

## **ARTICLE 9.     SEX OFFENDER RESIDENCY BY-LAW**

To see if the Town will vote to amend the By-laws of the Town of Ayer by adding a new chapter, sequentially numbered, as follows, or take any action thereon or in relation thereto.

### **SEX OFFENDER RESIDENCY AND SAFETY ZONE BY-LAW**

#### **SECTION 1. Findings and Intent**

(1). 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 sex offenders are prohibited from loitering and establishing temporary or permanent residence.

(2) 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 certain ex 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.

(3) 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 sex offenders will comply with the mandates of this by-law. 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.

(4) Certain sex offenders pose a clear threat to the children and the elderly residing or visiting in the community. Because certain sex offenders are more likely than any other type of offender to reoffend by 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 in the community by limiting the ability of certain classified levels of 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.

#### **SECTION 2. Definitions**

- (1) "Day Care Center" means an establishment, whether public or private, 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.
- (2) "Elder" or "Elderly" means a person or persons over 60 years of age. "Elderly Housing Facility" or "Senior Citizens Center" or "Over 55 Community" means any building or buildings which provide a group residence for the elderly or a location where the elderly gather and/or reside that is located within the Town of Ayer



- (3) "Establishing a Residence" means 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, or by means of purchasing real property or entering into a lease or rental agreement for real property
- (4) "Loitering" means to remain for more than fifteen (15) minutes within a five hundred (500) foot distance of the location in question.
- (5) "Park" means active and passive public land designated for recreational or athletic use by the Town of Ayer and located within the Town of Ayer.
- (6) "Permanent Residence" means a place where a person lives, abides, lodges, or resides for five (5) or more consecutive days or fourteen (14) or more days in the aggregate during any calendar year.
- (7) "Recreational Facility" means a playground, a forest preserve, conservation area, jogging trail or running track, hiking or biking trail, beach, water park, swimming pool, 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 Ayer.
- (8) "School" means any public or private educational facility that provides services to children in grades kindergarten - 12, or anyone or more of such grades.
- (9) "School Bus Stop" means any area designated by the public school district or by a private or parochial school within the Town of Ayer as a school bus stop, which school bus stop has been designated in a list maintained by the Town and available to the public.
- (10) "Sex Offender" and "Sex offense" shall have the same meaning for purposes of this by-law as provided for in G.L. c. 6, § 178C.
- (11) "Sex Offense Involving a Child" shall have the same meaning for purposes of this by-law as provided for in G.L. c. 6, § 178C.
- (12) "Temporary Residence" means a place where a person lives, abides, lodges or resides for a period of less than five (5) consecutive days or fourteen (14) days in the aggregate during any calendar year.

### SECTION 3. Sex Offender Residence Prohibition

It is unlawful for any sex offender who has been finally classified as a Level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board, for as long as so classified, to establish a permanent residence or temporary residence in the Town of Ayer within one thousand (1,000) feet of the property on which any public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 community, senior citizens center, or licensed day-care center is located.

### SECTION 4. Evidentiary Matters; Measurements



For purposes of determining the minimum distance requirement, the separation shall be measured by following a straight line from the outer property line of the permanent residence to the nearest outer property line of any public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 community, senior citizens center, or licensed day-care center

#### SECTION 5. Notice to Move

Any sex offender who has been finally classified as a Level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board, for as long as so classified, who establishes a permanent residence or temporary residence in the Town of Ayer within one thousand (1,000) feet of any public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 community, senior citizens center, or licensed day-care center shall be in violation of this by-law and shall, within thirty (30) days of receipt of written notice of the sex offender's noncompliance with this by-law, move from said location to a new location, but said location may not be within one thousand (1,000) feet of any public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 community, senior citizens center, or licensed day-care center within the Town of Ayer. Furthermore it shall be a separate violation each day that a sex offender shall move from one location in the Town of Ayer to another that is within one thousand (1,000) feet of any public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 community, senior citizens center, or licensed day-care center.

#### SECTION 6. Exceptions

A person residing within 1,000 feet of any public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 communities, senior citizens center, or licensed day-care center does not commit a violation of this by-law if any of the following apply:

- (1) The person established the permanent residence and reported and registered the residence, as required by the Sex offender Registry Law and any applicable regulations of the Massachusetts Sex offender Registry Board, 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 Ayer 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 and/or oral 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 Ayer different from the permanent residence established prior to the effective date of this by-law; or
  - (c) Permanent residence was established through a written and/or oral 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 Ayer different from the permanent residence established prior to the effective date of this by-law.



- (2) The person was a minor when the relevant crime was committed and was not convicted as an adult.
- (3) The person is a minor.
- (4) The public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 community, senior citizens center, or licensed day-care center was established after such person established the permanent residence and reported and registered the residence pursuant to the Sex Offender Registry Law and any applicable regulations of the Massachusetts Sex Offender Registry Board.
- (5) The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility located within the aforementioned 1,000 foot area.
- (6) The person is admitted to and/or subject to an order of commitment at a public or private facility for the care and treatment of mentally ill persons pursuant to G.L. c. 123 located within the aforementioned 1,000 foot area.
- (7) The person is a mentally ill person subject to guardianship pursuant to order or supervision of the Probate and Family Court or a mentally retarded person subject to guardianship pursuant to G.L. c. 201 §6A, residing with his or her guardian or residing within a group residence that is professionally staffed and supervised 24 hours a day and located within the aforementioned 1,000 foot area.

