

ORDINANCE NO. 14-M-23

AN ORDINANCE AMENDING CHAPTER 75 OF THE CITY OF SCHERTZ CODE OF ORDINANCES MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 1000 FEET OF A CHILD SAFETY ZONE; MAKING IT ILLEGAL FOR SEX OFFENDERS TO GO IN, ON, OR WITHIN 1000 FEET OF A CHILD SAFETY ZONE; PROVIDING EXCEPTIONS TO THE ORDINANCE; AND PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE

WHEREAS, the City of Schertz, Texas (the "City"), has a compelling interest in protecting the health, safety and welfare of children by reducing opportunities for sexual predators to come in contact with children; and

WHEREAS, victims of childhood sexual abuse are known to suffer long-lasting emotional, behavioral, psychological, and other physical and mental health-related trauma; and

WHEREAS, studies readily available in the public domain, one of which is attached hereto as Exhibit A, indicate that individuals commonly commit crimes in close proximity to where they reside; and

WHEREAS, courts upholding the validity of similar residency restrictions, including the court in *Doe v. Miller*, 405 F.3d 700, 715 (8th Cir. 2004), *cert. denied*, *Doe v. Miller*, 546 U.S. 1034 (2005), attached hereto as Exhibit B, have determined that "when convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault"; and

WHEREAS, to protect children from sex offenders, the City Council finds it necessary to amend the City's Code of Ordinances, Chapter 75, to create restrictions prohibiting registered sex offenders from residing near or going in, on, or within Child Safety Zones (hereinafter defined); and

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code and the City's Charter, authorize the City to adopt ordinances for the good government, peace, order, and welfare of the City; and

WHEREAS, the Texas Legislature has deemed it appropriate in Article 42.12 (13B) of the Texas Code of Criminal Procedure to establish a 1000-foot safety zone for children as a condition of community supervision for those convicted of certain sexual offenses; and

WHEREAS, the City Council of the City hereby finds and determines that sexual offenders who prey on children are a threat to the public health, welfare, and safety of the citizens of the City; and

WHEREAS, the City Council hereby finds and determines that prohibiting individuals required to register on the Texas Department of Public Safety's Sex Offender Database from residing near or going in, on, or within a Child Safety Zone (hereinafter defined) will reduce opportunities for sexual offenders to come into contact with children; and

WHEREAS, the City Council hereby finds and determines that the City's residency restriction and prohibition on going in, on, or within a Child Safety Zone (hereinafter defined) on sex offenders is consistent with the current child safety zone statutes established by Article 42.12 (13B) of the Texas Code of Criminal Procedure; and

WHEREAS, the City finds and determines that rules and regulations adopted herein promote the public health, welfare, and safety of the citizens of the City.

NOW THEREFORE; BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS:

SECTION 1. CODE AMENDMENT. That Chapter 75 of the Code of Ordinances is amended by adding a new Chapter 75 to read as follows:

CHAPTER 75

SEXUAL OFFENDER RESIDENCY AND CHILD SAFETY ZONE RESTRICTIONS

Sec. 75-1. Definitions. For purposes of this Section, the following terms, words, and the derivation thereof shall have the meaning given herein.

Child means any person under the age of seventeen (17).

Child Safety Zone means any premises that is used as a school, licensed day-care facility, private or public playground, public or private youth center, public swimming pool, video arcade facility, public or private park, or public library.

In this section, "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134 of the Texas Health and Safety Code, as amended.

Database means the Texas Department of Public Safety's Sex Offender Database.

Day-Care Facility means a facility licensed by the State of Texas, which provides care, training, education, custody, treatment, or supervision for children for less than twenty-four (24) hours a day.

Public or Private Park means (i) any land designated for public recreation or any athletic field that is owned, leased, or maintained by the City, including, but not limited to, conservation areas, recreational centers, skate parks, water parks, or public swimming pools or (ii) any private land

that is used by the general public as a recreational or park area, including, but not limited to, a park or playground maintained by a community home owners' association.

Residence, Permanent means the place within the City that a person registers or verifies under Article 62.152, Texas Code of Criminal Procedure, as the person's residence.

Residence, Temporary means a place where a person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where a person routinely abides, resides, or lodges for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Sex Offender means an individual who has been convicted of or placed on deferred adjudication for a sexual offense involving a person under seventeen (17) years of age for which the individual is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

Sec. 75-2. Sexual Offenders Residence Prohibition

- (a) It is unlawful for a Sex Offender to establish a Permanent Residence or Temporary Residence within 1000 feet of any Child Safety Zone.
- (b) A Sex Offender shall not on each October 30th and 31st (or any date set by the City for trick-or-treaters) between the hours of 4:00 p.m. and 11:00 p.m. leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the premises.
- (c) For the purposes of subsection (a), measurement is made in a straight line, without regard to intervening structures or objects, from the nearest portion of the Permanent Residence or Temporary Residence to the nearest property line of the Child Safety Zone.
- (d) It is a defense to prosecution under this section that a person who has a Permanent Residence or Temporary Residence within 1000 feet of a Child Safety Zone:
 - (1) Is under 18 years of age and:
 - (A) resides with the person's parent or legal guardian; or
 - (B) has not been convicted of an offense after the effective date of this Ordinance that:
 - (i) requires the person to register under Article 62.001(5), Texas Code of Criminal Procedure; and
 - (ii) involves a victim or intended victim under seventeen (17) years of age;

