

ORDINANCE NO. 2019-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS, CREATING SECTION 20-3. - SEX OFFENDERS - OF CHAPTER 20 - OFFENSES AND MISCELLANEOUS PROVISIONS - OF THE CODE OF ORDINANCES, TO ESTABLISH REGULATIONS RELATED TO THE PROXIMITY OF CHILD SEX OFFENDERS TO AREAS COMMONLY UTILIZED BY CHILDREN, AND PROVIDING A PENALTY CLAUSE FOR VIOLATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS:

Section 1. That, SECTION 20-3. – SEX OFFENDERS, of Chapter 20 - OFFENSES AND MISCELLANEOUS PROVISIONS, of the Code of Ordinances, is hereby created and adopted as follows:

Sec. 20-3. - SEX OFFENDERS

A. Finding and intent.

The City Council finds that child sex predators, who are required to register as a sex offender under Ch. 62 of the Texas Code of Criminal Procedure, present a threat to the health, safety and welfare of children. The City Council further finds that children lack the ability to protect themselves from sexual predators, and additional safety measures are required to prevent certain registered sex offenders from having access to children in areas where children generally feel safe.

It is the intent of this Section 20-3 to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City, by creating areas around locations where children regularly congregate in concentrated numbers, wherein certain registered child sex offenders are prohibited from entering, loitering, or establishing temporary or permanent residency.

B. Definitions.

The following words, terms and phrases, when used in this Section 20-3, shall have the meanings ascribed to them in this Subsection, except where the context clearly indicates a different meaning, and terms not defined here shall be construed as in ordinary and common usage.

Child safety area shall mean all improved and unimproved areas of a lot or tract of land that is used as a private or public elementary or secondary school, a day-care center or facility, a private or public playground, a private or public youth center, a public swimming pool, a video arcade facility, an amusement park, a carnival or fair, a public park, and any children's section of a public library.

Child sex offender shall mean any person with a reportable conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on any of the following offenses:

- (1) Continuous sexual abuse of a young child or children (Texas Penal Code § 21.02);
- (2) Indecency with a child (Texas Penal Code § 21.11);
- (3) Sexual assault of a child (Texas Penal Code § 22.011);
- (4) Aggravated sexual assault of a child (Texas Penal Code § 22.021);
- (5) Online solicitation of a minor (Texas Penal Code § 33.021);
- (6) Sexual performance by a child (Texas Penal Code § 43.25);
- (7) Possession or promotion of child pornography (Texas Penal Code § 43.26); or
- (8) A violation of the laws of another state, federal law, laws of a foreign country, or the Uniform Code of Military Justice, if the violation contained elements substantially similar to the elements of the violations described (1) through (7) of this paragraph.

Day-care center or facility shall mean a facility licensed by the State of Texas, which provides care, training, education, custody, treatment, or supervision of children for less than 24 hours a day.

Loiter shall mean standing or sitting idly or without apparent purpose, whether or not in a motor vehicle.

Minor shall mean any person under 18 years of age.

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

Person in authority shall mean the owner, a person authorized by the owner, or a person or business with apparent authority to act for the owner, including but not limited to, a manager or a property management business.

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- (6) Sexual performance by a child (Texas Penal Code § 43.25);
- (7) Possession or promotion of child pornography (Texas Penal Code § 43.26); or
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Playground, Premises, School, Video arcade facility, and Youth center shall have the meanings assigned by Texas Health and Safety Code § 481.134.

Public park shall mean:

(1) any land, including improvements to said land, designated as a public park or public recreation area for use by the general public, including but not limited to City parks, water parks, conservation areas, jogging trails, and hiking trails; and

(2) any athletic field that is owned, leased, operated, managed, or maintained by the City, including but not limited to soccer fields, baseball fields, softball fields, basketball courts, and football fields.

Reportable conviction or adjudication shall have the meaning assigned by Texas Code of Criminal Procedure § 62.001(5).

Temporary residence shall mean:

(1) 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 residence; and

(2) a place where a person 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.

C. Sex offender entry and loitering restriction.

(1) It shall be unlawful for a child sex offender to intentionally or knowingly enter a child safety area.

(2) It shall be unlawful for a child sex offender to intentionally or knowingly loiter within one thousand feet (1000') of a child safety area. Under this Subsection 20-3(C), any distance measurement is made in a straight line, without regard to intervening structures or objects, between the child sex offender's location and the nearest property line of the child safety area.

