

**TOWN OF CHARLTON  
BY-LAW APPROVAL**

**TOWN BULLETIN**

**BY-LAWS VOTED AT  
NOVEMBER 25, 2008  
SPECIAL TOWN MEETING**

*Art 3*

Posted March 18, 2009

By

Susan J Nichols

Town Clerk

**Town Hall**

**Town Library**

**Center Post Office**

**City Post Office**

**Charlton Country Store**



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION  
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MARTHA COAKLEY  
ATTORNEY GENERAL

March 12, 2009

Susan J. Nichols, Town Clerk  
37 Main Street  
Charlton, MA 01507

**RE: Charlton Special Town Meeting of November 25, 2008 – Case # 4987  
Warrant Article #3 (General)**

Dear Ms. Nichols:

**Article 3** - We return with the approval of this Office the amendments to the Town by-laws adopted under this Article on the warrant for the Charlton Special Town Meeting that convened on November 25, 2008.

**I. General Description of the Proposed Sex Offender Residency By-law -**

The amendments adopted under Article 3 add to the Town's general by-laws a new by-law entitled, "Sex Offender Residency By-Law." The proposed by-law is divided into five distinct sections: Section 1 setting forth the definitions of terms used in the by-law; Section 2 restricting where certain sex offenders may establish a residence; Section 3 establishing what constitutes a violation of the proposed by-law; Section 4 establishing the penalties for violations of the proposed by-law; and Section 5 providing exceptions to the residency restrictions. More specifically, Section 2 prohibits a sex offender who is classified as a level 2 or 3 offender from establishing a residence within 2000 feet of any school, day care center, park, or elderly housing facility.<sup>1</sup>

**II. The Attorney General's Standard of Review -**

Pursuant to G.L. c. 40, § 32, the Attorney General has a limited power of disapproval with every "presumption made in favor of the validity of municipal by-laws." Amherst v. Attorney General, 398 Mass. 793, 796 (1986). If a proposed by-law is capable of any interpretation or

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<sup>1</sup> Section 2 is similar to the following by-laws previously reviewed by this Office: the Town of West Boylston (approved in part by this Office in a letter dated January 10, 2007); the Town of Dedham (approved in part by this Office in a letter dated March 24, 2008); the Town of Rockland (approved in part by this Office in a letter dated September 4, 2008); the Town of Southborough (approved in part by this Office in a letter dated October 9, 2008); the Town of Somerset (approved by this Office in a letter dated October 27, 2008); the Town of Mendon (approved in part by this Office in a letter dated December 29, 2008); the Town of Dudley (approved by this Office in a letter dated February 20, 2009); and the Town of Webster (approved by this Office in a letter dated February 24, 2009).



application that would make it a legal one, then it must be approved under G.L. c. 40, § 32. See Concord v. Attorney General, 336 Mass. 17, 24-25 (1957). The Attorney General must cite an inconsistency between the by-law adopted by the Town and the Constitution or laws of the Commonwealth. Amherst v. Attorney General, 398 Mass. at 796. For the reasons set forth in more detail below, in giving our approval of the proposed by-law, we do not opine as to whether the amendments would be held to be constitutional if reviewed by a court on a fuller factual record or whether a court would determine that the proposed by-law unconstitutionally restricts where registered sex offenders may live or travel.

As a practical matter, it is unclear whether, if a sex offender tried to move to or within the Town of Charlton, the by-law, combined with other factors, would make it reasonably possible to do so. The Town provided the Attorney General with a map that, according to the Town, depicts those portions of the Town within which the restrictions on establishing a residence set forth in Section 2 are applicable. Although the filed map indicates that there are parcels in the Town of Charlton where a sex offender could lawfully establish a residence, as a practical matter it is unclear whether the by-law, combined with other factors, makes it reasonably possible for a sex offender to move to, or within, the Town of Charlton. We caution the Town that a by-law that in particular circumstances effectively bans sex offenders from establishing a residence anywhere in a Town might be the subject of a constitutional challenge in court, the outcome of which cannot be predicted with certainty. Moreover, the Attorney General's review of the proposed by-law does not and cannot include the kind of factual inquiry a court might make in the course of resolving such a challenge.

