

ORDINANCE NO. 3288-3-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 10, OFFENSES - MISCELLANEOUS, BY ADDING ARTICLE VI, REGULATION OF SEX OFFENDER RESIDENCY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE, PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500); AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Code of Ordinances of the City of Allen, Texas, be and the same is hereby amended by amending Chapter 10, Offenses – Miscellaneous, by adding Article VI, Regulation of Sex Offender Residency, to read as follows:

“ARTICLE VI. - REGULATION OF SEX OFFENDER RESIDENCY

Sec. 10-55. - Definitions.

For purposes of this section the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Minor shall mean a person younger than 17 years of age.

Permanent residence shall mean a place where a person abides, lodges, or resides for 14 or more consecutive days.

Premises where children commonly gather shall mean a public park, private or public school, or day care center or any public or nonprofit recreational facility (including public swimming pools). For purposes of this Article, landscaped street medians are not public parks.

Temporary residence shall mean a place where a person abides, lodges, or resides for a period of 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 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Sec. 10-56. - Offenses.

For each person required to register on the Texas Department of Public Safety's Sex Offender Database (the “database”) because of a violation involving a victim who was a minor, it is unlawful for that person to establish a permanent residence or temporary residence within 1,000 feet of any premises where children commonly gather.

Sec. 10-57. - Evidentiary matters; measurements.

- (a) It shall be prima facie evidence that this section applies to such a person if that person's record appears on the database and the database indicates that the victim was a minor as defined herein.

- (b) For the 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 or temporary residence to the nearest property line of the premises where children commonly gather, as defined herein, or, in the case of multiple residences, on one property, measuring from the nearest property line of the premises to the nearest property line of the premises where children commonly gather.
- (c) A map depicting the prohibited areas shall be maintained and annually updated by the police department which shall be available to the public for inspection at the Police Department.

Sec. 10-58. - Culpable mental state not required.

Neither the allegation of nor evidence of a culpable mental state is required for the proof of an offense defined by this article.

Sec. 10-59. - Affirmative defenses.

It is an affirmative defense to prosecution that any of the following conditions apply:

- (a) The person required to register on the database established the permanent or temporary residence and has complied with all of the sex offender registration laws of the state prior to the date of the adoption of this article.
- (b) The person required to register on the database was a minor when such person committed the offense requiring such registration and was not convicted as an adult.
- (c) The person required to register on the database is a minor.
- (d) The premises where children commonly gather, within 1,000 feet of the permanent or temporary residence of the person required to register on the database, was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state.
- (e) The person was at the time of the violation subject to community services supervision pursuant to section 13B of article 42.12 of the Texas Code of Criminal Procedure, as amended, and the court reduced or waived the 1,000-foot restriction for a child free zone under section 13B(a)(1)(B) of article 42.12 of the Texas Code of Criminal Procedure, as amended, as it applies to the person's residence.
- (f) The information on the database is incorrect, and, if corrected, this article would not apply to the person who was erroneously listed on the database.

Sec. 10-60. - Penalty.

An offense under the article is deemed to be a misdemeanor and upon conviction be punishable by a fine not to exceed \$500.00 for each offense."

SECTION 2. All ordinances of the City of Allen, Collin County, Texas, in conflict with the provisions of this Ordinance be, and the same are hereby, repealed; provided, however that all other provisions of said ordinances not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinance, or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense.

SECTION 6. This Ordinance shall take effective immediately from and after its passage and publication in accordance with its provisions of the Charter of the City of Allen, and it is, accordingly, so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 24TH DAY OF MARCH 2015.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(PGS:2-26-25:TM 70348)

Shelley B. George, TRMC, CITY SECRETARY