

ORDINANCE NO. 21-290

CREATING AN ORDINANCE FOR THE CITY OF WOODCREEK, TEXAS, OFFENSES AND MISCELLANEOUS PROVISIONS BY ADOPTING RESTRICTIONS APPLICABLE TO SEX OFFENDERS INCLUDING RESIDENCY AND DISTANCE REQUIREMENTS FROM CHILD SAFETY ZONES AND AN EXEMPTION HEARING PROCESS; SETTING A PENALTY OF NOT MORE THAN \$2000.00; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERABILITY REPEALER AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, sex offenders are a serious threat to public safety; and

WHEREAS, neither the State of Texas nor the City of Woodcreek currently imposes restrictions on where registered sex offenders may reside; and

WHEREAS, while some sex offenders do rehabilitate, the recidivism rate for released sex offenders poses a public safety risk to the community; and

WHEREAS, restricting registered sex offenders from accessing areas where children often congregate will provide better protection for the City's children.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Woodcreek:

1. FINDINGS OF FACTS

The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

2. ENACTMENT

This ordinance for the City of Woodcreek is amended as to read as Attachment A, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby authorized and directed to record and publish the language of Chapter 50, as amended by this Ordinance, in the City's Code of Ordinances.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon its passage and the publication of caption of this ordinance.

7. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed and attended by a quorum of the City Council, 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, Texas Government Code, Chapter 551.

PASSED & APPROVED this, the 8th day of July 2021 with a roll call vote. The motion was made by Mayor Pro Tem Aurora LeBrun and seconded by Councilmember Judy Brizendine. The following voted aye: Councilmember Jeff Rasco, Mayor Pro Tem Aurora LeBrun, Councilmember Bob Hambrick, Councilmember Brent Pulley, and Councilmember Judy Brizendine. There were no abstentions. The motion passed with a 5-0-0 vote.

CITY OF WOODCREEK ATTEST:


Gloria Whitehead, Mayor


Linda Land, City Secretary

ATTACHMENT A

Section I. Definitions

For the purposes of this ordinance, the following terms, words, and the derivations thereof shall have the meanings given herein.

Child safety zone. A premises where children commonly gather. The term includes a public or private school, public or private day-care facility, playground, public or private youth center, public swimming pool, city or state park, or any other facility that regularly holds events primarily for children.

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

Playground. Any outdoor facility that is:

- (1) Is intended for recreation;
- (2) Is open to the public or is open to a neighborhood or multi-family residential property containing more than two families; and
- (3) Contains at least one play station intended for the recreation of children.

Premises. Real property and all buildings and appurtenances pertaining to the real property.

Registered sex offender. An individual who is required to register as a sex offender under chapter 62, Texas Code of Criminal Procedure.

Temporary residence. 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.

Youth center. Any recreational facility or gymnasium that:

- (1) Is intended primarily for use by persons who are 17 years of age or younger; and
- (2) Provides athletic, civic, or cultural activities.

Section II. Offense

(a) *Generally.* A registered sex offender may not go in, on, or within 1,000 feet of a child safety zone in the city.

(b) Evidentiary matters; measurements.

(1) It shall be prima facie evidence that this ordinance applies to a person if that person's information appears on the central database maintained by the Texas Department of Public Safety as required by article 62.005 of the Texas Code of Criminal Procedure.

(2) 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 child safety zone.

(c) Culpable mental state not required. Neither allegation nor evidence of a culpable mental state is required for the offense defined under this section.

(d) Affirmative defenses. It is an affirmative defense to prosecution that any of the following conditions apply:

(1) The registered sex offender entered into a residential lease, rental agreement, or purchase of a residence in a child safety zone prior to the date of the adoption of this ordinance.

(2) The registered sex offender was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.

(3) The registered sex offender is a minor or a ward under guardianship.

(4) The child safety zone, as specified herein, within 1000 feet of the permanent or temporary residence of the registered sex offender was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state.

(5) The information on the sex offender registry database is incorrect, and, if corrected, this ordinance would not apply to the person who was erroneously listed on the database.

(6) The registered sex offender was in, on, or within a specified distance of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

(7) The registered sex offender was in, on, or within a specified distance of a child safety zone for purposes of attending a religious service, education, counseling, volunteering, or working at a church as defined by section 544.251, Texas Insurance Code.

(e) Exemption hearing.

(1) A registered sex offender may petition the Hays County Sheriff or the Sheriff's designee, in writing, for an exemption from the requirements of this ordinance.

(2) The Sheriff or the Sheriff's designee shall exempt a registered sex offender who established residency in a residence located within the specified distance of a child safety zone before the date this ordinance is adopted. This exemption applies only to:

(A) Areas necessary for the registered sex offender to have access to and to live in the residence; and

(B) The period the registered sex offender maintains residency in the residence.

(3) The Sheriff or the Sheriff's designee may authorize an exemption from this ordinance when, in their opinion, undue hardship will result from compliance or an individualized recidivist assessment indicates an exemption should be granted. In granting an exemption, the Sheriff or the Sheriff's designee shall consider the probable effect the exemption will have upon the public health, safety, and welfare of the community.

(4) No exemption shall be granted under subsection (e)(3) above without first having held a public hearing on the exemption petition and unless the Sheriff or the Sheriff's designee makes written findings regarding the petitioner's criminal and personal history as well as the petitioner's current circumstances requiring the exemption.

(5) Such findings of the Sheriff or the Sheriff's designee, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the hearing at which such exemption is granted. Exemptions may be granted only when in harmony with the general purpose and intent of this ordinance so that the public health, safety, and welfare may be secured, and that substantial justice may be done.

Section III. Prohibition against renting or leasing

(a) It shall be unlawful for the owner, lessee or occupant (collectively referred to as "lessor") of any place, residence, structure, dwelling, or other conveyance, with knowledge that it will be used as a temporary or permanent residence of such person, to rent or lease the same, or any part thereof, to a registered sex offender, if such place, residence, structure, dwelling, manufactured dwelling, mobile home, camping trailer or other conveyance is located within 1000 feet of any child safety zone.

(b) An owner, lessee, or occupant (collectively referred to as "lessor") of any place, residence, structure, dwelling, or other conveyance, shall be deemed to have knowledge that another person is a registered sex offender if such person's record appears on the central database maintained by the Texas Department of Public Safety on the earlier of:

(1) The date of receipt of a lease application, rental application or similar document by lessor or lessor's officers, agents, employees, or volunteers; or

(2) The date the person first occupies lessor's place, residence, structure, dwelling, manufactured dwelling, mobile home, camping trailer or other conveyance.

Section IV. Penalties

(a) The City shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance shall be liable for prosecution for criminal violations.

(b) Criminal prosecution. Except as may otherwise be provided herein, any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$2000.00. Except as may otherwise be provided herein, each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a class C misdemeanor.