States and municipalities across the United States have passed laws similar to what Charlton has adopted. Several state and federal courts have upheld those laws as constitutional under the United States Constitution and applicable state Constitutions.<sup>2</sup> There are also several instances in which sex offender residency restriction laws have been struck down by the courts as unconstitutional.<sup>3</sup> However, the Massachusetts courts have not yet reviewed sex offender restrictions similar to what Charlton proposes. It should also be noted that the Supreme Judicial Court has repeatedly held that the Massachusetts Constitution puts greater restrictions on the exercise of police powers than the United States Constitution.<sup>4</sup> Thus, it is possible for sex offender restrictions to be found constitutional under the federal Constitution, but unconstitutional under the Massachusetts Constitution.

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<sup>2</sup> See Doe v. Miller, 405 F.3d 700, 704 (8th Cir., 2005) (Iowa); State v. Seering, 701 N.W.2d 655 (Iowa 2005); and People v. Leroy, 357 Ill.App.3d 530 (2005).

<sup>3</sup> See G.H. v. Township of Galloway, 401 N.J. Super. 392, (2008); State v. Pollard, 886 N.E.2d 69 (2008); Mann v. Georgia Department of Corrections, et al., 282 Ga. 754, (2007); Mikaloff v. Walsh, 2007 WL 2572268 (N.D. Ohio); Elwell v. Township of Lower, 2006 WL 3797974 (N.J. Super. Ct. Law Div. 2006); City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003); State v. C.M., 746 So. 2d 410 (Ala. Crim. App. 1999).

<sup>4</sup> See Goodridge v. Dept. of Public Health, 440 Mass. 309, 329 (2003) ("The Massachusetts Constitution protects matters of personal liberty against government incursion as zealously, and often more so, than does the Federal Constitution, even where both Constitutions employ essentially the same language. Planned Parenthood League of Mass., Inc. v. Attorney Gen., 424 Mass. 586, 590, 677 N.E.2d 101 (1997); Corning Glass Works v. Ann & Hope, Inc. of Danvers, 363 Mass. 409, 416, 294 N.E.2d 354 (1973).")

If the proposed by-law, together with other factors, has the practical effect of preventing or substantially restricting sex offenders from residing in Charlton, one or more affected persons might challenge the law on due process or other constitutional grounds. In Zuckerman v. Town of Hadley, 442 Mass. 511, 512 (2004), the court held on due process grounds that “absent exceptional circumstances . . . restrictions of unlimited duration on a municipality’s rate of development are in derogation of the general welfare and thus are unconstitutional.” In Zuckerman, the court viewed the Town’s rate-of-growth by-law as pushing away its burden of accommodating new residents because its by-law limited the number of building permits that could be issued each year for single-family homes. Zuckerman, 442 Mass. at 519-20. “Despite the perceived benefits that enforced isolation may bring to a Town facing a new wave of permanent home seekers, it does not serve the general welfare of the Commonwealth to permit one particular Town to deflect that wave onto its neighbors.” Id. at 519. Similarly, Charlton’s proposed by-law might be seen as an effort to avoid what a court might characterize as the Town’s shared burden of accommodating sex offenders. Although Zuckerman involved a challenge to a rate-of-growth by-law, its principle might be held to apply to sex offender residency restrictions. But see id. at 517-18 (“Like all . . . towns, Hadley may, in an effort to preserve its character and natural resources, adopt any combination of zoning bylaws, and participate in a wide variety of State-enacted programs, that may, as a practical matter, limit growth by physically limiting the amount of land available for development.”) (footnotes omitted).

We note that the public safety concerns that apparently motivate the Town are very real. The Attorney General shares those concerns. Moreover, we cannot conclude that, under the governing constitutional standards, the purpose and effect of the proposed by-law are “punitive,” let alone so clearly punitive as to trigger constitutional protections related to “punishment.” See, e.g., Smith v. Doe, 538 U.S. 84, 92, 105 (2003).

