

South Portland City Council  
***Position Paper of the City Manager***

***Subject:***

**ORDINANCE #12-13/14 - Amending Chapter 21, "Police," Establishing a Sex Offender Residency Restriction Ordinance. Passed first reading on 5/5/14. ROLL CALL VOTE. Passage requires majority vote.**

***Position:***

In 2009, the Maine Legislature enacted a law that allows municipalities to enact residency restrictions on certain sex offenders within certain limited parameters. It replaced a prior law that prohibited municipalities from enacting ordinances of any kind on this topic. The current law is the result of months of negotiations between the Maine Municipal Association, the Department of Corrections and the Maine Coalition Against Sexual Assault (with some technical assistance from the Attorney General's Office.) The resulting State enabling statute, 30-A M.R.S.A. § 3014 in effect balances the DOC and MECASA's position of not supporting any residency restrictions and the MMA's position of retaining local control over this field.

The statute is an express limitation on municipal home rule authority. In other words, a municipality may only adopt a local ordinance that restricts the residency of certain types of sex offenders in strict compliance with the statute. The proposed ordinance has been drafted with the statutory requirements in mind. The ordinance can only apply to persons convicted of serious crimes (Class A, B or C) against children under age 14 and can only prohibit residency of such persons to a maximum distance of 750 feet surrounding the real property comprising a public or private elementary, middle or secondary school or up to a maximum distance of 750 feet surrounding the real property comprising a municipally owned or state-owned property that is leased to a nonprofit organization for purposes of a park, athletic field or recreational facility that is open to the public where children are the primary users.

This ordinance was discussed at the April 28, 2014, passed first reading on May 5, 2014, and is in order for second reading and action.

***Requested Action:***

Council passage of ORDINANCE #12-13/14.

  
City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT  
Mayor

JAMES H. GAILEY  
City Manager

SUSAN M. MOONEY  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

IN CITY COUNCIL

District One  
MICHAEL R. POCK

ORDINANCE #12-13/14

**THE COUNCIL** of the City of South Portland hereby ordains that Chapter 21, "Police," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows (additions are underlined; deletions are ~~struck out~~):

District Two  
PATRICIA A. SMITH

Chapter 21

District Three  
MELISSA E. LINSOTT

POLICE

• • •

District Four  
LINDA C. COHEN

**ARTICLE III. SEX OFFENDER RESIDENCY RESTRICTIONS**

District Five  
GERARD A. JALBERT

**Sec. 21-20. Title.**

This article shall be known as the "City of South Portland Sex Offender Residency Restriction Ordinance."

At Large  
MAXINE R. BEECHER

**Sec. 21-21. Findings and purpose.**

The City promotes and strives to create a safe environment for its citizens to live and raise families and considers the promotion of the safety and welfare of children to be of paramount importance. The City recognizes that sex offenders who prey upon children may have a high rate of recidivism. Notwithstanding the fact that certain persons convicted of sex offenses or sexually violent offenses are required to register pursuant to the Maine Sex Offender Registration and Notification Act of 1999, 34-A M.R.S.A. § 11201 et seq., as may be amended from time to time, the City finds that further protective measures are necessary and warranted to safeguard places where children congregate. The purpose of this ordinance is to provide such further protective measures while balancing the interests and residential needs of sex offenders.

At Large  
THOMAS E. BLAKE

**Sec. 21-22. Authority.**

This ordinance is adopted in accordance with the provisions of 30-A M.R.S.A. § 3001 and 30-A M.R.S.A. § 3014, as may be amended from time to time.

**Sec. 21-23. Definitions.**

Setback - A 750 foot radius surrounding "Restricted Property."

Designated Sex Offender(s) - Person(s) convicted of Class A, B or C sex offenses committed against persons who had not attained 14 years of age at the time of the offense, regardless of whether the offense was committed in the State of Maine or another jurisdiction.

Residence – The temporary or permanent occupation or use of a place, including, but not limited to a domicile, for the purpose of living, residing or dwelling.

Restricted Property – (i) The real property comprising a public or private elementary, middle or secondary school; and (ii) the real property comprising a municipally owned property or State-owned property that is leased to a nonprofit organization for purposes of a park, athletic field or recreation facility that is open to the public where children are the primary users. The following properties are specially excepted from the definition of Restricted Property:

Greenbelt Walkway

**Sec. 21-24. Restricted Property map; restrictions.**

(a) The Planning Department, with the assistance of the Police Department, shall prepare and file with the City Clerk and Police Department an official map showing Restricted Property as defined by this ordinance. Said map is hereby incorporated herein and made a part of this ordinance. The Planning Department, with the assistance of the Police Department, shall by July 1 of each year recommend updates to the map to the City Council to reflect any changes in the locations of any Restricted Property and Setbacks. The City Council may amend the Restricted Property official map by Council Order, and any amended official map shall be filed with the City Clerk and the Police Department.

(b) No Designated Sex Offender shall reside within the Setback of any Restricted Property.

**Sec. 21-25. Exceptions.**

A Designated Sex Offender maintaining a residence within the Setback of a Restricted Property is not in violation of this ordinance if the residence was established and consistently maintained as a residence prior to May 19, 2014, the date of adoption of

this ordinance. A Designated Sex Offender is not in violation of this ordinance if the Restricted Property is created, moved or enlarged and such creation, movement or enlargement results in a Designated Sex Offender residing within the Setback of a Restricted Property, as long as the residence was in place and consistently maintained prior thereto.

**Sec. 21-26. Violations and penalties.**

(a) A Designated Sex Offender who, thirty (30) days after actual receipt of written notice sent by regular mail or hand-delivered from the City, acting by and through its Police Department, is in violation of this ordinance shall be subject to an action brought by the City to enforce the requirements of this ordinance. The City may file a legal action against the violator seeking any and all remedies to which it is entitled pursuant to State and local laws, including, without limitation, declaratory and injunctive relief.

(b) The City may also seek a penalty in the minimum amount of \$500.00 per day. Each day of violation shall constitute a separate violation. In the event the City is the prevailing party in any action under this ordinance, it shall be entitled to an award of its reasonable attorney's fees, court costs and the costs of any expert witness fees incurred by the City. All civil penalties shall inure to the benefit of the City of South Portland.

**Sec. 21-27. Severability.**

If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Fiscal Note: Less than \$1,000

Dated: May 5, 2014