

SEX OFFENDERS

LOCAL LAW NO. 3 OF THE YEAR 2006

A Local Law Regulating the Movement of Certain Convicted Sex Offenders in Certain Sections of the Town of Kirkwood

Adopted February 7, 2006

Be it enacted by the Town Board of the Town of Kirkwood as follows:

Section 1. Title

This Local Law shall be known as the “Local Law Regulating the Movement of Certain Convicted Sex Offenders in Certain Sections of the Town of Kirkwood.”

Section 2. Enacting Clause

This Local Law is hereby adopted and enacted pursuant to the authority conferred by the New York State Municipal Home Rule Law, which enables local governments to adopt local laws relating to their property, affairs, or government, so long as the local laws are not inconsistent with the New York State Constitution or any general law of New York State. The New York State Municipal Home Rule Law also authorizes local governments to adopt local laws regulating the protection, order, conduct, safety, health and welfare of the persons within the local municipality. This Local Law is adopted in recognition of the recently enacted Chapter 544 of the Laws (of the State of New York) of 2005, which prohibits certain sex offenders placed on conditional release or parole or probation from entering upon school grounds or other facilities where children are cared for. The Kirkwood Town Board has determined that this Local Law is not inconsistent with said Chapter 544 of the Laws of 2005.

Section 3. Purpose

In order to safeguard and protect the health, safety and welfare of the children of the Town of Kirkwood (the “Town”), and in particular to protect the children of the Town from access by convicted sex offenders who may be present in the Town, it is hereby declared that the movement of certain convicted sex offenders must be regulated, consistent with recently enacted State law, particularly in the areas of school grounds and facilities where children are cared for.

Section 4. Definitions

- A. **Level Two Sex Offenders** – For the purposes of this Local Law, a “Level Two Sex Offender” shall be defined as a person who: 1) is convicted of an offense defined in article one hundred thirty, two hundred thirty-five or two hundred sixty-three of the New York State Penal Law **and** the victim of the offense was a person under the age of eighteen at the time of the offense; **or**, is designated as a “level two sexual offender” pursuant to subdivision six of §168-1 of the New York State Correction Law; **and** 2) by reason of his or her conviction

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for the offense, the person: a) receives a sentence of probation or conditional discharge on or after September 1, 2005; **or** b) is released on parole or a conditional release pursuant to subdivision one or two of subdivision 14 of §259-c of the New York State Executive Law on or after September 1, 2005 **or** c) is conditionally released pursuant to §70.40 of the New York State Penal Law on or after September 1, 2005.

B. School Grounds – For the purposes of this Local Law, the term “School Grounds” shall mean: 1) any area in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or 2) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section, an “area accessible to the public” shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

C. Facility or Institution Primarily Used for the Care or Treatment of Persons under the Age of Eighteen – For the purposes of this Local Law, the term “Facility or Institution Primarily Used for the Care or Treatment of Persons under the Age of Eighteen” shall mean: any facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present, including but not limited to daycare centers licensed, certified or otherwise sanctioned by the State of New York and/or a political subdivision of the State of New York.

Section 5. Prohibited Conduct

Level Two Sex Offenders are hereby prohibited from knowingly entering into or upon any School Grounds or any Facility or Institution Primarily Used for the Care or Treatment of Persons under the Age of Eighteen within the Town, provided however, that if such Level Two Sex Offender is a registered student or participant or an employee of such School Grounds or Facility or Institution Primarily Used for the Care or Treatment of Persons under the Age of Eighteen, or an entity contracting therewith, or has a family member enrolled in such School Grounds or Facility or Institution Primarily Used for the Care or Treatment of Persons under the Age of Eighteen, said Level Two Sex Offender may enter upon such facility only if a written authorization of his or her probation officer or the court and the superintendent or chief administrator of such School Grounds or Facility or Institution Primarily Used for the Care or Treatment of Persons under the Age of Eighteen is obtained and for the limited purposes authorized by the probation officer or the court and superintendent or chief officer or such School Grounds or Facility. In addition to the foregoing, such Level Two Sex Offender may also lawfully enter into or upon a School Grounds or Facility or Institution Primarily Used for the Care or Treatment of Persons under the Age of Eighteen within the Town if he or she: a) has a medical emergency requiring immediate attention at a health care provider; or b) has

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lawful business at a federal, state or local court or governmental agency; or c) is traveling on an interstate roadway, state highway, county highway or town road within the proximity of a School Grounds or a Facility or Institution Primarily Used for the Care or Treatment of Persons under the Age of Eighteen within the Town. Nothing in this Local Law shall be construed as restricting any lawful condition of supervision that may be imposed on a sentenced Level Two Sex Offender.

Section 6. Penalties

A. Any person who commits any act in violation of any provisions of this Local Law shall be deemed to have committed a misdemeanor and shall be liable for the penalties provided.

B. For each violation of the provisions of this Local Law, the person violating the same shall be subject to a fine of not more than \$1,000, or imprisonment not to exceed one year, or both.

C. In addition to the above prescribed penalty, the Town Board may also maintain an action or proceeding the name of the Town in a court of competent jurisdiction to compel compliance with this local law by injunction, abatement or otherwise compel cessation of such violation.

Section 7. Inconsistency

All Ordinances, Local Laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 8. Effective Date

This Local Law shall take effect immediately upon its filing with the office of the New York State Secretary of State.