Some may question, however, whether the local legislative response is appropriately focused on the public safety risks it seeks to prevent and whether the nature and magnitude of the restrictions imposed by the proposed by-law can be reconciled with applicable provisions of the Constitution and laws of the Commonwealth. Moreover, it is unclear whether by-laws such as the one Charlton proposes actually achieve their presumed objectives. To some extent the proposed by-law might be argued to frustrate the legislative objectives of the state’s Sex Offender Registry Act, G.L. c. 6, §§ 178C-178Q, by creating a disincentive for sex offenders to comply with the Act’s registration requirements. It has been reported that in other jurisdictions such measures have resulted in a drop in registration compliance and in sex offenders “disappearing.” Dwight H. Merriam, Residency Restrictions for Sex Offenders: A Failure of Public Policy, Planning & Environmental Law, Oct. 2008, at 11. Whether this is a consequence that would render the proposed by-law fatally inconsistent with state law, however, is in part a fact-dependent matter, beyond the scope of the Attorney General’s by-law review function, and therefore an issue for the courts to decide.

### **III. Analysis of Specific Sections of the Sex Offender Residency By-law -**

#### **A. Section 1 “Definitions:” -**

Section 1 defines a number of terms.

1. Section 1 (f) -

Section 1 (f) defines “Sex Offender Registry” but that term is not used anywhere in the proposed by-law.<sup>5</sup> The Town may wish to delete this definition from the proposed by-law.

2. Section 1 (i) -

Section 1 (i) defines “Establishing a Residence” and provides as follows (with emphasis added):

“Establishing a Residence” - To set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location, and may be mobile or transitory, or the establishment of such a dwelling place or abode by means of purchasing real property or entering into a lease or rental agreement for real property (including a renewal or extension of a prior agreement whether through written execution or automatic renewal if such renewal or extension occurs after the effective date of this bylaw).

The above underlined text in the definition of “Establishing a Residence” was added as an amendment to the Main Motion adopted under Article 3. The text “if such renewal or extension occurs after the effective date of this bylaw” makes it clear that a renewal or extension, when it occurs (after the by-law’s effective date) constitutes establishing a residence, and so is subject to the by-law’s prohibitions.<sup>6</sup>

Including renewals or extensions in the definition of “Establishing a Residence,” and subjecting them to the by-law’s prohibitions, could lead to various constitutional challenges. Applying the proposed by-law to a sex offender who has entered into a lease agreement with a renewal provision might be challenged as depriving a sex offender of his or her economic interest in the property.<sup>7</sup> Also, requiring a sex offender to move if the sex offender has entered into a “lease or rental agreement” but not if the sex offender actually owns the home may be attacked as having no rational relationship to the interests the by-law seeks to protect, and thus as violating substantive due

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<sup>5</sup> The proposed by-law includes references to the “Sex Offender Registry Board,” which is different than the Sex Offender Registry.

<sup>6</sup> In previous letters we have cautioned Towns that it is unclear whether the phrase “including a renewal or extension of a prior agreement whether through a written execution or automatic renewal” means (1) a renewal or extension is within the exceptions to the by-laws, or instead (2) that a renewal or extension, when it occurs (after the by-law’s effective date) constitutes establishing a residence, and so is subject to the by-law’s prohibitions. See e.g. The Attorney General’s Letter to the Town of Southborough dated October 9, 2008.

<sup>7</sup> See Mann v. Georgia Department of Corrections, et al., 282 Ga. 754, (2007) (upholding a challenge to a residency restriction prohibiting registered sex offenders from residing within 1,000 feet of a child care facility as an unconstitutional taking of property primarily on the lack of a “move-to-the-offender” exception. The effect of the statute was an “immediate physical removal” from the offenders residence that made such removal “functionally equivalent to the classic taking in which government directly . . . ousts the owner from his domain); Polednak v. Rent Control Bd. of Cambridge, 397 Mass. 854, 861-62 (1986) (concluding that a taking occurs if an ordinance is applied retroactively and interferes with the plaintiff’s primary expectation concerning the use of the property).

process or equal protection under the Federal and State Constitutions. Finally, to the extent a sex offender has a protected liberty interest in not being forced to move from his or her home, a court could conclude that before imposing such a liberty deprivation there must be procedural due process. See Doe v. Attorney General, 426 Mass. 136, 143 (1997).

We cannot conclude that this definition of “Establishing a Residence” is *facially* unconstitutional under the governing constitutional standards, and on this basis we approve it. However, we strongly suggest that the Town discuss this issue in more detail with Town Counsel.

