsequent notice of nuisance party ordinance violations within ten (10) days of the party, and the premise owner shall be charged with violating this ordinance and shall be subject to a forfeiture as established by the City Council.
- (d) It shall be an affirmative defense to a charge of violating Section 50-18 (b) or (c) above that the premise owner has evicted or is diligently attempting to evict all tenants and occupants of the property who were responsible for the nuisance parties and/or it can be confirmed that the premise owner was the original complainant to emergency dispatch.
- (e) The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the City Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein.

50-19. Penalty.

A violation of section 50-16 shall be subject to a minimum fine as established by a policy adopted by the City Council.

The following is an addition to the City's Miscellaneous fees and penalties policy establishing penalties for violation of the Nuisance party ordinance:

A violation of Section 50-16 (b), Duty to Control	\$300
A violation of Section 50-16 (c), Attending a Nuisance Party	\$100
A violation of Section 50-16 (d), Order to Cease and Desist	\$500
A violation of Section 50-18 (b), Second Nuisance Party	\$500
A violation of Section 50-18 (c), Third or More Nuisance Party	\$1,000

Chapter 50 – Offenses and Miscellaneous Provisions

Article 11 Sex Offender Restricted Zone

Section 50-280: Purpose

The city of Lewiston recognizes that it has an obligation to protect the health, safety, and welfare of its children by prohibiting convicted sex offenders from residing in identified areas within the city where there is a significant concentration of children. The city recognizes that sex offenders who prey upon children may have a high rate of recidivism. Notwithstanding that certain persons convicted of sex offenses or sexually violent offenses are required to register with the state, the city finds that further protective measures are necessary and warranted to safeguard places where children congregate. The purpose of the ordinance is to provide such further protective measures, while balancing the interests and residential needs of sex offenders.

Section 50-281: Authority

This ordinance is adopted in accordance with the provisions of 30-A M.R.S.A. § 3001 and 30-A M.R.S.A. § 3014, as may be amended from time to time as outlined below.

Section 50-282: Definitions

- A) **Registered Sex Offender** – An individual convicted of a crime against a person under the age of 14 years and, as a result, is required to register pursuant to Title 34-A MRSA Chapter 15
- B) **Sex Offender Restricted Residing Zones** – The city has identified the areas of where significant concentrations of children exist under city ordinance 54-8 “Public drinking of alcoholic beverages prohibited.” Also, city ordinance 54-9 “Designation of Drug-Free “Safe Zones” further identifies the locations listed in ordinance 54-8 as “Safe Zones.”
- C) **School/Daycare** – Any public or private education facility that provides services to those 17 years or younger or a licensed daycare facility that is clearly marked.
- D) **Residence** – the temporary or permanent occupation or use of a place, including but not limited to a domicile, for the purpose of living, residing, or dwelling.
- E) **Domicile** - the status or attribution of being a permanent resident in a particular jurisdiction. A person can remain domiciled in a jurisdiction even after they have left it, if they have maintained sufficient links with that jurisdiction or have not displayed an intention to leave permanently

- F) **Premises** – shall mean the building structure and any accessory buildings attached to or detached from the primary structure, playground area, playing field, or courts
- G) **Radius** – distance shall be measured from the property line of the school or daycare center, as defined above, closest to a registered sex offender’s residence
- H) **Loiter**
- 1) It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone and/or in consort with others in a public place in such manner so as to commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto. (Section 50-5)
 - 2) No person shall loiter or lurk in any of the streets or public places adjacent thereto for malicious or unlawful purposes. (Section 50-4(a))
 - 3) No person shall loiter unnecessarily in or about any private dwelling or peep into the window of any private dwelling to the discomfort or alarm of the occupants of such dwelling, the neighbors or any person going to and from such dwelling. (Section 50-4(b))

Section 50-283 Restrictions:

- A) Any person, who is a registered sex offender, as defined above, shall not reside within a 750 foot radius of the property line of a school, daycare center, “safe zone”, or premise as defined above.
- B) No lifetime registrant shall loiter within a 750 foot radius of a school, daycare center, “safe zone”, or premise as defined above.

Section 50-284 Exceptions:

- A) A designated Sex Offender maintaining a residence within the radius from a school, daycare center, “safe zone”, or premise as defined above is not in violation if the residence was established and consistently maintained as a residence prior to the date of passage of this ordinance.

