

ORDINANCE NO. 20240326

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON, TEXAS, ENTITLED "SEX OFFENDER RESIDENCY RESTRICTIONS", ESTABLISHING CHILD SAFETY ZONES WITHIN THE CITY'S CORPORATE LIMITS, MAKING IT UNLAWFUL FOR CERTAIN SEXUAL OFFENDERS TO RESIDE WITHIN 1,000 FEET OF PREMISES WHERE CHILDREN GATHER; PROVIDING FOR THE MEASURING OF DISTANCE REQUIREMENTS; PROVIDING DEFINITIONS, EXCEPTIONS, AFFIRMATIVE DEFENSES, AND EXEMPTIONS TO RESIDENCY VIOLATIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 AND THAT EACH DAY DURING OR ON WHICH A VIOLATION OCCURS SHALL BE DEEMED A SEPARATE OFFENSE; DISPENSING WITH A CULPABLE MENTAL STATE; PROVIDING FOR INJUNCTIVE RELIEF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Huntington, Texas ("City") is a Type A general law municipality authorized under the Texas state law to legislate in the best interests of its residents; 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, Texas Local Government Code Section 51.001 provides, in part, that the City "may adopt...an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality...and is necessary or proper for carrying out a power granted by law to the municipality"; and

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

WHEREAS, the City Council of Huntington, Texas, finds and has determined that convicted sex offenders who are required to register on the Texas Department of Public Safety's sex offender database pose a legitimate, significant, and serious threat to the health, safety, and welfare of the public generally, and to the safety of children who gather in areas where such offenders reside; 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 City Council desires to establish residency restrictions for sex offenders and to create areas around locations where children regularly congregate in concentrated numbers and where certain registered sex offenders and sexual predators are prohibited from loitering or establishing temporary or permanent residency; and

WHEREAS, the laws of the State of Texas address the threat that convicted sex offenders pose to children by providing safety zones for children from those who have previously committed crimes against children; and

WHEREAS, the City Council, pursuant to its authority granted to it by Texas Local Government Code, Section 341.906, may adopt an ordinance that restricts a registered sex offender from going in, on, or within a specified distance of a child safety zone in the City; and

WHEREAS, the City Council intends to establish criminal liability for violators of the prohibitions contained therein and to assess fines as punishment for convictions of offenses thereunder; and

WHEREAS, the City deems it necessary to adopt such rules for the safeguarding of public health, safety, and welfare;

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

PART 1. The premises and findings set forth above are found to be true and correct legislative determinations of the City Council and they are hereby incorporated into the body of this ordinance as fully set forth herein.

PART 2. SEX OFFENDER RESIDENCY RESTRICTION

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, in accordance with Section 22.011(c)(1) of the Texas Penal Code.

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.

Child Safety Zone: any premises where children commonly gather. The term includes a school, daycare facility, playground, public or private youth center, public swimming pool, or video arcade facility, as those terms are defined by in section 481.134 of the Texas Health and Safety Code, or any other facility that regularly holds events primarily for children, having the same exclusions as provided by Section 341.906 of the Texas Local Government Code.

Database: Texas Department of Public Safety's Sex Offender Registry Database as defined and identified in Art. 62 of the Texas Code of Criminal Procedure.

Permanent Residence: the place within the city that a person registers or verifies under Article 62.152, Texas Code of Criminal Procedure as that person's residence.

Temporary Residence: the 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 such 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.

Offense:

- (a) It is unlawful for a sex offender to establish a permanent or temporary residence within 1,000 feet of any Child Safety Zone in the City.

- (b) It is unlawful for a sex offender to go in or on any property within 1,000 feet of a Child Safety Zone in the City.
- (c) Other than the intent to establish a residence, no culpable mental state is required to be proven by the prosecution as an element of this offense.
- (d) Nothing in this Ordinance shall be interpreted to modify or reduce the State of Texas's child safety ban.
- (e) A sex offender residing within 1,000 feet of a Child Safety Zone does not commit a violation of this section if:
- i. the person 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 ordinance;
 - a. This exception applies only to areas necessary for the registered sex offender to have access to and to live in the residence and for the period the registered sex offender maintains residency at such address.
 - ii. The Child Safety Zone within 1,000 feet of the person's permanent or temporary residence became a Child Safety Zone after the person established the permanent or temporary residence and the person complied with all sex offender registration laws of the State;
 - iii. The person was a minor when he/she committed the offense and was not convicted as an adult; or
 - iv. The person is a minor;
- (f) Measurement. 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.
- (g) It shall be prima facie evidence that this Ordinance applies to a person if that person appears on the Database.
- (h) Child Safety Zone Map. The Huntington Police Department will maintain a map illustrating the Child Safety Zones in the City of Huntington. The City shall review the map annually for changes. This map will be available to the public at the Huntington Police Department or on the City of Huntington's website – www.cityofhuntington.org.
- (i) Affirmative Defenses.