**B. Section 2. “Sex Offender Residence Prohibition.” and Section 3. “Notice to Move.” -**

Section 2 of the proposed by-law imposes residency restrictions on sex offenders who are classified as a level 2 or level 3 offender and provides in pertinent part as follows (with emphasis added):

It is unlawful for any sex offender who is finally classified as a level 2 or 3 sex offender pursuant to the guidelines of the Massachusetts Sex Offender Registry Board, so long as so classified, to establish a permanent residence within 2000 feet for level 2 and 3 offenders of any school, day care center, park or elderly housing facility. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence to the nearest outer property line of a school, day care center, park or elderly housing facility.

Section 3 of the proposed by-law establishes what constitutes a violation of the proposed by-law and provides in pertinent part as follows (with emphasis added):

Any level 2 or level 3 sex offender, so long as classified, who establishes a permanent residence within 2000 feet for level 2 and 3 offenders of any school, day care center, park or elderly housing facility shall be in violation of this section and shall, within thirty (30) days of receipt of written notice of the sex offender’s noncompliance with this chapter, move from said location to a new location, but said location may not be within 2000 feet for level 2 and 3 offenders of any school, day care center, park or elderly housing facility. Furthermore, it shall be a separate violation each day that a sex offender shall move from one location in the Town of Charlton to another that is within five hundred (500) feet of any school, day care center, park or elderly housing facility.

We approve Sections 2 and 3. However, in order to avoid a vagueness challenge and to make the proposed by-law easier to read (and therefore to comply with), we strongly suggest that the Town delete the extraneous phrase “for level 2 and 3 offenders” after the words “2000 feet” in Sections 2 and 3.

In approving Section 3, we also caution the Town that, unless the term “classified” in Section 3 is applied only to those offenders who have been finally classified by the Sex Offender Registry Board under 803 C.M.R. §§ 1.13 or 1.22-1.23, the application of the by-law could be challenged under Doe v. Attorney General, 430 Mass. 155 (1999) (absent narrowly tailored regulations for specific offense categories, sex offenders are constitutionally entitled to opportunity for individualized hearings before being classified and being subjected to deprivation of liberty interests as a result). Applying the term “classified” in Section 3 to those offenders who have received a recommended classification under 803 C.M.R. § 1.07, and who have requested but not yet received

an evidentiary hearing before final Board classification, would be problematic under Doe. The Town may wish to clarify this language at a future Town Meeting, and consult with Town Counsel as to the proper application of the current text.

Section 3 provides that any level 2 or level 3 sex offender who establishes a permanent residence within 2000 feet of any school, day care center, park or elderly housing facility shall be in violation of this section. Further, Section 3 provides that any such offender shall, within 30 days of receipt of written notice of the sex offender's noncompliance with "this chapter," move from said location to a new location that is in compliance with the proposed by-law's residency restrictions. It is unclear what "this chapter" in Section 3 refers to; depending on the Town's intent, the phrase "this by-law" might be more apt. The Town may wish to clarify this language at a future Town Meeting.

C. Section 5. "Exceptions:" -

Section 5 of the proposed by-law pertains to exceptions from the proposed by-law's residency restrictions and provides as follows:

A person residing within 2000 feet for level 2 and 3 offenders of any school, day care center, park or elderly housing facility does not commit a violation of this section if any of the following apply:

- (a) The person established the permanent residence and reported and registered the residence, in accordance with the regulations of the Massachusetts Sex Offender Registry Board, prior to the effective date of this by-law.
- (b) The person was a minor when he/she committed the offense and was not convicted as an adult and who has not been or is no longer classified as a Level 3 sex offender.
- (c) The person is a minor.
- (d) The school, day care center, park or elderly housing facility within 2000 feet for level 2 and 3 offenders of the personal permanent residence was established after the person established the permanent residence and reported and registered the residence pursuant to the Sex Offender Registry Law.
- (e) The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility located within the aforementioned 2000 feet for level 2 and 3 offenders area.
- (f) The person is admitted to and/or subject to an order of commitment at a public or private facility for the care and treatment of mentally ill persons pursuant to G.L. c. 123 located within the aforementioned 2000 feet for level 2 and 3 offenders area.
- (g) The person is a mentally ill person subject to guardianship pursuant to G.L. c. 201, § 6 or a mentally retarded person subject to guardianship pursuant to G.L. c. 201 § 6A, residing with his or her guardian or residing within a facility or group residence licensed by the Commonwealth that is professionally staffed and supervised 24 hours a day and located within the aforementioned 2000 feet for level 2 and 3 offenders area.

