

Town of Milton

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ORDINANCE NO. 2012- 08

AN ORDINANCE TO AMEND CHAPTER 174 OF THE TOWN CODE RELATING TO THE RESIDENCY RESTRICTIONS OF SEX OFFENDERS.

WHEREAS, Section 29(a)(1) of the Town Charter of the Town of Milton vests power in the Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, Section 29(a)(19) of the Town Charter of the Town of Milton vests power in the Town Council to generally to exercise all powers and authorities vested in the legislative body of incorporated towns under and by virtue of Chapter 3, Title 22 of the Delaware Code, as amended; and

WHEREAS, Chapter 3, Title 22 of the Delaware Code vests power in the Town Council, for the purpose of promoting health, safety, morals or the general welfare of the community, to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence or other purposes;

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton, a majority thereof concurring, that the following amendments to Chapter 174, with additions shown by underlining and deletions shown by strike-through, are hereby incorporated into the Town Code as follows:

§ 174-1. Definitions; word usage.

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, the words used in the present tense include the future tense, words in the plural number include the singular number, and works in a singular number include the plural number. The word "shall" is always mandatory and not merely directory.

CHILD-CARE FACILITY – A licensed day-care center, a licensed child-care facility, or any other child-care services facility exempt from licensing pursuant to the laws of the State of Delaware.

PARK – Any land, or tract of land, or facility used for passive or active recreation, including, but not limited to, playgrounds, parks, skate parks, athletic fields, and any other facility owned or operated by the Town of Milton, Sussex County, or the State of Delaware.

RESIDE – To occupy, or stay overnight in a particular parcel of the real property for a period greater than fourteen days within a one-year period. A sex offender may have more than one residence that meets this definition of "reside" at the same time.

SCHOOL – Any preschool, kindergarten, elementary school, secondary school, vocational/technical school, or any institution which has as its primary purpose the education or instruction of children under 16 years of age.

SEX OFFENDER -- Any person who is registered as a sex offender pursuant to Title 11, Chapter 41, and Subchapter III of the Delaware Code.

§ 174-2. Residency restrictions.

It shall be unlawful for any sex offender to reside, lodge, abide, or live within 3,000 feet of any school, park, or child-care facility located within the Town of Milton. The three-thousand-foot distance shall be measured by following a straight line from the outer property line at the residence or lodging of the sex offender to the nearest outer property line of the school, park, or child-care facility.

§ 174-3. Notice of violation; time to comply.

The Town shall notify any person who is in violation of this chapter, and the person shall have 60 days to comply with this chapter following notification of the first violation. The sixty-day period for compliance shall not apply to any subsequent violation, including those related to any different residence. The person shall be deemed to have been notified of the violation when he or she has been personally delivered written notice by a member of the Police Department. If a person does not comply with this chapter within the sixty-day period following the person's notification of the first violation, he or she will be in violation of this chapter and subject to the penalties hereunder. Each seven-day period following the expiration of the sixty-day period for compliance shall constitute a separate violation subject to the penalties hereunder.

§ 174-4. Violations and penalties.

A. The penalty for violation shall be punishable by a fine of up to \$1,000.

B. Nothing herein shall prevent the Town from pursuing civil remedies, including injunctive relief.

§ 174-5. Applicability and severability.

A. This chapter shall not apply to any sex offender's particular residence which was established prior to the date of adoption of this chapter, November 6, 2006. This chapter shall not apply if the school, park, or child-care facility was established subsequent to the establishment of the sex offender's residence.

B. The provisions of this chapter are severable. If any section, clause, sentence, part, or provision of this chapter shall be determined to be illegal or invalid by any court of competent jurisdiction, such decision shall not impair or affect the remaining terms, section, and clauses of this chapter.

