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Acton Police Department

InterDepartmental Memo

From: Frank J. Widmayer, Chief of Police **Date:** August 16, 2010
To: Steve Ledoux, Town Manager
Subj: Zoning ordinance for Level 2 & 3 Sex Offenders

On July 15th Det. Kevin Heffernan and I met with Christopher Miles at the police department to discuss sex offenders living or working in the Town of Acton. Det. Heffernan is the primary contact person who registers all sex offenders within the Town of Acton. The number of sex offenders within the town varies constantly due to job changes, reclassification and moving. At the time of our meeting we had 25 offenders living or working in town, 10 level-1, 11 level-2 and 4 level-3. The level 3 offenders are considered the most likely to reoffend. Over the past 10 or 12 years I have seen the total number reach the 35 range but recently it seems that many have either been reclassified or moved away.

The main concern of Mr. Miles is that a level three sex offender recently obtained a job at a business in the vicinity of the school complex and his home. As a general procedure when a level 3 offender moves or starts working we blanket the general area plus all school and daycare facilities with flyers as required by law. This notification led Mr. Miles to call the BOS and ask for a meeting. The Board referred him to me. We discussed various topics and answered his questions. In the end he told us that he intended to petition the Board of Selectmen to implement a bylaw that would address the living, working and traveling conditions that level 2 & 3 sex offenders would have to follow within the town. He also agreed to send me some information on other communities that have created bylaws. I discussed with Christopher the various issues that I felt would be a problem with a new bylaw but since he was intent on presenting his plan to the Board it really made no difference to the conversation as he was already aware of many issues based on his research.

As police chief it is my responsibility to make sure that laws are followed as opposed to creating new ones. The existing state law is complex and as Mr. Miles will present to you, changes have not been forthcoming. His attempt to create a bylaw is well intended but will also be complicated and not easily implemented. I will list a number of concerns that I have so you can make an informed decision as to whether you will proceed with the Board to create a new bylaw.

1. A new bylaw will be enforced through a civil summons commonly known as a 21D citation, similar to a marijuana possession charge or zoning violation. There

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is no right of arrest, no provision that the suspect must identify himself and the maximum fine will be \$300.

2. Any existing sex offenders who live or work in Acton will not be affected by the bylaw in regards to their living or working arrangements unless they change locations. It is very doubtful that you could create a retroactive bylaw and still get it approved by the Attorney General. In fact the suggested bylaw grandfatheres existing sex offenders already.
3. The bylaw when finished will be subject to the approval of the Massachusetts Attorney General and then will have to be voted in at a town meeting.
4. The bylaw residential limit includes nursing homes and that will be a problem in my opinion.
5. The same week that Mr. Miles was complaining about the location of the sex offender I was dealing with a business owner from a different part of town who complained that we embarrassed him and his business by posting information on a sex offender that he had recently hired. He felt that we were being unreasonable.
6. Sex offenders do not wear signs identifying them as such so enforcement of limitations on places where they can go will not be easy to implement.
7. I know of no legal way to enforce that operators of ice cream trucks not be sex offenders. Consider the fact that landscapers, tow truck drivers, plow operators, temporary restaurant employees, contractors, et al could be covered by this bylaw and we would have no idea when or where they are in town.
8. The more cumbersome the bylaw, the more enforcement resources will be necessary to enforce it. Right now we spend a lot of time registering sex offenders and making sure that we check on them several times a year. This is another unfunded state mandate. Homeless sex offenders are required to check in every 45 days already by state law. The number of them who do not report is unknown.
9. Putting a zone around certain areas such as schools, day care facilities, libraries, etc., makes it very likely that much of the town will be off-limits to sex offenders. That will either push them into smaller areas or to become homeless and not report their addresses to us. Neighbors in the areas where sex offenders are forced into will not be happy with that aspect.
10. In the original days of the sex offender law people were only able to obtain information on sex offenders within 1000 feet of the location they were interested

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in. That was an impossible task for us to implement and the law was eventually changed to include the entire town. I expect similar problems with the 500, 1000 or 2000 foot exclusion areas. Also, I seriously doubt we will be putting up signs that say, "SEX OFFENDER EXCLUSION AREA."

11. The ACLU occasionally takes interest in local bylaws of this type so beware of that possibility and the potential cost of litigation.
12. Depending on the size of the exclusionary zone if there is no reasonable amount of space left to house sex offenders the bylaw would be considered so unreasonable that it would not pass muster by the courts.
13. I mentioned to Corey York of the Engineering Department that you might be asking for some thoughts on the 500, 1000 and 1500 ft. exclusionary areas and how those calculations might affect housing possibilities for sex offenders. His response is that it can be done but will take some effort to compile the list of all the potential facilities in town. I will be meeting with him later on this week to get some idea of the resources required to get it done.
14. Instituting a new bylaw will require training and that costs money. It will also drain the resources of the police department by adding to the workload if there is no additional funding to implement it.

Those are the immediate issues that come to mind with the proposed bylaw. I will be at the meeting along with Det. Heffernan to answer any questions that might come up after the presentation by Mr. Miles.

I strongly recommend that if you decide to implement a bylaw as suggested by Mr. Miles that town counsel be included in the process.

Frank J. Widmayer III
Chief of Police