Section 5 is captioned, "Exceptions" and the first paragraph provides that a person residing within "2000 feet for level 2 and 3 offenders" of any school, day care center, park, elderly housing facility does not commit a violation of this section if the person satisfies any of seven criteria set forth in Subsections (a) through (g). We caution the Town to delete the words "for level 2 and 3 offenders" throughout Section 5 for the same reasons given above in Sections 2 and 3 (see pages 4-5).

We also caution the Town that Section 5 does not define any violation. It is unclear what "this section" in Section 5 applies to; depending on the Town's intent, the phrase "this by-law" might be more apt. The Town may wish to clarify this language at a future Town Meeting.

1. Sections 5 (a) and (d) -

Section 5 (a) exempts from the prohibitions of the proposed by-law a person who establishes a permanent residence and reports and registers the residence, "in accordance with the regulations of the Massachusetts Sex Offender Registry Board" before the effective date of the proposed by-law. Section 5 (d), using slightly different terms; exempts from the prohibitions of the proposed by-law a person who establishes a permanent residence and reports and registers the residence, "pursuant to the Sex Offender Registry Law" and a school, day care center park, or elderly housing facility is later established within 2000 feet of the person's permanent residence. The Town may wish to amend Sections 5 (a) and (d) to make the reporting and registering requirements consistent.

2. Sections 5 (e), (f), and (g) -

Sections 5 (e), (f), and (g) provide exceptions from the prohibitions of the proposed by-law for persons who are required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility; who are committed to a public or private facility for the care and treatment of mentally ill persons; or who are subject to a guardianship and residing with a guardian or in a group residence. It is unclear whether the exceptions in Sections 5 (e), (f), and (g) provide exceptions for persons residing in such facilities in Charlton, or instead provide exceptions for persons who are away from their Charlton residence. The Town may wish to clarify this language at a future Town Meeting.

**IV. Conclusion -**

While we approve the amendments adopted under Article 3 that add a new Sex Offender Residency By-law to the Town's general by-law, we strongly urge the Town to discuss the application and effectiveness of the proposed by-law with Town Counsel.

**Note:** Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

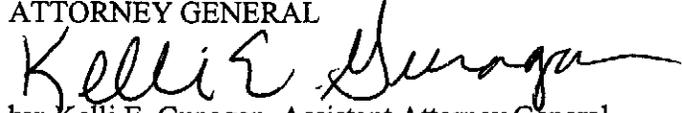
If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and

published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Kelli E. Gunagan", written over the typed name.

by: Kelli E. Gunagan, Assistant Attorney General  
By-law Coordinator, Municipal Law Unit  
1350 Main Street, 4<sup>th</sup> Floor  
Springfield, MA 01103-1629  
(413) 784-1240

enc.

cc: Town Counsel



## VOTE CERTIFICATE

### TOWN OF CHARLTON

At a legal ~~election~~ meeting of the qualified voters of The Town of Charlton, held Nov. 25 2008 the following business was transacted under Article 3

#### **ARTICLE 3. TOWN OF CHARLTON SEX OFFENDER RESIDENCY BY-LAW**

To see if the town will vote to adopt the following by-law regulating residency for registered sex offenders or take any action relative thereto or thereon.