(3) It is an affirmative defense to prosecution under this Subsection 20-3(C) if at the time of the offense, a child sex offender has entered a child safety area for such time as is necessary to attend a regular, special, or called meeting of a governmental body that is open to the public pursuant to Chapter 551 of the Texas Government Code. The defense under this

Subsection 20-3(C)(3) shall only apply to those areas of the child safety area that are necessary for attendance at the meeting of a governmental body.

- (4) It is an affirmative defense to prosecution under this Subsection 20-3(C) if at the time of the offense, a child sex offender has entered a child safety area for such time as is necessary for the limited purpose of voting at an official polling place located within a child safety area, if the child sex offender qualifies to vote at such polling place. The defense under this Subsection 20-3(C)(4) shall only apply to those areas of the child safety area that are necessary for the limited purpose of voting.
- (5) It is an affirmative defense to prosecution under this Subsection 20-3(C) if at the time of the offense, a child sex offender has entered the premises of any school during the standard operating hours of the school and complied with Texas Code of Criminal Procedure Art. 62.064.
- (6) It is an affirmative defense to prosecution under this Subsection 20-3(C) if at the time of the offense, a child sex offender has entered a child safety area for such time as is necessary for the limited purpose of accompanying a child under 18 years of age on the premises of the child safety area, provided said child sex offender is the parent or legal guardian of the child.

D. Sex offender Halloween restrictions.

- (1) On October 31st of each year, a child sex offender shall:
 - (a) Remain at their residence of registry between the hours of 4:00 p.m. and 11:59 p.m.;
 - (b) Not illuminate any exterior lights upon the premises at their residence of registry between the hours of 4:00 p.m. and 11:59 p.m.; and
 - (c) Not invite or entice trick-or-treaters to solicit the premises at their residence of registry.
- (2) It shall be unlawful for a child sex offender to fail to comply with this Subsection 20-3(D). A culpable mental state is not required for the commission of an offense under this Subsection 20-3(D), and need not be alleged or proved.
- (3) It is an affirmative defense to prosecution under this Subsection 20-3(D) that the child sex offender was required to report and did report to a specified location on October 31st between the hours of 4:00 p.m. and 11:59 p.m., as a condition of their probation or parole.

- (4) It is an affirmative defense to prosecution under this Subsection 20-3(D) that the child sex offender was at a location outside the City limits and remained outside the City limits, between the hours of 4:00 p.m. and 11:59 p.m. on October 31st.
- (5) It is an affirmative defense to prosecution under this Subsection 20-3(D) that the child sex offender was working at said offender's place of employment, or traveling directly to or from said offender's place of employment, between the hours of 4:00 p.m. and 11:59 p.m. on October 31st.

E. Sex offender residence restriction.

- (1) It shall be unlawful for a child sex offender to establish a permanent residence or temporary residence within one thousand feet (1000') of a child safety area. Under this Subsection 20-3(E), any distance measurement is made in a straight line, without regard to intervening structures or objects, between the nearest property line of the premises of the child sex offender's residence and the nearest property line of the child safety area.
- (2) It is a defense to prosecution under this Subsection 20-3(E) if at the time of the offense, a child sex offender:
 - (a) has established the residence and complied with all the sexual offender registration laws of the State of Texas prior to the effective date of the ordinance from which this Section is derived; and
 - (b) has not received a reportable conviction or adjudication involving a minor victim after the effective date of the ordinance from which this Section is derived.
- (3) It is a defense to prosecution under this Subsection 20-3(E) if at the time of the offense, a child sex offender:
 - (a) has established the residence and complied with all sexual offender registration laws of the State of Texas prior to the date a new child safety area is established within one thousand feet (1000') of the residence; and
 - (b) has not received a reportable conviction or adjudication involving a minor victim after the date the new child safety area is established within one thousand feet (1000') of the residence.

{ End of code text }


Section 2. Severability or Invalidity. If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without defeating the purpose or objective of the provisions, and to this end, the provisions of this ordinance are declared to be severable.

Section 3. Repealer. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. Penalty. That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-6 of the Code of Ordinances.

Section 5. Effective Date. This ordinance shall be effective on and after March 1, 2019.

PASSED AND APPROVED on this the 4th day of February, 2019.


Linda Langerhans, Mayor
City of Fredericksburg, Texas

ATTEST:


Shelley Goodwin, City Secretary

APPROVED AS TO FORM:


Daniel Jones, City Attorney

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