A designated Sex Offender is not in violation of this ordinance if the school, daycare center, “safe zone”, or premise as defined above is created, moved or enlarged which results in a

designated Sex Offender residing within the radius of a school, daycare center, "safe zone", or premise as defined above as long as the residence was in place and consistently maintained prior thereto.

- B) A property owner leasing or renting a residence for use by a designated Sex Offender within the radius of a school, daycare center, "safe zone", or premise as defined above is not in violation if the residence was established and consistently maintained as a residence prior to the passage of this ordinance.

A property owner is not in violation of this ordinance if the school, daycare center, "safe zone", or premise as defined above is created, moved or enlarged which results in a designated Sex Offender residing within the radius of a school, daycare center, "safe zone", or premise as defined above as long as the residence was in place and consistently maintained prior thereto.

Section 50-285 Violation; injunctive relief and penalties:

- A) A designated Sex Offender who, thirty (30) days after written notice from the city of Lewiston, is in violation of Section 4 Subsection 1 of this Ordinance shall be subject to an action brought by the city of Lewiston in District Court or Superior Court to enforce the requirements of this Ordinance.

The city of Lewiston may seek a penalty in the minimum amount of \$500 per day, for each day of violation of Section 4 Subsection 1 of this Ordinance after thirty (30) days.

In the event the city of Lewiston is the prevailing party in any action under this Ordinance, it shall be entitled to an award of its reasonable attorney's fees, court costs and the costs of any expert witness fees incurred by the city of Lewiston

- B) Property Owners who, thirty (30) days after written notice from the city of Lewiston, leases or rents any residence to a designated Sex Offender within the radius of school, daycare center, "safe zone", or premise as defined above shall be subject to an action brought by the city of Lewiston in District Court or Superior Court to enforce the requirements of this Ordinance.

The city of Lewiston may seek a penalty in the minimum amount of \$500 per day, for each day of violation of Section 4 Subsection 1 of this Ordinance after thirty (30) days.

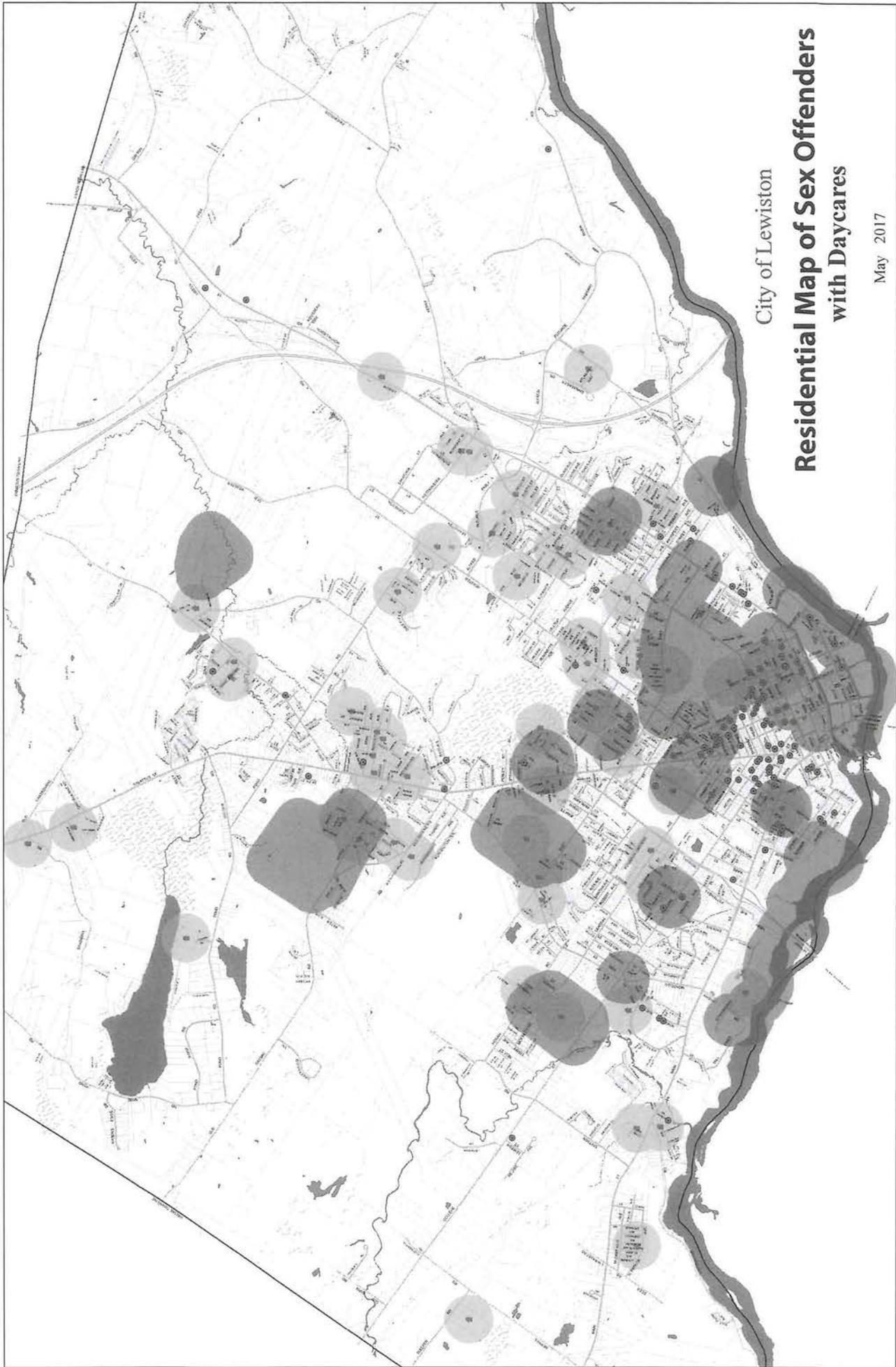
In the event the city of Lewiston is the prevailing party in any action under this Ordinance, it shall be entitled to an award of its reasonable attorney's fees, court costs and the costs of any expert witness fees incurred by the city of Lewiston