#### **SECTION 1. DEFINITION OF TERMS:**

- (a) "PARK" means public land designated for active or passive recreational or athletic use by the Town of Charlton, the Commonwealth of Massachusetts or other governmental subdivision, and located within the Town of Charlton.
- (b) "SCHOOL" means any public or private educational facility that provides services to children in grades kindergarten - 12, or any one or more of such grades.
- (c) "DAY CARE CENTER" means an establishment, whether public or private, which provides care for children and is registered with and licensed pursuant to the laws of the Commonwealth of Massachusetts by the Office of Child Care Services.
- (d) "ELDERLY HOUSING FACILITY" means a building or buildings on the same lot containing four or more dwelling units restricted to occupancy by households having one or more members fifty-five years of age or older.
- (e) "SEX OFFENDER" means a person who resides in, works in, or attends an institution of higher learning located in, the commonwealth and who has been convicted of a sex offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense, or a person released from incarceration or parole or probation supervision or custody with the Department of Youth Services for such a conviction or adjudication, or a person who has been adjudicated a sexually dangerous person under G.L. c. 123 A, § 14, as in force at the time of adjudication, or a person released from civil commitment pursuant to section 9 of said chapter 123 A, whichever last occurs, on or after August 1, 1981.

- (f) "SEX OFFENDER REGISTRY" means the collected information and data that is received by the criminal history systems board pursuant to Sections 178C to 178P, inclusive, as such information and data is modified or amended by the sex offender registry board or a court of competent jurisdiction pursuant to said Sections 178C to 178P, inclusive.
- (g) "PERMANENT RESIDENCE" means a place where a person lives, abides, lodges, or resides for five (5) or more consecutive days or fourteen (14) or more days in the aggregate during any calendar year.
- (h) "TEMPORARY RESIDENCE" means a place where a person lives, abides, lodges, or resides for a period of less than five (5) consecutive days or fourteen (14) days in the aggregate during any calendar year, which is not the person's permanent address or place where the person routinely lives, abides, lodges, or resides and which is not the person's permanent residence.
- (i) "ESTABLISHING A RESIDENCE" means to set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location, and may be mobile or transitory, or the establishment of a such a dwelling place or abode by means of purchasing real property or entering into a lease or rental or occupancy agreement for real property (including a renewal or extension of a prior agreement whether through written execution or automatic renewal).

## SECTION 2. SEX OFFENDER RESIDENCE PROHIBITION:

It is unlawful for any sex offender who is finally classified as a level 2 or 3 offender pursuant to the guidelines of the Massachusetts Sex Offender Registry Board, to establish a permanent residence within five hundred (500) feet of any school, day care center, park or elderly housing facility. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence to the nearest outer property line of a school, day care center, park or elderly housing facility.

## SECTION 3. NOTICE TO MOVE:

Any registered level 2 or level 3 sex offender who establishes a permanent residence within five hundred (500) feet of any school, day care center, park or elderly housing facility shall be in violation of this section and shall, within thirty (30) days of receipt of written notice of the sex offender's noncompliance with this chapter, move from said location to a new location, but said location may not be within five hundred (500) feet of any school, day care center, park or elderly housing facility. It shall constitute a separate violation for each day beyond the thirty (30) days the sex offender continues to reside within five hundred (500) feet of any school, day care center, park or elderly housing facility. Furthermore, it shall be a separate violation each day that a sex offender shall move from one location in the Town of Charlton to another that is within five hundred (500) feet of any school, day care center, park or elderly housing facility.

## SECTION 4. PENALTIES:

Violation of this bylaw, or of any regulation adopted hereunder, may be enforced through any lawful means in law or in equity by the Board of Selectmen, the Town Administrator, or their duly authorized agents, or any police officer of the Town of Charlton including, but not limited to, enforcement by non-

criminal disposition pursuant to G.L. c. 40, § 21D. Each day a violation exists shall constitute a separate violation. The penalties shall be as follows:

- (a) First Offense: Notification to offender that he/she has thirty (30) days to move.
- (b) Subsequent Offense: Non-criminal fine of \$300.00 and notification to the offender's landlord, parole officer and/or probation officer and the Commonwealth's Sex Offender Registry Board that the person has violated a municipal bylaw.