- i. It shall be an affirmative defense to prosecution under this Ordinance if the person was in, on, or within 1,000 feet of a Child Safety Zone for a legitimate purpose. Legitimate purposes include:
 - a. transportation of a child that the Sex Offender is legally permitted to be with;
 - b. transportation to and from work; and
 - c. other work-related purposes.
- ii. It shall be an affirmative defense to prosecution under this Ordinance if the person proves that the information on the Database is incorrect and that, if corrected, this Ordinance would not apply to the person.
- iii. It shall be an affirmative defense to prosecution under this Ordinance if the person has been exempted by a court order from registration as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure.
- iv. It shall be an affirmative defense to prosecution under this Ordinance if the person has had the offense for which the sex offender registration was required reversed on appeal or pardoned.
- v. It shall be an affirmative defense to prosecution under this Ordinance if the person's duty to register on/in the database has expired.

(i) Exemption and Application for Exemption

- i. A Sex Offender who established the permanent residence or temporary residence prior to the effective date of this Ordinance is exempt from this Ordinance. 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.
- ii. A Sex offender may apply for an exemption from this Ordinance by submitting to the City Secretary an application for exemption, in the form supplied by the City, accompanied by an affidavit that shows the sex offender established residency in a residence location within 1,000 feet of a child safety zone before the date this Ordinance is adopted.
- iii. The Chief of Police shall determine whether an application for exemption may be granted. The Chief of Police may request the sex offender to provide, within a reasonable period, additional documentation to establish proof of exemption. Documentation may include, but is not limited to, affidavits of third parties, lease agreements, or deeds.

- iv. The Chief of Police shall send to the applicant written notice of the decision to grant or deny an exemption and, if applicable, a statement of the right to an appeal to the City Council.
- v. Any person who is denied an exemption under the Ordinance may appeal the decision of the Chief of Police by filing with the City Secretary a written request for hearing before the City Council. The request for an appeal must be submitted within ten (10) days after the notice of denial from the Chief of Police is sent to the applicant.
- vi. City Council decisions relating to appeals of application determinations by the Chief of Police are within the sole discretion of the City Council, and the City Council's decision as to any such appeal is final and non-appealable.

PART 3: Penalties

- (a) Any person, firm, corporation, or entity intentionally, knowingly, recklessly, or with criminal negligence violating any provision contained in this ordinance shall be deemed guilty of a Class C misdemeanor and, upon conviction, shall be fined an amount not to exceed \$500.00 for each offense. Each day such violation shall continue or be permitted to continue shall be deemed a separate offense.
- (b) Any violation of this ordinance may be enjoined by a suit filed in the name of the City of Huntington, Texas in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of Ordinances of the City of Huntington. The City is not required to give bond as a condition to the issuance of injunctive relief.

PART 4: It is the intent of the City Council that each clause, phrase, sentence, paragraph, section, or subsection of this Ordinance be deemed severable, and should such clause, phrase, sentence, paragraph, section, or subsection be declared invalid or unconstitutional by a court of competent jurisdiction, such declaration of invalidity or unconstitutionality shall not be construed to affect or impair the validity of those provisions of this Ordinance left standing, or the validity of any other ordinance of the City of Huntington.

PART 5: This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Huntington, and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

PART 6: The City Secretary of the City of Huntington is hereby directed to publish this ordinance and penalty clause in the newspaper prior to this ordinance taking effect in accordance with State law.

PART 7: This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law.

PASSED AND APPROVED THIS 26th day of March, 2024.



Todd Ricks, Mayor
City of Huntington, Texas



ATTEST:



Julie Davis, City Secretary



Erika Neill, City Attorney