- C) Any designated Sex Offender who, after verbal notice from a police officer employed by the city of Lewiston, is in violation of Section 4 Subsection 2 of this Ordinance shall be subject to an

action brought by the city of Lewiston in District Court or Superior Court to enforce the requirements of this Ordinance.

The city of Lewiston may seek a penalty in the minimum amount of \$100 per violation, after a police officer or law enforcement officer has ordered that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of Section 4 Subsection 2 of this Ordinance.

In the event the city of Lewiston is the prevailing party in any action under this Ordinance, it shall be entitled to an award of its reasonable attorney's fees, court costs and the costs of any expert witness fees incurred by the city of Lewiston



City of Lewiston

Residential Map of Sex Offenders with Daycares

May 2017

STATE LAW AUTHORIZING SEX OFFENDER RESTRICTED ZONES.

Title 30-A: MUNICIPALITIES AND COUNTIES HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Part 2: MUNICIPALITIES HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Subpart 4: ORDINANCE AUTHORITY AND LIMITATIONS HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Chapter 141: ORDINANCES HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§3014. Ordinances regarding residency restrictions for sex offenders

(REALLOCATED FROM TITLE 30-A, SECTION 3013)

1. Application and scope. The State intends to occupy and preempt the entire field of legislation concerning the regulation of persons convicted of a sex offense in this State or in another jurisdiction. Except as provided in this section, a municipality may not adopt or enforce any ordinance or bylaw addressing persons who have been convicted of a sex offense in this State or in another jurisdiction that would impose on them restrictions or requirements not imposed on other persons who have not been convicted of a sex offense in this State or in another jurisdiction. As used in this section, "convicted of a sex offense in this State or in another jurisdiction" means a conviction for any current or former Maine crime listed in former Title 17, sections 2922 to 2924 or Title 17-A, chapter 11 or 12 or Title 17-A, section 556; a conviction for an attempt or solicitation of those listed crimes; or any conviction for any former or current crime in any other jurisdiction in which the person engaged in substantially similar conduct to that of the earlier specified current or former Maine crimes.

[RR 2009, c. 1, §21 (RAL) .]

B. A municipality may prohibit residence by a sex offender up to a maximum distance of 750 feet surrounding the real property comprising a public or private elementary, middle or secondary school or up to a maximum distance of 750 feet surrounding the real property comprising a municipally owned or state-owned property that is leased to a nonprofit organization for purposes of a park, athletic field or recreational facility that is open to the public where children are the primary users. [2013, c. 161, §1 (AMD).]

