

**CITY OF PAPILLION
MAYOR AND CITY COUNCIL REPORT
January 3, 2023 AGENDA**

| Subject: | Type: | Submitted By: |
|---|---|--------------------------------|
| An ordinance to Amend Chapter 127 of the Municipal Code | Ordinance No. 1985 (Introduction) | Chris Whitted, Police Chief |

SYNOPSIS

This is an Ordinance to amend Chapter 127 of the Papillion Municipal Code, titled “Sexual Offender Residency Restriction” to bring the Chapter into compliance with state statute.

BACKGROUND

Chapter 127 was adopted by the City of Papillion in 2006, after the adoption of Nebraska Revised Statute §29-4017 which allows a political subdivision to enact legal restrictions proscribing where a sexual predator may reside. In 2009, state statute was revised to redefine a “sexual predator” to be a person who has victimized a person aged 18 years or younger and who has committed an act involving the penetration of, direct genital touching of, oral to anal contact with, or oral to genital contact with (a) a victim age thirteen years or older without the consent of the victim, (b) a victim under the age of thirteen years, or (c) a victim who the sex offender knew or should have known was mentally or physically incapable of resisting or appraising the nature of his or her conduct. The new definition of sexual predator is no longer consistent with the definition used in Chapter 127. Because Chapter 127 as currently written applies to a broader population than is allowed under NRS §29-4017, the current residency restrictions are void and cannot be enforced. Additional minor changes to Chapter 127 will make it more consistent and concise.

FISCAL IMPACT

None.

RECOMMENDATION

First Reading.

ATTACHMENTS

Ordinance No.1985
Chapter 127 with Tracked Changes

ORDINANCE NO. 1985_

AN ORDINANCE TO AMEND CHAPTER 127 OF THE PAPIILLION MUNICIPAL CODE, ENTITLED **SEX OFFENDER RESIDENCY RESTRICTION** TO CONFIRM TO STATE STATUTORY REQUIREMENTS, TO MAKE THE LANGUAGE CONSISTENT AND CONCISE AND TO PROVIDE AN EFFECTIVE DATE THEREOF.

BE IT ORDAINED by the Mayor and City Council of the City of Papillion as follows:

Section 1: That Chapter 127, entitled “Sex Offender Residency Restriction” of the Papillion Municipal Code is amended to read as follows:

§ 127-1 Findings and intent.

A. The Nebraska Legislature, pursuant to Neb. Rev. Stat. § 29-4002, has found that sex offenders present a high risk to commit repeat offenses.

B. Sex offenders who use physical violence and prey on children present an extreme threat to public safety. These 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 sex offender victimization to society at large, while incalculable, extremely exorbitant.

C. 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 the citizens of the City by creating certain areas around locations where children regularly congregate in concentrated numbers where certain sex offenders cannot reside.

§ 127-2 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

CHILD-CARE FACILITY

A place with a license issued under the Nebraska Child-Care Licensing Act, Sections 71-1908 to 71-1923, as currently existing or hereafter amended. It shall include licensed places both inside and outside of the corporate limits of the City.

RESIDENCE

A place where a person regularly sleeps, where a person has established his or her home, where a person is temporarily domiciled or where he or she is habitually present, and to which, when he or she departs, he or she intends to return. A residence may include more than one location and may be mobile or transitory. Temporarily domiciled means a place at which a person actually lives or stays on a temporary basis, even though he or she may plan to return to his or her permanent address or to another temporary address. For purposes of this chapter, a temporary domicile means any place at which the person actually lives or stays for a period of at least three working days. Residency may be shown by, among other evidence, receipt of mail at the

premises or identification of the premises as a residence on a driver's license, vehicle registration or other document.

SCHOOL

A public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Neb. Rev. Stat. § 79 et seq.

SEX OFFENDER

Anyone who is required to register as a Sexual Offender pursuant to the Sex Offender Registration Act (Sections 29-4001 to 29-4013, inclusive, Neb. Rev. Stat.) or any amendments thereto.