#### SECTION 5. EXCEPTIONS:

A person residing within five hundred (500) feet of any school, day care center, park or elderly housing facility does not commit a violation of this section if any of the following apply:

- (a) The person established the permanent residence and reported and registered the residence, in accordance with the regulations of the Massachusetts Sex Offender Registry Board, prior to the effective date of this by-law.
- (b) The person was a minor when he/she committed the offense and was not convicted as an adult.
- (c) The person is a minor.
- (d) The school, day care center, park or elderly housing facility within five hundred (500) feet of the personal permanent residence was established after the person established the permanent residence and reported and registered the residence pursuant to the Sex Offender Registry Law.
- (e) The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility located within the aforementioned 500 foot area.
- (f) The person is admitted to and/or subject to an order of commitment at a public or private facility for the care and treatment of mentally ill persons pursuant to G.L. c. 123 located within the aforementioned 500 foot area.
- (g) The person is a mentally ill person subject to guardianship pursuant to G.L. c. 201, § 6 or a mentally retarded person subject to guardianship pursuant to G.L. c. 201 § 6A, residing with his or her guardian or residing within a group residence that is professionally staffed and supervised 24 hours a day and located within the aforementioned 500 foot area.

**SPONSOR:** Police Department

**Motion and second made that the Town vote to adopt the bylaw as printed in the warrant under Article 3 but with the following amendments:**

**In Section 1, subparagraph (c) by deleting the words "Office of Child Care Services" and substituting therefore the words "Department of Early Education and Care".**

**Also in Section 1, by deleting subparagraph (h) "TEMPORARY RESIDENCE" in its entirety, since the term temporary residence is not used anywhere else in the proposed bylaw, and by re-designating what is labeled subparagraph (i) as subparagraph (h).**

**Also in Section 1, in the foregoing subparagraph (i), now to be redesignated (h), by adding at the end of the text as printed in the warrant the following words, "if such renewal or extension occurs after the effective date of this bylaw."**

**In Section 2, second line, immediately following the words "Massachusetts Sex Offender Registry Board", by inserting a comma immediately followed by the words "so long as so classified" immediately followed by another comma.**

**In Section 3, first line, by deleting the word "registered" and inserting immediately following the word "offender" the words "so long as so classified".**

**In Section 4, first line, by deleting the comma which immediately follows the word "bylaw", further deleting the words "or of any regulation adopted hereunder" and further deleting the comma which immediately follows the aforementioned word "hereunder".**

**In Section 5, subparagraph (b), by adding at the end of the text the words "and who has not been or is no longer classified as a Level 3 sex offender".**

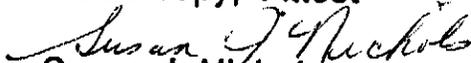
**Also in Section 5, subparagraph (g) by deleting the words "group residence" and substituting therefore the words "facility or group residence licensed by the Commonwealth."**

**Board of Selectmen and Finance Committee support the Article.  
Majority vote needed.**

**An amendment to the Main Motion was the made that:  
Throughout Article 3, each instance of the words "500 feet" be replaced with the words "2000 feet for level 2 and 3 offenders".  
Amendment passes by Majority Voice Vote.**

**Main Motion for Article 3 passes as amended by Unanimous Voice Vote.**

A true copy, Attest

  
Susan J. Nichols  
Town Clerk

TOWN SEAL

*final version*

## **SEX OFFENDER RESIDENCY BY-LAW**

### **SECTION 1. DEFINITION OF TERMS:**

- (a) "PARK" means public land designated for active or passive recreational or athletic use by the Town of Charlton, the Commonwealth of Massachusetts or other governmental subdivision, and located within the Town of Charlton.
- (b) "SCHOOL" means any public or private educational facility that provides services to children in grades kindergarten – 12, or any one or more of such grades.
- (c) "DAY CARE CENTER" means an establishment, whether public or private, which provides care for children and is registered with and licensed pursuant to the laws of the Commonwealth of Massachusetts by the Department of Early Education and care
- (d) "ELDERLY HOUSING FACILITY" means a building or buildings on the same lot containing four or more dwelling units restricted to occupancy by households having one or more members fifty-five years of age or older.
- (e) "SEX OFFENDER" means a person who resides in, works in, or attends an institution of higher learning located in, the commonwealth and who has been convicted of a sex offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense, or a person released from incarceration or parole or probation supervision or custody with the Department of Youth Services for such a conviction or adjudication, or a person who has been adjudicated a sexually dangerous person under G.L. c. 123 A, § 14, as in force at the time of adjudication, or a person released from civil commitment pursuant to section 9 of said chapter 123 A, whichever last occurs, on or after August 1, 1981.
- (f) "SEX OFFENDER REGISTRY" means the collected information and data that is received by the criminal history systems board pursuant to Sections 178C to 178P, inclusive, as such information and data is modified or amended by the sex offender registry board or a court of competent jurisdiction pursuant to said Sections 178C to 178P, inclusive.
- (g) "PERMANENT RESIDENCE" means a place where a person lives, abides, lodges, or resides for five (5) or more consecutive days or fourteen (14) or more days in the aggregate during any calendar year.
- (h) "ESTABLISHING A RESIDENCE" means to set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location, and may be mobile or transitory, or the establishment of a such a dwelling place or abode by means of purchasing real property or entering into a lease or rental or occupancy agreement for real property (including a renewal or extension of a prior agreement whether through written execution or automatic renewal), if such renewal or extension occurs after the effective date of this bylaw.