2. Residency restriction ordinance. A municipality may adopt an ordinance regarding residency restrictions for persons convicted of Class A, B or C sex offenses committed against persons who had not attained 14 years of age at the time of the offense. Any such ordinance is limited as follows.

A. An ordinance may restrict only residence. It may not impose additional restrictions or requirements, including, but not limited to, registration and fees. [RR 2009, c. 1, §21 (RAL).]

C. An ordinance may not restrict the residence of a person who lived in an area restricted pursuant to paragraph B prior to the adoption or amendment of the ordinance. [RR 2009, c. 1, §21 (RAL).]

D. An ordinance may not be premised on a person's obligation to register pursuant to Title 34-A, chapter 15. [RR 2009, c. 1, §21 (RAL).]

Topic:

DAY CARE; LEGISLATION; STATE BOARDS AND COMMISSIONS; MUNICIPALITIES;
RESIDENCY REQUIREMENTS; SEX CRIMES; MUNICIPAL ORDINANCES; SCHOOLS
(GENERAL);

Location:

SEX OFFENDERS;



May 23, 2007

2007-R-0380

SEX OFFENDERS' RESIDENCY RESTRICTIONS

By: Sandra Norman-Eady, Chief Attorney

You asked for information about state laws and local ordinances that preclude registered sex offenders from residing in or visiting certain areas.

SUMMARY

As of August 2006, at least 21 states and over 400 local governments had adopted sex offender residency restriction laws and ordinances, respectively, according to the California Research Bureau in an August 2006 report entitled *The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review*. These laws are modeled after nuisance codes, creating sex offender-free zones like drug-free zones. They typically prohibit sex offenders from living, and sometimes working or loitering, within a specified distance of designated places where children congregate.

Like all states, Connecticut requires sex offenders to register. And like most states, police must notify residents when a sex offender moves or returns to their neighborhoods. But, the state has not enacted a law restricting sex offenders' residency. This could change soon, however. A bill, sHB 5503, currently before the General Assembly requires the Risk Assessment Board to use the risk assessment scale it develops to determine the sex offenders who should be prohibited from living within 1,000 feet of the property comprising an elementary or secondary school or a licensed center- or home-based child day care facility.

Danbury is the only city in this state known to have an ordinance restricting sex offenders' residency. The ordinance prohibits sex offenders from entering a public park, playground, recreation center, bathing beach, swimming pool, sports field, or sports facility.

Proponents of residency restrictions argue the need to safeguard potential victims and opponents argue the need to track offenders. **We have found no empirical studies on whether these laws reduce crime rates.**

Constitutional challenges to the laws and ordinances have been unsuccessful.

BACKGROUND

States began trying to keep track of sex offenders over 50 years ago, when, in 1947, California enacted the first sex offender registration law. Now all states have sex offender registration laws that help law enforcement agencies keep track of offenders' movements.

In the mid 1990's states, following the federal government's lead, enacted community notification laws that require law enforcement agencies to inform residents of the identity and location of sex offenders in their neighborhoods. These notification laws caused people to complain to their local official when sex offenders moved into their neighborhoods. As a result, five years after the first notification law the first sex offender residency and child safety zone restriction law was enacted in Texas.

SEX OFFENDER RESIDENCY RESTRICTION LAWS AND ORDINANCES

State Laws

At least 21 states have laws restricting where registered sex offenders can visit or live. The most common type of restriction prohibits them from residing within a certain distance of specified places where children congregate. Distance markers generally range from 1,000 to 2,000 feet from the designated place; however, Illinois and South Dakota have 500 foot distance markers. Some states limit the restrictions to offenders (1) convicted of only the most serious offenses (Arkansas, California, Indiana, and Louisiana) or (2) most likely to reoffend based on some type of risk assessment (Minnesota and Washington). Table 1 shows the 22 states, lists their relevant statutes, and describes the ban.

