

ORDINANCE NO. UCC 2005-003

AN ORDINANCE PURSUANT TO SDCL § 7-8-20(10) PROHIBITING CERTAIN PERSONS SUBJECT TO SEXUAL OFFENDER REGISTRATION REQUIREMENTS OF SDCL § 22-22-31 FROM RESIDING IN CERTAIN AREAS OF THE COUNTY AND ESTABLISHING A PENALTY FOR A VIOLATION IN UNION COUNTY, SOUTH DAKOTA.

BE IT ORDAINED BY THE BOARD OF COUNTY COMISSIONERS, UNION COUNTY, SOUTH DAKOTA:

1. PURPOSE

It is the intent of this ordinance to serve Union County's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of Union County by creating a specific zone/area around specific locations where children regularly congregate where certain sex offenders are prohibited from establishing temporary or permanent residence.

2. DEFINITIONS

"MINOR" in this ordinance shall be defined as any individual under eighteen (18) years of age.

"PERSON" in this ordinance shall be defined as any individual who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor pursuant to SDCL § 22-22-31 and who is required by state law pursuant to SDCL § 22-22-31 to register as a convicted sex offender.

"PERMANET RESIDENCE" in this ordinance shall be defined as a place where the person abides, lodges or resides for fourteen (14) or more consecutive days.

"TEMPORARY RESIDENCE" in the ordinance shall be defined as a place where the person abides, lodges or resides for a period of fourteen (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 (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent residence.

3. RESIDENCE PROHIBITION

A person shall not reside with in two-thousand (2,000) feet of the real property comprising a public or nonpublic elementary or secondary school (hereinafter referred to as a school) or a childcare facility registered

pursuant to SDCL § 26-6-11 or facilities where preschool programs are operated or a public playground/park.  
Each day that a person is in violation of this ordinance constitutes a new offence.

a. NOTICE

After notice is served on the person by complaint or personal delivery by either certified mail or service of process by the sheriff's department (return of service shall satisfy proof of notice), each and every day that such violation continues after notification shall constitute a separate offense.

i. Notification:

1. Written notice by the Union County Commissioners or a public official (ex. A city counsel-member, Mayor of a municipality, or an attorney for a municipality), advising that the person(s) is in violation of this ordinance delivered via Certified Mail; or
2. Service by process by the Union County Sheriff's Department or any other law enforcement agency authorized to operate within Union County via a letter providing written notice by the Union County Commissioners or a public official (ex. A city counsel-member, Mayor of a municipality, or an attorney for a municipality), or the Union County State's Attorney, advising that the person(s) is in violation of this ordinance.

4. PENALTY

A person, who resides within two thousand (2,000) feet of the real property comprising a school, a registered childcare facility, a facility operating a preschool program or a public playground/park commits a violation of this ordinance and shall be subject to fines and penalties according to SDCL § 7-18-2, pursuant to the following schedule:

- a. A person convicted under this ordinance as a first offense violation shall be subject to a fine up to two hundred (\$200.00) dollars.
- b. A person convicted under this ordinance as a second or subsequent violation shall be subject to a fine up to two hundred (\$200.00) dollars and/or thirty days in jail pursuant to SDCL § 1-18-2(1).
- c. Nothing in this section prohibits the county from pursuing a remedy under SDCL § 7-18-2(2).

5. EXCEPTIONS

A person residing within two thousand (2,000) feet of the real property comprising a public or nonpublic elementary or secondary school or a registered child care facility does not commit a violation of this section if any of the following apply:

- a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
- b. The person is subject to an order of mental illness or commitment.
- c. The person has established a residence prior to July 1, 2005, or a school or childcare facility has been newly located/created on or after July 1, 2005, and such person was settled in that residence prior to newly located/created school of childcare facility.
- d. The person is a minor or a ward under a guardianship.

6. SUNSET PROVISION

If the State of South Dakota adopts legislation addressing residence restrictions for persons required to register as a sex offenders, this ordinance shall sunset and become null and void on the effective day of the state's statute.

BOARD OF COMMISSIONERS  
UNION COUNTY, SOUTH DAKOTA



Auditor

  
Chairman

First reading: Nov 8, 2005  
Second reading: Dec 29 2005  
Passed and Approved: Dec 29, 2005  
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