## SECTION 2. SEX OFFENDER RESIDENCE PROHIBITION:

It is unlawful for any sex offender who is finally classified as a level 2 or 3 offender pursuant to the guidelines of the Massachusetts Sex Offender Registry Board, so long as so classified, to establish a permanent residence within two thousand (2,000) feet of any school, day care center, park or elderly housing facility. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence to the nearest outer property line of a school, day care center, park or elderly housing facility.

## SECTION 3. NOTICE TO MOVE:

Any level 2 or level 3 sex offender so long as classified who establishes a permanent residence within two thousand (2,000) feet for level 2 and 3 offenders of any school, day care center, park or elderly housing facility shall be in violation of this section and shall, within thirty (30) days of receipt of written notice of the sex offender's noncompliance with this chapter, move from said location to a new location, but said location may not be within two thousand (2,000) feet for level 2 and 3 offenders of any school, day care center, park or elderly housing facility. It shall constitute a separate violation for each day beyond the thirty (30) days the sex offender continues to reside within two thousand (2,000) feet for level 2 and 3 offenders of any school, day care center, park or elderly housing facility. Furthermore, it shall be a separate violation each day that a sex offender shall move from one location in the Town of Charlton to another that is within two thousand (2,000) feet for level 2 and 3 offenders of any school, day care center, park or elderly housing facility.

## SECTION 4. PENALTIES:

Violation of this bylaw may be enforced through any lawful means in law or in equity by the Board of Selectmen, the Town Administrator, or their duly authorized agents, or any police officer of the Town of Charlton including, but not limited to, enforcement by non-criminal disposition pursuant to G.L. c. 40, § 21D. Each day a violation exists shall constitute a separate violation. The penalties shall be as follows:

- (a) First Offense: Notification to offender that he/she has thirty (30) days to move.
- (b) Subsequent Offense: Non-criminal fine of \$300.00 and notification to the offender's landlord, parole officer and/or probation officer and the Commonwealth's Sex Offender Registry Board that the person has violated a municipal bylaw.

## SECTION 5. EXCEPTIONS:

A person residing within two thousand (2,000) feet of any school, day care center, park or elderly housing facility does not commit a violation of this section if any of the following apply:

- (a) The person established the permanent residence and reported and registered the residence, in accordance with the regulations of the Massachusetts Sex Offender Registry Board, prior to the effective date of this by-law.
- (b) The person was a minor when he/she committed the offense and was not convicted as an adult and who has not been or is no longer classified as a Level 3 sex offender.
- (c) The person is a minor.
- (d) The school, day care center, park or elderly housing facility within two thousand (2,000) feet for level 2 and 3 offenders of the personal permanent residence was established after the person established the permanent residence and reported and registered the residence pursuant to the Sex Offender Registry Law.
- (e) The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility located within the aforementioned 2,000 foot area.
- (f) The person is admitted to and/or subject to an order of commitment at a public or private facility for the care and treatment of mentally ill persons pursuant to G.L. c. 123 located within the aforementioned 2,000 foot area.
- (g) The person is a mentally ill person subject to guardianship pursuant to G.L. c. 201, § 6 or a mentally retarded person subject to guardianship pursuant to G.L. c. 201 § 6A, residing with his or her guardian or residing within a facility or group residence licensed by the Commonwealth that is professionally staffed and supervised 24 hours a day and located within the aforementioned 2,000 foot area.