TABLE 1: RESIDENCY RESTRICTIONS BY STATE

States With Sex Offender Residency Restriction Laws		
<i>State</i>	<i>Statutory Citations</i>	<i>Restriction</i>
Alabama	§ 15-20-26(a)	

		A sex offender may not live or work within 2,000 feet of schools or childcare facilities.
Arkansas	§ 5-14-128 (a)	A level 3 or 4 (most serious) sex offender cannot live within 2,000 feet of schools or daycare centers.
California	W&I Code § 6608.5 (f) (2005) Penal Code § 3003 (g) (1) (3)	A sexually violent predator or a serious paroled sex offender cannot live within one-fourth of a mile of a school, and high-risk paroled sex offenders cannot live within one-half mile of a school, daycare center, or place where children congregate.
Florida	§ 947. 1405 (7)(a)(2)	A sex offender whose victim was under 18 years old cannot live within 1,000 feet of schools or places where children congregate.
Georgia	§§ 42-1-13 and 42-1-15	No sex offender may live, work, or loiter within 1,000 feet of any school, childcare facility, school bus stop, or place where minors congregate.
Illinois	§ 5/11-9.3 (b-5)	A child sex offender may not live within 500 feet of a school or school property.
Indiana	§ 11-13-3-4 (g) (2) (A)	A violent sex offender cannot live within 1,000 feet of any school property while on parole.
Iowa	§ 692 (A)(2A)	A sexual offender may not live within 2,000 feet of a school or childcare facility.
Kentucky	§ 17.495	A sex offender may not live within 1,000 feet of a school, childcare facility, ball field, or playground.
Louisiana	§§ 14:91.1 and 15.538	A sexually violent predator and serious paroled sex offender may not live within 1,000 feet of schools or related school activities, including school bus stops for life or duration of parole or probation.
Michigan	§§ 28.721 to 28.732	A sex offender cannot live within 1,000 feet of school safety zone.

Minnesota	MSA Chap. 244.052 et al.	The parole commissioner determines if a level III sex offender may live within 1,500 feet of school zones.
Missouri	§ 589.417	A sex offender may not live within 1,000 feet of a school or childcare facility.
Ohio	§ 2950.031(A)	A sex offender cannot live within 1,000 feet of any school, childcare facility, or place where children gather.
Oklahoma	OSA Tit. 57 § 590	A registered sex offender cannot live within 2,000 feet of a school.

Table 1: -Continued-

States With Sex Offender Residency Restriction Laws		
State	Statutory Citations	Restriction
Oregon	§§ 144.642 (1)(a) and 144.644(2)(a)	The Department of Correction decides where and how close a sex offender can live to a school or daycare center based on a decision matrix.
South Dakota	§ 22-24B	A sex offender cannot live or loiter within 500 feet of community safety zones.
Tennessee	§ 40-39-[2]11(a)-(b)	A sex offender cannot live within 1,000 feet of schools, childcare facilities, or the victim.
Texas	Texas Govt. Code Chap. 508.187 (b)	The state parole board decides how close to a child safety zone a paroled sex offender can live or visit.
Washington	§§ 9.94A.712(6)(a)(ii) and 9.95.425-430	A sex offender convicted of a serious offense with a high-risk assessment (Level II or III) cannot live within a community protection zone (within 880 feet of any school or daycare center)

West Virginia	§ 62-12-26 (b) (1)	A paroled sex offender cannot live within 1,000 feet of a school or childcare facility.
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Source: California Research Bureau/ California State Library, 2006.

Local Ordinances

According to the California Research Bureau, over 400 municipalities have enacted restrictive ordinances, primarily within the past two years. States with known local ordinances include California, Florida, Georgia, Iowa, New Jersey, New York, Texas, Virginia, and Washington. The number of municipalities with such ordinances varies by state but according to the bureau, at least 113 municipalities in New Jersey and 60 in Florida have them. Like state laws, local ordinances on this issue either preclude offenders from certain areas where children are known to congregate or establish distance markers.

Danbury is the only city in Connecticut with such an ordinance. It prohibits child sex offenders who are required to register in this state from being present in any child safety zone. A "child safety zone" is a public park, playground, recreation center, bathing beach, swimming or wading pool, or sports field or facility and surrounding land.

The prohibition does not apply to any person:

1. whose name has been removed from the Department of Public Safety's Sex Offender Registry or from the registry in another state or in the federal or military system by court order or expiration of the registration term or
2. entering into a polling place in a child safety zone to vote if he leaves immediately after voting.

If a police officer reasonably believes a child sex offender is in a child safety zone in violation of the ordinance, the officer must ask him to provide his name, address, and telephone number. If the officer's belief is confirmed, he or she must issue the offender a written warning and require him to leave the area. An offender who refuses to leave and subsequent offenders are subject to a \$100 fine for each violation. The fine does not apply if the offender's conduct results in his conviction for a new criminal offense or if his parole or probation is revoked because of it (Danbury City Ord. § 12-27).

