

Somerset Sex Offender Residency and Restriction Zone By-law
Adopted: ATM May 19, 2008
Article 39

Section 1: Preamble; Findings; Intent

- a. It is the intent of this by-law to serve and 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, the elderly, and the mentally impaired 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, the elderly, and the mentally impaired in places where children and the elderly would naturally congregate, and that the protection of the health and safety of our children, the elderly, and the mentally impaired is a compelling governmental interest.
- c. By the enactment of this or any other by-law, the Town understands that it can not remove the threat posed to or guarantee the safety of children, the elderly, and the mentally impaired, or assure the public that registered sex offenders will comply with the mandates of this law. This by-law is intended to create a regulatory scheme in order to protect children, the elderly, and the mentally impaired to the extent possible under the circumstances. Nothing contained herein shall constitute a specific assurance of safety or assistance.
- d. The Town finds that registered sex offenders pose a clear threat to the children, the elderly, and the mentally impaired residing in or visiting in Somerset. Because registered sex offenders are more likely than any other type of offenders to re-offend for another sexual offense, the Town desires to impose safety precautions in furtherance of the goal of protecting the children, the elderly, and the mentally impaired in the Town of Somerset. The purpose of this by-law is to reduce the potential risk of harm to the children, the elderly, and the mentally impaired of the community by restricting the ability of registered sexual offenders to be in contact with those persons in locations that are primarily designed for use by or are primarily used by children, the elderly, and/or the mentally impaired, namely, the grounds of a public or private school for children, a pre-school, a day care facility, parks or other public recreational facilities, facilities for the elderly, facilities for the mentally impaired, or public libraries.

Section 2: Definitions

- a. "Child" or "children" shall mean persons under eighteen (18) years of age.

- b. “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 Office of Child Care Services.
- c. “Elder” or “elderly” shall mean persons over fifty-five (55) years of age.
- d. “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, including 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).
- e. “Facility for the Elderly” means a building or buildings on the same lot which provides group residence for persons over fifty-five (55) years of age or serves as a center for such persons to gather.
- f. “Facility for the mentally impaired” means any facility which provides group residence for the mentally impaired or serves as a center for the mentally impaired to gather.
- g. “Loiter” means remaining in or around the location in question for a more than fifteen (15) minutes.
- h. “Park or recreational facility” means public land or facilities designated for active or passive recreational or athletic use by the Town of Somerset, the Commonwealth of Massachusetts, or other governmental subdivision, and located within the Town of Somerset, including parks, beaches, playgrounds, and athletic fields and facilities.
- i. “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.
- j. “Public library” means a building, structure or other enclosure in which a library is located for use by the general public.
- k. “School” means any public or private educational facility that provides educational services to children in grades pre-kindergarten through twelve (12).
- l. “Sex offender” means a person who resides, works, or attends an institution of higher learning in the commonwealth and who has been convicted of a sex offense, or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense, or a person released from incarceration or parole or probation supervision or custody with the Department of Youth Services for such a conviction or adjudication, or a person who has been adjudicated a sexually dangerous person under M.G.L. chapter 123A, section 14, as in force at the time of adjudication, or a person released from civil commitment pursuant to section 9 of said chapter 124A, whichever last occurs, on or after August 1, 1981.
- m. “Sex Offender Registry” means the collected information and data that is received by the Criminal History Systems Board pursuant to M.G.L. chapter 6, sections 178C to 178Q, inclusive, as such information and data is modified or amended by the Sex Offender Registry Board or a court of competent jurisdiction pursuant to said sections 178C to 178Q, inclusive.

- n. “Temporary residence” means a place where a person lives, abides, lodges, or resides for a period of less than five (5) consecutive days or less than fourteen (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.

Section 3: Sexual Offender Residence Prohibits; Penalties; Exceptions.

