

# Newton rejects sex offender ban

Wednesday, March 14, 2007

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NEWTON — After putting off a decision for nine months, Newton officials rejected an ordinance Monday that would have prevented sex offenders from living nearly anywhere in town, saying they are waiting for the state to take the lead on such residency restrictions.

Having tabled the ordinance at every meeting since June, the Newton Town Council brought the ordinance back up for discussion and then unanimously voted it down. The ordinance would have authorized restriction zones that could virtually make the entire 3 1/2-square mile town off-limits to convicted sex offenders registered with the state.

"I know it's a concern to everyone and I'm concerned too, but I just don't want to do something that's non-enforceable," Councilman Joseph Ricciardo said. "The state has to act first and make a law that's enforceable."

As recent court decisions show, Newton has reason to be concerned about a possible, and successful, legal challenge against its proposed sex offender residency restrictions.

A similar residency law was rejected by a Superior Court judge in Cape May County's Lower Township last fall. More recently, another judge struck down a Cherry Hill ordinance last month, saying the state's Megan's Law, which requires sex offenders to register their address, overrides the local law. Cherry Hill's 2005 law bans sex offenders from living within 2,500 feet of any school, park, church or other place "where children might congregate."

"We can't have potentially hundreds of municipalities around the state creating a hodgepodge mosaic of ordinances in an area that clearly must have a carefully crafted detailed framework," Superior Court Judge John T. McNeil wrote in his Feb. 27 opinion.

More than 40 towns across the state have enacted local laws restricting where sex offenders can live, including Franklin, Ogdensburg, Sussex Borough and Sparta in Sussex County. The Sparta ordinance imposes a 2,500-foot buffer, nearly covering the entire municipality.

"The message from those judges is they wanted the state to address the issue," said Sparta attorney Tom Ryan, who drafted the ordinance based on others from around the state. "It

wasn't arbitrary. We tried to follow some pattern of consistency. The overall perspective is subject to challenge and review."

Any decision made by either the State Legislature or the Supreme and Appellate Courts could override the Sparta ordinance, Ryan said. Some of the remaining legal questions are whether Megan's Law precludes towns from enacting their own restrictions, or the state law needs to be revised to address the subject of where sex offenders can live, he said.

Several bills introduced in the Legislature have not been put up for a vote. Two separate bills would restrict sex offenders from living within 2,500 feet of schools, playgrounds and child care centers, and a third proposal suggests a 500-foot buffer.

Newton began looking into its own ordinance early last year in response to concerns made by residents from the Merriam Avenue neighborhood, who discovered in January that the county's only Tier-3 sex offender, Thomas Ziniewicz, lives a few hundred feet from the Merriam Avenue School. Unlike other county towns, many Newton students walk to and from school.

Ziniewicz and another Tier-3 sex offender — ones with the highest risk of reoffending — are currently listed on the New Jersey State Police online directory as residents of Newton. Ziniewicz pleaded guilty in December to not living at his registered address for an extended period of time between April and May.

After considering residency bans of 500, 1,000 and 1,500 feet, the Town Council voted against a proposal Monday to restrict sex offenders from living within 2,000 feet of schools, parks, playgrounds and any other place where children congregate, Ricciardo said.

The small size of Newton has put it in a "Catch-22," however, when it comes to sex offender restrictions. If a residency ban is too large, the entire town is off-limits and the law might be unenforceable. A smaller ban could have the opposite effect of creating neighborhood pockets where sex offenders would be allowed to live, raising concerns over property values.

"It's a no-win situation till someone greater than us determines what we're going to do with this situation," Mayor Kevin Elvidge said. "You're forced to address (the issue) here at this level and then open yourself to lawsuits.

"That's (the) worst crime imaginable — to destroy a kid at a young age," Elvidge added. "It either has to be townwide or really not at all."

Some people have questioned the effectiveness of residency restrictions, saying such laws do not help prevent sex offenses committed by both relatives of children and by sex offenders who visit a neighborhood, even if they're not living there.

"They don't protect kids. They give you this stupid, false sense of security," said Jon'a F. Meyer, associate professor of criminology at Rutgers University.

Most sex offenders are less likely to commit the crimes again, but without a support network of family and friends near where they live, their problems could resurface, Meyer said. There is no legal precedent for restricting where they can live, she said.

"(Residency bans) are going to keep spreading, but at some point, where do they move?" Meyer said. "Living where people live is considered a basic right."

Bans might provide a false sense of security, Ricciardo said, but they will ease the concerns of residents living in a particular neighborhood protected by the residency restrictions.

"I agree they have to live somewhere, but do you want them in your community?" Ricciardo said. "Do you want them where they're tempted continuously?"

*The Associated Press contributed to this story.*