ARGUMENTS FOR AND AGAINST RESTRICTIONS

The most powerful and often the single argument in support of safety zones or residency restrictions is that they reduce recidivism rates by keeping potential victims safe and apart from offenders. Opponents argue that these restrictions have a number of unintended consequences. For example, they (1) isolate offenders, often forcing them to live in rural areas that lack jobs, transportation, housing, and treatment; (2) create homelessness, making it difficult for law enforcement officers to track offenders; (3) cause offenders to go underground and not update

registration information; and (4) can prevent offenders from residing with supportive family members who live in the restricted areas.

CONSTITUTIONALITY OF RESIDENCY RESTRICTIONS

Residency restrictions have withstood constitutional challenges in trial and appellate courts in Illinois, Iowa, Ohio, and South Dakota. At issue in these cases collectively was whether the restrictions (1) impose criminal sanctions that penalize offenders whose convictions are final in violation of the *ex post facto* clause of Article I, Section 10, Clause 1, of the U.S. Constitution, (2) violate the constitutionally-protected right to travel, or (3) discriminate against offenders in violation of the 14th Amendment's Equal Protection Clause.

These courts have held that (1) residency restrictions are a form of civil regulation intended to protect children and thus prohibitions on *ex post facto* laws do not apply; (2) the federal constitution does not include a right to live where one chooses; and (3) residency restrictions are rationally related to states' legitimate interests in protecting children from harm (see *Doe v. Miller*, 405 F. 3d 700 (8th Cir. 2005); *State v. Steering*, 701 N.W. 2d 655 (Iowa 2005); *Coston v. Petro*, 398 F. Supp. 2d 878 (S.D. Ohio 2005); and *People v. Leroy*, 357 Ill. App. 3d 530 (2005)).

SN-E:ts

To: Chief O'Malley

From: Joe Philippon

Subject: Supplemental Sex Offender Proposed Ordinance Report

Chief,

Below is summary of Lewiston Sex Offender data from December 11, 2015 to May 3, 2017 (1 year, 4 months, and 22 days):

- 1) Lewiston has added an additional 39 sex offenders since December 11, 2016
 - a) December 11, 2016 = 147
 - b) May 3, 2017 = 186
 - i) This represents a 26.53% increase in sex offenders residing in Lewiston
- 2) In total, 27 sex offenders were removed from our records between December 11, 2016 to May 3, 2017
- 3) In total, since December 11, 2015 a total of 66 sex offenders have been added to our records
- 4) 45 sex offenders have changed their addresses from December 11, 2016 to May 3, 2017
 - a) 24.19% of Lewiston's sex offenders have changed address between December 11, 2017 to May 3, 2017
- 5) Of the 186 sex offenders as of May 3, 2017:
 - a) 178 had been convicted one offense
 - b) 6 had been convicted of two separate offenses
 - c) 2 had been convicted of three separate offenses
 - i) 4.3% of the sex offenders as of May 3, 2017 had committed more two or more separate offenses

Possible cause for increase of sex offenders in Lewiston:

The city of Auburn passed a Sex Offender Residency Restriction Ordinance on February 27, 2017 and its impact on Lewiston has not been determined, due in part that it has only been in effect for a few months. According to Det. Brochu he believes only one or two offenders from Auburn have moved to Lewiston since the ordinance was enacted. The Auburn ordinance does not include a 750 foot restricted area around daycares. (Ordinance is attached)

Legal:

Based on national review Sex Offender Residency Restricted Zones are constitutional, but courts have found laws too vague and too restrictive which has resulted in the courts forcing laws to be changed.

Proposed ordinance writing information:

The proposed ordinance was written based on Maine law and what other communities have enacted as local ordinances, and was written using the maximum allowances.

There is plenty of room to remove, lessen, and specifically narrow the scoop of how this ordinance is implemented.

Childcare/daycare list management:

According to both the City Clerk's Office and Code Enforcement, Lewiston does not maintain a list of childcare facilities within the city. All childcare licensing is done through D.H.H.S.