(2) Established the Permanent Residence or Temporary Residence and complied with all the sexual offender registration laws of the State of Texas prior to the effective date of this Ordinance, and has not been convicted of an offense after the effective date of this Ordinance that:

(A) requires the person to register under Article 62.001(5), Texas Code of Criminal Procedure; and

(B) involves a victim or intended victim under seventeen (17) years of age; or

(3) Established the Permanent Residence or Temporary Residence and complied with all sexual offender registration laws of the State of Texas prior to the date a new Child Safety Zone is established, and has not been convicted of an offense after the effective date of this Ordinance, or the date the new Child Safety Zone is established, that:

(A) requires the person to register under Article 62.001(5), Texas Code of Criminal Procedure; and

(B) involves a victim or intended victim under seventeen (17) years of age.

- (e) For purposes of Subsection (d), a person is considered to have established a residence at a correctional facility, as that term is defined under Section 1.07(14), Texas Penal Code, in which the person is confined for more than seven consecutive days after the effective date of this Ordinance for a conviction of any sexual offense involving a person under seventeen (17) years of age.
- (f) It is a defense to prosecution under this section that the person required to register on the Database has been exempted by a court order from registration as a Sex Offender under Chapter 62, Texas Code of Criminal Procedure.
- (g) It is a defense to prosecution under this section that the person required to register on the Database has had the offense for which the Sex Offender registration was required reversed on appeal or pardoned.
- (h) It is a defense to prosecution under this section that the person's duty to register on the Database has expired.
- (i) It is a defense to prosecution under this section that the information on the Database is incorrect, and the person listed on the Database can provide evidence to show such error.
- (j) It is not a defense to prosecution under this section that a person, who is required to register as a Sex Offender under the Texas Code of Criminal Procedure, was allowed by mistake or error of the City to reside in a Permanent Residence or Temporary Residence that is within 1000 feet of any Child Safety Zone.

Sec. 75-3. Sexual Offenders Prohibited from Going In, On, or Within Child Safety Zones.

- (a) It is unlawful for a Sex Offender to knowingly or intentionally go in, on, or within 1000 feet of a Child Safety Zone.
- (b) Upon discharge from community supervision or parole, it is a defense to prosecution under this section that, at the time a person prohibited from going in, on, or within a Child Safety Zone pursuant to sub-section (a) went in, on, or within the Child Safety Zone,
 - (1) such person was the parent or legal guardian of a child 18 years of age or younger who resides with the person; and
 - (2) the child was on the premises of the Child Safety Zone.
- (c) It is a defense to prosecution under this section that the person required to register on the Database has been exempted by a court order from registration as a Sex Offender under Chapter 62, Texas Code of Criminal Procedure.
- (d) It is a defense to prosecution under this section that the person required to register on the Database has had the offense for which the Sex Offender registration was required reversed on appeal or pardoned.
- (e) It is a defense to prosecution under this section that the person's duty to register on the Database has expired.
- (f) It is a defense to prosecution under this section that the information on the Database is incorrect, and the person listed on the Database can provide evidence to show such error.

Section 75-4. Child Safety Zone Map. The Schertz Police Department will maintain a map illustrating the Child Safety Zones in the City. The City shall review the map annually for changes. This map will be available to the public at the Schertz Police Department or available on both the City website and the Schertz Police Department website.

Section 75-5. Penalties. Any person found guilty of violating this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed the maximum amount allowed by law. Each day that a violation exists shall constitute a separate offense.

SECTION 2. CUMULATIVE CLAUSE. This Ordinance shall be cumulative of all provisions of the City, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

SECTION 3. SEVERABILITY. It is hereby declared to be the intention of the City Council of the City that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this Ordinance of any such unconstitutional phrases, clause, sentence, paragraph, or section.

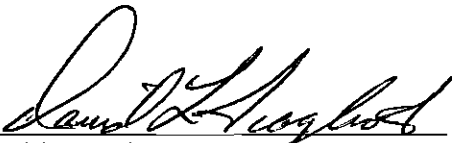
SECTION 4. PROPER NOTICE AND MEETING. It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, as amended.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be effective upon passage and publication as required by State and local law.

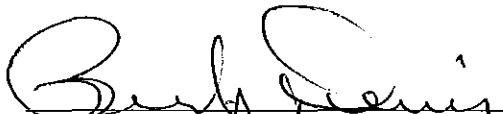
PASSED and APPROVED on first reading this the 15th day of July, 2014.

PASSED, APPROVED and ADOPTED on second reading this the 22nd day of July

APPROVED:


David Scagliola, Mayor Pro-Tem

ATTEST:


Brenda, Dennis, City Secretary