#### SECTION 7. Forfeiture of Exception

If, either after the effective date of this by-law or after a new public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 community, senior citizens center, or licensed day-care center opens, an indictment or conviction of another sex offense is issued by a court against a Level 2 or 3 Sex Offender otherwise enjoying an exception under this by-law, he or she shall immediately forfeit that exception and be required to comply with this by-law.

#### SECTION 8. Penalties

(1) Criminal Complaint. Violation of the residency provisions of this by-law may be enforced by criminal complaint filed by any police officer of the Town of Ayer. Each day a violation exists shall constitute a separate violation. The fine for each violation, upon conviction, shall be \$300.

(2) Noncriminal Disposition. In addition to enforcement by criminal complaint, violation of the residency provisions of this by-law may be enforced through any lawful means in law or in equity by any police officer of the Town of Ayer including, but not limited to, enforcement by non-criminal disposition pursuant to G.L. c. 40, § 21D. Each day a violation exists shall constitute a separate violation. The penalties for noncriminal disposition shall be as follows:

- (a) First offense: Notification to offender that he/she has thirty (30) days to move.
- (b) Subsequent offense: noncriminal fine of \$300, enforceable by a police officer, and written notification to the property owner, if other than the offender, the offender's landlord, parole officer and/or probation officer, and



the Commonwealth's Sex Offender Registry Board that the sex offender has violated a Town By-Law.

## SECTION 9. Safety Zone

### A. Prohibitions.

(1) A sex offender who has been finally classified as a Level 2 or 3 offender pursuant to the guidelines of the Sex offender Registry Board, and for as long as so classified, 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 sex offender who has been finally classified as a Level 2 or 3 offender pursuant to the guidelines of the Sex offender Registry Board, and for as long as so classified, 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 sex offender who has been finally classified as a Level 2 or 3 offender pursuant to the guidelines of the Sex offender Registry Board, and for as long as so classified, is prohibited from entering upon the premises of a park or any recreational facility.

(4) A sex offender who has been finally classified as a Level 2 or 3 offender pursuant to the guidelines of the Sex offender Registry Board, and for as long as so classified,, after having received notice from the Ayer Police Department that he/she is loitering by having remained for more than fifteen (15) minutes within five hundred (500) feet of a public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 community, senior citizens center, or licensed day-care 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 public or private school, park, playground, beach, biking/hiking trail, other recreational facility, elderly housing facility, over 55 community, senior citizens center, or licensed day-care center.

(5) A sex offender who has been finally classified as a Level 2 or 3 offender pursuant to the guidelines of the Sex offender Registry Board, and for as long as so classified,, after having received notice from the Ayer 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 which has been designated in a list maintained by the Town and available to the public is prohibited from continuing to so loiter; provided, however, that this prohibition shall not apply on days when the schools within the Town of Ayer are not in session.

### B. Exceptions

(1) The prohibitions defined in this By-Law shall not be construed or enforced so as to prohibit a 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 sex offender's place of residence when such residence is excepted under this By-Law.



### C. Penalties.

(1) Criminal Complaint. Violation of the safety zone provisions of this by-law may be enforced by criminal complaint filed by any police officer of the Town of Ayer. Each day a violation exists shall constitute a separate violation. The fine for each violation, upon conviction, shall be \$300.

(2) Noncriminal Disposition. In addition to enforcement by criminal complaint, violation of the safety zone provisions of this by-law may be enforced through any lawful means in law or in equity by any police officer of the Town of Ayer including, but not limited to, enforcement by non-criminal disposition pursuant to G.L. c. 40, § 21D. Each day a violation exists shall constitute a separate violation. The penalties for noncriminal disposition shall be as follows:

- (a) First offense: noncriminal fine of \$ 150, enforceable by an Ayer police officer.
- (b) Subsequent offense: noncriminal fine of \$300, enforceable by an Ayer police officer, and written notification to the offender's parole officer and/or probation officer, and the Commonwealth's Sex Offender Registry Board that the sex offender has violated a Town By-Law.

### SECTION 10. Maps and List of Safety Zones.

One or more maps depicting the prohibited residency restriction areas defined by this by-law and depicting the safety zone areas defined by this by-law shall be created by the Town and maintained by the Ayer Police Department. A written list describing the prohibited areas defined by this by-law, including school bus stops, shall be created by the Town and maintained by the Ayer Police Department. As to school bus stops, the list shall govern over the maps. The list, maps and a copy of this by-law shall be available to the public at the Ayer Police Department, the Ayer Town Clerk's office and on the Town of Ayer web site. The Town shall review the list and maps annually for changes.

### SECTION 11. Severability.

If any portion of this by-law is deemed by a court of competent jurisdiction to be unconstitutional or otherwise invalid or unenforceable, such judgment shall not impair or invalidate or render unenforceable the remaining portions of this by-law.

Sponsor: Board of Selectmen  
Police Chief: Recommends  
Finance Committee