

ORDINANCE NO. O-2022-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 4, OF THE CODE OF ORDINANCES “OFFENSES AND MISCELLANEOUS PROVISIONS,” BY A NEW ARTICLE VI ENTITLED “SEX OFFENDER RESIDENCY RESTRICTIONS,” MAKING IT UNLAWFUL FOR CERTAIN SEXUAL OFFENDERS TO RESIDE WITHIN 1000 FEET OF PREMISES WHERE CHILDREN GATHER; PROVIDING DEFINITIONS; PROVIDING FOR THE MEASURING OF DISTANCE REQUIREMENTS; PROVIDING A CRIMINAL OFFENSE; DISPENSING WITH A CULPABLE MENTAL STATE; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING EXEMPTIONS; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING A SEVERABILITY CLAUSE; AND AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations not in conflict with Federal or State law to promote the health, safety and welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether expressed or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed in the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may regulate and control, for whatever purposes, public places; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, the City Council of Tyler, Texas finds that sex offenders who prey on children are a serious threat to public safety; and

WHEREAS, the City Council finds that the recidivism rate for released sex offenders is alarmingly high, especially for those who commit crimes against children; and

WHEREAS, a 2003 study by the U.S. Department of Justice, Bureau of Justice Statistics, titled *Recidivism of Sex Offenders Released from Prison in 1994*, found that child molesters who were released from prison were at least six times more likely to be rearrested for another sex crime against a child as compared to a non-sex offender released from prison; and

WHEREAS, the U.S. Court of Appeals for the Fifth Circuit has upheld the constitutionality of an ordinance restricting sex offenders from residing within 1,500 feet of premises where children commonly gather enacted by another home-rule municipality in Texas; and

WHEREAS, the City Council finds that restricting property available for residence of certain sex offenders will provide better protection for children gathering in the City; and

WHEREAS, it is the intent of the City Council to ensure the provision of proper care, protection and supervision of children; and

WHEREAS, it is important to provide children with a safe, wholesome and enjoyable environment in which to live, attend school, and engage in recreational and other activities; and

WHEREAS, the City Council finds that persons convicted of offenses that involve either physical contact with minors or attempted physical contact with minors are a greater risk to the safety of children who gather near areas where such offenders reside; and

WHEREAS, the City Council finds that establishing regulations that restrict certain sex offenders from residing in areas that are at or near where there is a high concentration of children will provide better protection for children in the City by minimizing immediate access and proximity to children who are at and going to and from schools, parks, playgrounds, libraries, and day care centers; and

WHEREAS, the City Council finds it is in the interest of the public safety and welfare of its citizens to prohibit persons convicted of certain sexual offenses from residing within close proximity to places where children commonly gather;

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

PART 1. That the findings set forth above are incorporated into the body of this ordinance as if fully set forth herein.

PART 2. That Chapter 4 of the Code of Ordinances of the City of Tyler, Texas, "Offenses and Miscellaneous Provisions", is hereby amended by adding a new Article VI, "Sex Offender Residency Restrictions," to read as follows:

Article VI. Sex Offender Residency Restrictions

Sec. 4-105. Definitions

Definitions. For purposes of this Article, the following terms, words, and derivations thereof shall have the following meanings:

Child. A person younger than seventeen (17) years of age.

Child Safety Zone. Any premises improved or unimproved, where children commonly gather, that is used as a private or public school, licensed day-care center, or any public park or playground.

Premises. Includes all improved and unimproved areas on the lot.

In this Article, “playground,” “premises,” and “school,” have the meanings assigned by Tex. Health and Safety Code Section 481.134, as amended, or a “day care center”, as that term is or may be defined in Chapter 42 of the Texas Human Resources Code, as amended.

Child day care center. Premises for operation of a child day care, as defined in 40 Texas Administrative Code Section 745.33, as amended, but excluding a child day care operation located at the residence of a child day care permit-holder.

Public park. Any land designated for public recreation or any athletic field that is owned, leased, or maintained by the City, including, but not limited to, areas designated as parks or recreation areas, recreational centers, skate parks, water parks, and public swimming pools.

Database means the Texas Department of Public Safety's Sex Offender Registry Database, and the Dru Sjodin National Sex Offender Registry Database, and the Sex Offender Registration files maintained by the Sex Offender Registration Officer of the Tyler Police Department. (individually or collectively referred to as a “Database”).