- a. It is unlawful for any sex offender who is classified as a level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board to establish a permanent residence or temporary residence within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library.
- b. For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the outer property line of the permanent residence to the nearest outer property line of a school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library.
- c. Notice to move: Any sex offender who is classified as a level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board and who establishes a permanent residence or temporary residence within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library shall be in violation of this section and shall within thirty (30) days of receipt of written notice of the sex offender’s noncompliance with this chapter, move from said location to a new location, but said location may not be within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library. It shall constitute a separate violation for each day beyond the thirty (30) days that the sex offender continues to reside within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library. Furthermore, it shall be a separate violation each day that a sex offender shall move from one location in the Town of Somerset to another that is within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library.
- d. Penalties: Violation of this section, or of any regulations adopted hereunder, may be enforced through any lawful means in law or in equity by the Somerset Police Department or any police officer of the Town of Somerset, including, but not limited to, enforcement by non-criminal disposition pursuant to M.G.L. chapter 40, section 21D. Each day a violation exists shall constitute a separate violation. The penalties shall be as follows:
- i. First Offense: Notification to offender that he/she has thirty (30) days to move.
- ii. Subsequent Offense: Non-criminal penalty or fine not to exceed \$300.00 and notification to the offender’s landlord, parole officer, and/or probation officer and the Commonwealth’s Sex Offender Registry Board that the person has violated a municipal by-law.
- e. Exceptions. A person residing within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library does not commit a violation of this section if any of the following apply:
- i. The person established the permanent residence and reported and registered the residence prior to the effective date of this by-law;

- ii. The person was a minor when he/she committed the offense and was not convicted as an adult;
- iii. The person is a minor;
- iv. The school, day care center, park or recreational facility, facility for the elderly, facility, facility for the mentally impaired, or public library within 500 feet of the personal permanent residence was established after the person established the permanent residence and reported and registered the residence pursuant to the Sex Offender Registry Law;
- v. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
- vi. 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 M.G.L. chapter 123; or,
- vii. The person is mentally ill person subject to guardianship pursuant to M.G.L. chapter 201, section 6, or a mentally retarded person subject to guardianship pursuant to M.G.L. chapter 201, section 6A, residing with his or her guardian or residing within a licensed group residence.

Section 4: Sex Offender Restriction Zone; Exceptions; Penalties.

a. Prohibitions:

- i. A sex offender who is classified as a level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board is prohibited from entering upon the premises of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library, unless expressly authorized in advance and in writing by the person or entity having control of said premises.
- ii. A sex offender who is classified as a level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board is prohibited, after having received notice from the Somerset Police Department that he/she is loitering within five hundred (500) feet of a school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library, from continuing to so loiter or from returning thereto. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the sex offender in question to the outer property line of the school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library.

b. Exceptions:

- i. The prohibitions in section 4.a. above 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, or from attending any religious service.
- ii. The prohibitions in sections 4.a. above do not apply to a sex offender's place of residence when such residence is excepted under section 3.e. above.

c. Penalties: Any violation of this section, or of any regulations adopted hereunder, may be enforced through any lawful means in law or in equity by the Somerset Police Department or any police officer of the Town of Somerset including, but not limited to, enforcement by non-criminal

disposition pursuant to M.G.L. chapter 40, section 21D. Each day a violation exists shall constitute a separate violation. The penalties shall be as follows:

- i. First Offense: a non-criminal penalty or fine of \$150.00;
- ii. Subsequent Offense: Non-criminal penalty or fine of \$300.00 and notification to the offender's landlord, parole officer and/or probation officer and the Commonwealth's Sex Offender Registry Board that the person has violated a municipal by-law.

Section 5: General Exemption

The provisions of this by-law shall not apply to sex offenders incarcerated in any facility owned, maintained, and/or operated by the Town of Somerset.

Section 6: List/Map of Areas Covered

A written list describing the prohibited areas defined in this by-law, as well as a map depicting the residency restriction areas and safety zones shall be created and maintained by the Somerset Highway Department and Somerset Police Department, to be updated from time-to-time as necessary. The list, map, and copies of this by-law will be available to the public at the Somerset Town Clerk's Office and Somerset Police Department.

Section 7: Severability

If any clause, sentence, paragraph, subdivision, section or other part of this by-law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional, or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this by-law, and it shall be construed to have been the legislative intent to enact this by-law without such unconstitutional or invalid parts therein.

Section 8: Effective Date

This by-law shall become effective immediately upon passage and approval by the Office of the Massachusetts Attorney General and publication.

A True Copy Attest:

Dolores Berge, Town Clerk