

ORDINANCE NO. 26-5721

AN ORDINANCE AMENDING THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, BY AMENDING CHAPTER 23, "OFFENSES AND MISCELLANEOUS PROVISIONS," TO ADD A SECTION REGULATING WHERE CERTAIN SEX OFFENDERS MAY RESIDE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL PRIOR ORDINANCES AND REPEALING CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Fort Worth ("City") seeks to protect the health, safety, and welfare of its citizens; and

WHEREAS, the City has the authority pursuant to its police powers as a home-rule municipal corporation to adopt and enforce ordinances and regulations to protect the health, safety, and welfare of the public; and

WHEREAS, the City Council finds that protecting children from sexual abuse and predatory behavior is a legitimate and compelling governmental interest; and

WHEREAS, pursuant to Chapter 62 of the Texas Code of Criminal Procedure, the Texas Legislature has established a system of registration for persons convicted of certain sexual offenses, including individuals convicted of sexual offenses against children; and

WHEREAS, persons required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure for offenses against children present a high risk of recidivism and a particular danger to children; and

WHEREAS, the City Council desires to reduce opportunities for contact between registered sex offenders and children by restricting where such offenders may reside in relation to areas where children commonly gather within City limits; and

WHEREAS, the City Council finds that establishing child safety zones around areas where children commonly gather will serve to protect children and promote the public safety and welfare; and

WHEREAS, the City Council finds that this ordinance is not intended to impose additional punishment on those required to register as sex offenders but to serve the civil and regulatory purposes of protecting children and preventing future victimization; and

WHEREAS, the City Council finds that establishing child safety zones around areas where children commonly gather will not completely prohibit registered sex offenders from residing within the City of Fort Worth; and

WHEREAS, the City Council has considered the public testimony, Police Department recommendations, and relevant research regarding offender proximity and risk reduction; and

WHEREAS, the City Council has determined that the restrictions imposed by this ordinance are rationally related to legitimate public safety objectives and do not violate the constitutional rights of affected individuals; and

WHEREAS, the Fort Worth City Council finds this ordinance to be reasonable and necessary to protect the health, safety, and welfare of the public;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, THAT:

SECTION 1.

Chapter 23, “Offenses and Miscellaneous Provisions,” of the Code of the City of Fort Worth (2015), as amended, is hereby amended by adding a new section to be and read as follows:

§ 23-23 SEX OFFENDER RESIDENCY RESTRICTIONS.

(a) *Definitions.* For purposes of this section:

- (1) “Database” means the state registry of sex offenders maintained by the Texas Department of Public Safety pursuant to Chapter 62 of the Texas Code of Criminal Procedure.
- (2) “Minor” means a person younger than seventeen (17) years of age.
- (3) “Permanent residence” means a place where a person abides, lodges, or resides for a period of fourteen (14) or more consecutive days.
- (4) “Premises where children commonly gather” means a school, day-care or child-care facility, park, playground, public swimming pool, youth center, community center, or public library.

- (5) “Shelter” means (1) a lawfully operating emergency shelter facility, capable of, and intended to provide temporary shelter to no less than fifty (50) adult homeless individuals; and (2) a facility which is temporarily used for emergency shelter overflow during periods of inclement weather.
- (6) “Specified sex offender” means a person required to register as a sex offender in the state database pursuant to Chapter 62 of the Texas Code of Criminal Procedure for an offense involving a victim who was a minor at the time of the offense.
- (7) “Temporary residence” means a place where a person abides, lodges, or resides for a period of fourteen (14) or more days during any calendar year but which is not the person’s permanent residence, or a place where a person routinely abides, lodges, or resides for a period of four (4) or more consecutive or non-consecutive days in a month and which is not the person’s permanent residence.

(b) *Offenses.*

- (1) It shall be unlawful for a specified sex offender to establish permanent or temporary residence within two thousand (2,000) feet of any premises where children commonly gather.
- (2) It shall be unlawful to let or rent any place or structure or part thereof, manufactured home, trailer, or any other conveyance with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this section due to the place or structure or part thereof, manufactured home, trailer, or other conveyance being located within two thousand (2,000) feet of any premises where children commonly gather. This prohibition shall not apply to a shelter.

(c) *Evidentiary matters.*

- (1) It shall be prima facie evidence that this section applies to a person if the person’s record appears in the database maintained by the Texas Department of Public Safety (the “database”) pursuant to Chapter 62 of the Texas Code of Criminal Procedure and the person is subject to registration for an offense involving a victim who was a minor at the time of the offense.
- (2) No culpable mental state is required for an offense under (b)(1) above.

- (3) For purposes of this section, the distance between a residence and the premises where children commonly gather shall be measured by following a straight line from the outer property line of the residence to the nearest property line of the premises where children commonly gather.
 - (4) In cases of a dispute over measured distances, it shall be the burden of the person challenging the measurement to prove otherwise.
 - (5) A map depicting the prohibited areas shall be created and maintained by the Fort Worth Police Department and shall be available to the public for inspection at the Fort Worth Police Department.
- (d) *Affirmative defenses.* It shall be an affirmative defense to prosecution under this section that:
- (1) The specified sex offender established the permanent residence or temporary residence within two thousand (2,000) feet of the premises where children commonly gather prior to the date of adoption of this section and has complied with all sex offender registration laws of the State of Texas.
 - (2) The premises where children commonly gather located within two thousand (2,000) feet of the permanent residence or temporary residence of the specified sex offender was opened after the specified sex offender established the permanent residence or temporary residence, and the specified sex offender has complied with all sex offender registration laws of the State of Texas.
 - (3) The specified sex offender is a minor.
 - (4) The specified sex offender was a minor when he or she committed the offense requiring registration in the database and was not convicted as an adult.
 - (5) The information in the database is incorrect, and, if corrected, this section would not apply to the person who was erroneously listed in the database.
 - (6) The specified sex offender established the permanent residence or temporary residence at a shelter.
- (e) *Penalty.* Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500.00 for each offense. Each day such violation shall continue to exist shall constitute a separate offense.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances of the Code of the City of Fort Worth, Texas, (2015), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council 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 shall 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 and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation exists shall constitute a separate offense.

SECTION 5.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of the City of Fort Worth, or any other ordinances of the City, that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance, but may be prosecuted until final disposition by the courts.

SECTION 6.

That the City Secretary of the City of Fort Worth, Texas is hereby directed to publish the caption and Section 4 of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas as authorized by Chapter XXV, Section 2 of the Charter of the City of Fort Worth, Texas, and Section 52.013(a) of the Texas Local Government Code.

SECTION 7.

This ordinance shall take effect upon adoption and publication as required by law, and it is so ordained.

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

Assistant City Attorney

Jannette Goodall, City Secretary

Date: _____

ADOPTED: _____

EFFECTIVE: _____