Reportable conviction or adjudication. Offense and disposition as defined in Texas Code of Criminal Procedure, Art. 62.0001, as amended.

Residence, Permanent. 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. A place where a person abides, lodges, or resides for a period of seven (7) 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.

Recurring visitor. A person who on at least three (3) occasions during any month spends more than 48 consecutive hours in the City of Tyler.

Sex Offender. 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. 4-105. Offense: Residency Requirements.

It is unlawful for a person to establish a Permanent Residence, Temporary Residence, or be a Recurring Visitor, within 1,000 feet of any Child Safety Zone, if the person is required to register on the Texas Department of Public Safety’s Sex Offender Registry Database or the Dru Sjodin National Sex Offender Registry Database (individually or collectively referred to as a “Database”) because of a reportable conviction or adjudication involving a minor. Any person violating this Section shall be subject to a penalty as set forth in Section 1- 4.

Sec. 4-106. Offense: Halloween.

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 pm and 11:00 pm leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the premises. Any violation of this Section is unlawful and shall subject the offender to a penalty as set forth in Section 1- 4.

Sec. 4-107. Evidentiary Matters; Measurement.

- a. It shall be prima facie evidence that this Article applies to a person if that person appears on the database and the database indicates that the victim was a minor or the reportable conviction or adjudication was for online solicitation of a minor.
- b. For the purposes of determining the distance separation, the requirement shall be measured by following a straight line, without regard to intervening structures or objects, from the outer property line of the permanent residence to the nearest property line of the Child Safety Zone, or in the place of multiple residences on one (1) property, measuring from the nearest property line of the premises to the nearest property line of the Child Safety Zone.

Sec. 4-108. Child Safety Zone map.

The Tyler Police Department will maintain a map illustrating the Child Safety Zones in the City of Tyler. The City shall review the map annually for changes. This map will be available to the public at the Tyler Police Department or available on both the City of Tyler website and the Tyler Police Department website.

Sec. 4-109. Culpable mental state not required.

Neither allegation nor evidence of a culpable mental state is required as set forth in Section 1- 5.

Sec. 4-110. Exemptions.

- a. A sex offender who established and consistently maintained a permanent residence or temporary residence located within 1,000 feet of a child safety zone prior to the adoption of this Article is exempt from prosecution under this Article. This exemption applies only to:
 - 1. Areas necessary for the sex offender to have access to and to live in the residence; and
 - 2. The period the sex offender maintains residency in the residence.

Sec. 4-111. Affirmative Defenses.

It is an affirmative defense to prosecution under this Article that a person who has a permanent residence or temporary residence within 1,000 feet of a Child Safety Zone:

- a. Is under 18 years of age and:
 1. Resides with the person's parent or legal guardian; or
 2. Has not been convicted of an offense after the effective date of this Ordinance from which this Article derives 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;
- b. Established the permanent residence or temporary residence and complied with all-sexual offender registration laws of the State of Texas prior to the effective date of this Article, and has not been convicted of an offense after the effective date of this Article that:
 1. Requires the person to register under Article 62.001(5), Texas Code of Criminal Procedure; and
 2. Involves a victim or intended victim under seventeen (17) years of age.
- c. 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 from which this Article derives, or the date the new Child Safety Zone is established, that:
 1. Requires the person to register under Article 62.001(5), Texas Code of Criminal Procedure; and
 2. Involves a victim or intended victim under seventeen (17) years of age.
- d. It is a defense to prosecution under this-Article 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.
- e. It is a defense to prosecution under this Article that the person required to register on the Sex Offender Data base has had the offense for which the Sex Offender registration was required reversed on appeal or pardoned.

- f. It is a defense to prosecution under this Article that the person's duty to register on the Sex Offender Database has expired.
- g. It is a defense to prosecution under this Article that the information on the Sex Offender Database is incorrect, and the person listed on the Sex Offender Database can provide evidence to show such error.
- h. It is not a defense to prosecution under this Article 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. 4-112. Injunctive relief.

Any violation of this Article can be enjoined by a suit filed in the name of the City of Tyler in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this Code. The City is not required to give bond as a condition to the issuance of injunctive relief.

PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 4: 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 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be _____, 2021.

PASSED AND APPROVED THIS the _____ day of _____ A. D., 2022.

DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY