

**ORDINANCE 08-18**

**SEX OFFENDERS RESIDENCY**

**AN ORDINANCE OF THE CITY OF HAMILTON, TEXAS, DEFINING CERTAIN TERMS; MAKING IT UNLAWFUL FOR CERTAIN SEXUAL OFFENDERS TO RESIDE WITHIN 1,000 FEET OF PREMISES WHERE CHILDREN GATHER; PROVIDING EXCEPTIONS TO THE ORDINANCE; PROHIBITING PROPERTY OWNERS FROM RENTING REAL PROPERTY TO CERTAIN SEXUAL OFFENDERS; PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE;**

**WHEREAS**, the Mayor and City Council of the City of Hamilton, Texas, desire to establish a policy which provides maximum protection of the lives and persons of the City of Hamilton; and,

**WHEREAS**, Article 42.12 (13B) of the Texas Code of Criminal Procedure, provides a 1,000-foot safety zone for children, as a condition of probation for those convicted of certain sexual offenses; and

**WHEREAS**, Section 341.906(e) of the Local Government Code requires the City to establish a procedure where a registered sex offender may submit an application for an exemption from the ordinance; and

**WHEREAS**, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code provide the City authority to adopt ordinances for the good government, peace, order and welfare of the municipality.

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

**Section 1 Purpose, intent**

The city council finds that sex offenders who are required to register as a sexual predator under V.T.C.A., Texas Code of Criminal Procedure, chapter 62, present an extreme threat to the health, safety and welfare of children. It is the intent of this article 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 sex offenders and sexual predators are prohibited from loitering or prohibited from establishing temporary or permanent residency.

**Section 2 Definitions**

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

Child. Any person under the age of seventeen (17).

Child-care facility. A family day-care home which provides regular care to no more than four (4) children under fourteen (14) years of age, excluding children related to the caretaker, and provides care after school hours for not more than six (6) additional elementary school children, but the total number of children, including those related to the caretaker, shall not exceed twelve (12) at any given time.

Child-care institution. A commercial day-care center provides regular care to any number of adults or children for less than twenty-four (24) hours a day.

Child safety zone. Public parks, private and public schools, public library, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public or commercial and semi-private swimming pools, child-care facility, child-care institution, public or private youth soccer or baseball field, crisis center or shelter, skate park or rink, public or private youth center, movie theater, bowling alley, and scouting facilities.

Database. The Texas Department of Public Safety's Sex Offender Database or the sex offender registration files maintained by the sex offender registration officer of the police department.

Loiter. Standing, sitting idly, whether or not the person is in a vehicle or remaining in or around an area.

Park or playground. One of the following:

- (1) Any land, including improvements to the land that is administered, operated or managed by the city for the use of the general public as a recreational area.
- (2) City recreational areas include, but are not limited to, conservation area, jogging trail, hiking trail, bicycle trail, recreational center, swimming pool, soccer field or baseball field.

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

Places where children regularly congregate. Same as child safety zone.

Public way. Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, shopping centers, parking lots, transportation facilities, restaurants, shops and similar areas that are open to the use of the public.

School. A private or public preschool, private or public elementary school or private or public secondary school.

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.

*Temporary residence.* A place where a person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate, during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

### **Section 3 Offenses**

(a) It is an offense for a sex offender to establish a permanent residence or temporary residence within one thousand (1,000) feet of the real property comprising a school, child-care facility, child-care institution, park or playground or other places where children regularly congregate.

(b) It is an offense for a sex offender to knowingly enter a child safety zone.

(c) It is an offense for a sex offender to knowingly loiter on a public way within 300 feet of a child safety zone.

### **Section 4 Property owners prohibited from renting real property to registered sex offenders**

It is unlawful to let or rent any place, 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 article, if such place, structure, or part thereof, manufactured home, trailer, or other conveyance is located within 1,000 feet from a child safety zone, as defined in section 2.

### **Section 5 Measurements**

For the purpose of this article, the distance between a permanent or temporary residence and the premises shall be determined by a straight line from the outer property line of such permanent or temporary residence in closest proximity to the nearest property line of the premises. In the case of apartment complexes or other multiple residences, the distance shall be determined by a straight line from the outer property line of such apartment complex or other multiple residences in closest proximity to the nearest property line of the premises.

### **Section 6 Evidentiary matters**

(a) If a sex offender that is prohibited from being in a child safety zone is found in a child safety zone by a police officer, the sex offender is subject to punishment in accordance with this article.

(b) It shall be prima facie evidence that this article applies to such a person if that person's record appears in/on the database and the database indicates that the victim was less than seventeen (17) years of age.

(c) The distance of three hundred (300) feet from a child safety zone shall be measured on a straight line from the closest boundary of the child safety zone.

(d) The distance of one thousand (1,000) feet from a place where children congregate shall be measured on a straight line from the closest boundary line of the sex offender's residence to the closest boundary line of the school, child-care facility, child-care institution, park or playground or other places where children regularly congregate.

(e) In the case of multiple residences on one property, measuring from the nearest property line of the residences to the nearest property line of the school, child-care facility, child-care institution, park or playground or other places where children regularly congregate.

(f) In cases of a dispute over measured distances, it shall be incumbent upon the person(s) challenging the measurement to prove otherwise.

(g) A map depicting the prohibited areas shall be created by the city and maintained by the police department. The city shall review the map annually for changes. Said map will be available to the public at the police department or available on the city's website or the city's police department website.

### **Section 7 Exceptions**

(a) The person required to register in/on the database established the permanent residence or temporary residence and residency prior to the adoption of this article, has been consistently maintained and the person 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 place where children regularly congregate, as specified herein, within one thousand (1,000) feet of the permanent or temporary residence of the person required to register on/in the database was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state.

(c) The information on/in the database is incorrect, and, if corrected, this section would not apply to the person who was erroneously listed on/in the database.

(d) The person required to register on/in the database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.

(e) The person required to register is under eighteen (18) years of age or a ward under a guardianship, who resides with a parent or guardian.

(f) The person required to register has been exempted by a court order from registration as a sex offender under chapter 62, Texas Code of Criminal Procedure; or

(g) The person required to register has had the offense for which the sex offender registration was required, reversed on appeal or pardoned.

(h) The person's duty to register on/in the database has expired.

- (i) Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.

### **Section 8 Penalties**

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof may be fined an amount not to exceed \$2,000.00 as allowed by law. Each day that a violation is permitted to exist shall constitute a separate offense and shall be punishable as such.

### **Section 9 Nonliability**

The city and its officers, agents and employees shall have no liability of any nature for any actions, omissions, or other matters in any way concerning the subject matter of this article.

### **Section 10 Appeal**

(a) Option to appeal. A sex offender may seek an exemption from this article by appealing to the city council.

(b) Appeal procedure.

- (1) The city secretary shall prepare an official appeal form.
- (2) A sex offender shall completely fill in the official form and submit it to the city secretary, who shall forward it to the mayor.
- (3) The mayor, upon receiving the completed appeal form, shall schedule a public hearing before the city council.
- (4) The city council shall conduct a public hearing, during which they may review any pertinent information and may accept oral and written statements from any person.
- (5) Following the public hearing, the city council shall decide, by majority vote, whether to grant or deny an exemption. An exemption may be unconditional or limited to a certain address or time. The decision on whether or not to grant an exemption may be based on whether the sex offender has shown remorse, has rehabilitated, could re-offend, and any other factor related to the city's interest in promoting, protecting, and improving the health, safety, and welfare of the community.
- (6) A written copy of the official minutes of the meeting shall detail the decision, and shall, upon written request, be provided to the sex offender.

### **SECTION 11**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances shall remain in full force and effect.

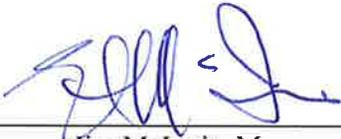
**SECTION 12**

Should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**SECTION 13**

This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

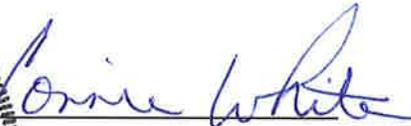
**DULY PASSED BY THE CITY COUNCIL FOR THE CITY OF HAMILTON, TEXAS,  
ON THE 13th DAY OF NOVEMBER, 2018.**

  
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Jim McInnis, Mayor

ATTEST:

  
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Ryan Polster, City Secretary



  
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Connie White, Attorney