If the childcare/daycare provisions were to remain in the proposed ordinance, we will need to determine when D.H.H.S. will be contacted in order to update the restricted zones. A possible remedy would be to update the map on January 1st with the most current list from D.H.H.S. and use this map for the entire year before it is updated again for the following year. Also, this could be done monthly, quarterly, or every six months etc.

G.I.S. mapping:

G.I.S. is capable of developing several versions of the restricted zones that would allow both the department and the public to see where the zones boundaries are and even possibly allow a user to enter an address to see if it is location within or outside of a restricted zone.

Attachments:

I have attached a few articles and reports on the Sex Offender Restricted Zones laws and have highlighted areas of note for your consideration.



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Residency Restrictions for Sex Offenders

Residency restriction laws are a fairly new method some jurisdictions are using in an attempt to curb the actions of sex offenders. Alabama passed the first residency restriction law in 1996. The law was part of the states' Community Notification Act. It prohibited child molesters from living within 1,000 feet of a school. By January 2006, approximately 14 states had enacted residency restrictions. Moreover, some local governments have implemented their own residency restrictions.

Critics and supporters of residency restriction laws have watched Iowa's law with interest since its passage in 2002. The Iowa law applies to 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." According to the law, "A person shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility." The law does not apply in certain circumstances, including where the "person has established a residence prior to July 1, 2002, or a school or child care facility is newly located on or after July 1, 2002," or where the person is a minor or a ward under a guardianship. It is an aggravated misdemeanor to reside within 2,000 feet of a school or child care.

The Iowa law took effect on July 1, 2002, but was almost immediately challenged in federal district court. The plaintiffs were three named sex offenders who contended that the law was unconstitutional on its face. The case was certified as a class action, on behalf of other sex offenders to whom the law would apply. At trial, the plaintiffs presented evidence regarding the scope of the law. In many cities, the law would effectively limit sex offenders to small areas of residency. In small towns, a single school or child care center could mean that the entire town was off limits. Expert witnesses on both sides testified to their beliefs in the expected efficacy of the law.

The district court enjoined enforcement of the law, and ruled that it was unconstitutional on several grounds, including:

- The law was unconstitutional because it was an ex post facto law for anyone convicted before July 1, 2002;
- It violated plaintiffs' rights to avoid self-incrimination, because registrants would be required to report their addresses, even when the addresses were not in compliance with the law;
- It violated plaintiffs' procedural due process rights;
- It infringed on fundamental rights to travel and decide how to conduct their family affairs; and
- It was not tailored narrowly enough to serve a compelling state interest.

In a ruling dated April 29, 2005, three judges from the United States Eighth Circuit Court of Appeals unanimously voted to reverse the district court's decision. The appellate court dispensed with each ground relied upon by the district court, and ruled that the law was not unconstitutional on its face. The court ruled that there exists no constitutional right to "live where you want." Therefore, the state only needed to show that the statute rationally advanced some legitimate governmental purpose. Plaintiffs acknowledged that the law was enacted to promote the safety of children, and that this was a legitimate legislative goal. They argued, however, that the law is irrational because there is no scientific evidence to support the conclusion that residency restrictions will enhance the safety of children. The court rejected this argument as well, noting that state policymakers are entitled to employ "common sense" when making a determination that "limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense."

Two judges agreed that the law did not amount to an ex post facto punishment. They ruled that plaintiffs did not establish by "clearest proof" that the law's punitive effect overrides the legislature's "legitimate intent to enact a nonpunitive, civil regulatory measure that protects health and safety" of the state's citizens.

Municipalities and counties have enacted their own versions of residency restrictions. For example, in Des Moines, Iowa, the state's largest city, officials added parks, libraries, swimming pools, and recreational trails to the list of protected buffer zones.

A report in the *Des Moines Register* on January 22, 2006, reported that since the state's residency law took effect, more sex offenders are eluding tracking by authorities. The paper reported that 298 sex offenders were unaccounted for in

January 2006, compared to 142 on June 1, 2005. Critics charge that the law has forced some sex offenders to become homeless; others may lie and say that they are homeless to hide the fact that they are not complying with the law. Iowa has approximately 6,000 registered sex offenders.

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LEWISTON CITY COUNCIL
MEETING OF SEPTEMBER 12, 2017

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. ES-1

SUBJECT:

Executive Session to discuss Disposition of Property of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To enter into an Executive Session, pursuant to MRSA Title 1, section 405(6)(c), to discuss Disposition of Property, of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.