SEXUAL PREDATOR

An individual who is required to register under the Nebraska Sex Offender Registration Act, who has victimized a person 18 years of age or younger and who has committed an offense which involves the penetration of, direct genital touching of, oral to anal contact with, or oral to genital contact with (a) a victim age thirteen years or older without the consent of the victim, (b) a victim under the age of thirteen years, or (c) a victim who the sex offender knew or should have known was mentally or physically incapable of resisting or appraising the nature of his or her conduct.

§ 127-3 Sex offender residence prohibitions; penalties and exceptions.

A. Prohibited location of residence. It is unlawful for any person who is subject to the Nebraska Sex Offender Registration Act and is classified as a sexual predator as herein defined to reside within 500 feet of any child-care facility or school as defined herein.

B. 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 the nearest outer boundary line of a public or nonpublic elementary or secondary school or a child-care facility.

C. Penalties. A person who violates this section shall be punished to a fine not exceeding \$500 or six months in jail, or both.

D. Exceptions. A person residing within 500 feet of any child-care facility or school does not commit a violation of this section if any of the following apply:

- (1) The person resides within a prison or a correctional or treatment facility operated by the state or a political subdivision;
- (2) The residence was established before July 1, 2006, and has not moved from that residence;
- (3) The residence was established after July 1, 2006, and the school or child-care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location; or

(4) The person becomes in violation of this chapter because of annexation into the City.

§ 127-4 Ordinance copies provided.

Any person subject to the Nebraska Sex Offender Registration Act shall, upon making request to the Papillion Police Department, be provided a copy of this ordinance and any current amendments.

§ 127-5 Severability.

If any provision of this chapter or its application to any person or circumstances shall be held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances, shall not be affected.

Section 2: That Chapter 127 of the Papillion Municipal Code, as previously enacted, should be and is hereby repealed in its entirety.

Section 3: Effective Date. This Ordinance shall be in full force and effect fifteen (15) days after its passage. The City Clerk is directed to effectuate the publishing of this Ordinance for at least one (1) week in a newspaper in general circulation within the City of Papillion, which publication must take place within fifteen (15) days of the passage of this Ordinance by the City Council. The City Clerk shall cause this Ordinance to be published in book or pamphlet form. This Ordinance shall have the same force and effect as though it had been published at large. A copy of said Ordinance shall be filed for use and examination by the public in the office of the City Clerk.

PASSED AND APPROVED THIS _____ DAY OF _____, 2023.

CITY OF PAPIILLION

David P. Black
Mayor

ATTEST:

Nicole Brown, City Clerk

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B. ~~Repeat s~~Sex offenders who use physical violence and prey on children ~~are sexual perpetrators who present an extreme threat to public safety. Certain sex offenders are extremely likely to use physical violence or to repeat their offenses.~~ These 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 sex offender victimization to society at large, while incalculable, extremely exorbitant.

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Anyone ~~who is required to register as a Sexual Offender pursuant to defined in~~ the Sex Offender Registration Act (Sections 29-4001 to 29-4013, inclusive, Neb. Rev. Stat.) or any amendments thereto, ~~or any person convicted under the law of another state if, at the time of the conviction under the law of~~

~~such other state, the offense for which the person was convicted would have required registration under the Nebraska Sex Offender Registration Act if the conviction occurred in Nebraska.~~

SEXUAL PREDATOR

An individual who is required to register under the Nebraska Sex Offender Registration Act, ~~or any person required to register under a similar law of another state, who has a high risk of recidivism as determined by the Nebraska State Patrol under Neb. Rev. Stat. § 29-4013, and~~ who has victimized a person 18 years of age or younger and who has committed an offense which involves the penetration of, direct genital touching of, oral to anal contact with, or oral to genital contact with (a) a victim age thirteen years or older without the consent of the victim, (b) a victim under the age of thirteen years, or (c) a victim who the sex offender knew or should have known was mentally or physically incapable of resisting or appraising the nature of his or her conduct.

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