

ORDINANCE NO. 004-14

AN ORDINANCE THE CITY OF DE LEON, TEXAS REPEALING AND REPLACING CITY ORDINANCE NO. 009-12; ESTABLISHING AMENDED RESTRICTIONS RELATED TO THE RESIDENCY AND ACTIVITIES OF REGISTERED SEX OFFENDERS WITHIN THE CITY; PROHIBITING SEX OFFENDERS FROM RESIDING WITHIN 1,000 FEET OF REAL PROPERTY ON WHICH A SCHOOL, DAYCARE FACILITY, PUBLIC PARK OR PUBLIC PLAYGROUND IS LOCATED; PROHIBITING SEX OFFENDERS FROM ENTERING OR BEING IN OR REMAINING NEAR A PUBLIC PARK; PROVIDING EXCEPTIONS AND PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING A VARIANCE PROCESS; AND PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of De Leon (the "Council") finds that sex offenders who are required to register as sexual predators under Chapter 62 of the Texas Code of Criminal Procedure present a threat to the health, safety and welfare of children; and

WHEREAS, it is the intent of the Council, by passage of this Ordinance, to promote, protect and improve the health, safety and welfare of the citizens of the City by improving safety in areas around locations within the City where children regularly congregate in concentrated numbers within which certain sex offenders are prohibited from loitering or from establishing temporary or permanent residency; and

WHEREAS, the Council acknowledges that certain exceptions may apply to restrictions on sex offenders and that a fair and unbiased variance procedure is necessary to except persons from the restrictions imposed by this Ordinance in certain situations; 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; and

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

1. **Repeal.** That Ordinance No. 009-12 of the City of De Leon, adopted on August 2, 2012, is hereby repealed.
2. **Enactment.** That the following provisions shall be and are, hereby, enacted and adopted as the Sex Offender Restriction Ordinance of the City of De Leon, replacing City Ordinance No. 009-12 in its entirety.

Section 1. Definitions. The following words, terms and phrases when used in this Ordinance, shall have the meaning described in this section, except where the context clearly indicates a different meaning:

- a. "Child" means any person under the age of seventeen (17).
- b. "Child care facility " or "Day care facility" includes a daycare center and/or a group daycare home, as those terms are defined by Section 42.002, Human Resources Code and includes 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.
- c. "Child care institution" means a commercial day care center which provides care to any number of children for less than twenty-four (24) hours a day.
- d. "Child safety zone" means public parks, private and public schools, public libraries, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public or commercial and semi-private swimming pools, child care facilities, child care institutions, public or private youth soccer or baseball fields, crisis center or shelter, skate park or rink, public or private youth center, movie theater, bowling alley, scouting facilities and Offices of Child Protective Services.
- e. "Database" means the Texas Department of Public Safety's Sex offender Database or the Sex Offender Registration files maintained by the local Sex Offender Registration Officer.
- f. "Loitering" means standing, sitting idly, whether or not the person is in a vehicle or remaining in or around an area.
- g. "Park" or "playground" means 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, including, without limitation:
 - (i) Land owned or controlled by a unit of local government that is designated by the unit of local government for use solely or primarily for children's recreation;
 - (ii) City recreational areas, including, but not limited to, a forest preserve, conservation area, jogging trail, hiking trail, water park, lake, campground, swimming pool, soccer field or baseball field under the jurisdiction of a unit of local government.
- h. "Permanent Residence" means a place where a person lives, abides, lodges or resides for fourteen (14) or more consecutive days.

- i. "Public way" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, common areas of schools, shopping centers, parking lots, parks, playgrounds, transportation facilities, theaters, restaurants, shops, bowling alleys, taverns, cafes, arcades, and similar areas that are open to the use of the public.
- j. "School" means a private or public elementary or secondary school.
- k. "Sex offender" means a person 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 of the Texas Code of Criminal Procedure.
- l. "Supervising officer" means the official to whom a Sex Offender is required to report, including that Sex Offender's juvenile probation officer, community supervision officer, corrections department officer, or parole officer.
- m. "Temporary residence" means a place where a person lives, abides, lodges or resides for a period of fourteen (14) days or more in the aggregate during any calendar year and which is not the person's permanent address or a place where the person routinely live, abide, lodge or reside 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 2. Offenses. The following are considered offenses under this ordinance:

- a. It is an offense for a Sex Offender to establish a permanent residence or temporary residence within one thousand (1,000) feet of real property comprising a Child Safety Zone. The distance of one thousand (1,000) feet 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 Child Safety Zone.
- b. It is an offense for a Sex Offender to knowingly loiter on a public way within three hundred (300) feet of a Child Safety Zone.
- c. It is an offense for a Sex Offender to enter or be in a Child Safety Zone.
- d. A Sex Offender shall not on each October 31 or any other date set by the City for Halloween trick-or-treating, as understood within the context of Halloween, leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the premises where the Sex Offender resides or is visiting.
- e. It is an offense under this ordinance for any person to let or rent any place, structure, or part thereof, including any manufactured home, trailer, recreational vehicle, or vehicle of any type with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such residence pursuant to the terms of this chapter, if such place, structure, or vehicle, or part

thereof, is located within one thousand (1,000) feet of premises defined in this ordinance as a Child Safety Zone.

Section 3. Exceptions. A person who is required to register on the Database does not commit an offense under Section 2 if:

- a. The person has established and continues to maintain the residence prior to the effective date of this ordinance;
- b. The person has established and continues to maintain the residence prior to the effective date of this ordinance and, subsequently a school, daycare facility, park or playground is constructed or located within one thousand (1,000) feet of the Sex Offender's residence;
- c. The information on the Database is incorrect, and, if corrected, this ordinance would not apply to the person who is erroneously listed on the Database.
- d. The person required to register on 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 is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located within one thousand (1,000) feet of a Child Safety Zone.
- f. The person is under eighteen (18) years of age or a ward under a guardianship, who resides with a parent or guardian;
- g. The person has been exempted by a court order from registration as a Sex Offender under Chapter 62, Texas Code of Criminal Procedure; or 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 the Database has expired.
- i. The person has been granted a variance under Section 4 of this Ordinance.

Section 4. Request for Variance. A Sex Offender may submit an application for a variance to except that Sex Offender from some or all of the provisions of this Ordinance.

- a. Eligibility. A Sex Offender is eligible to make a request for a variance under this Section if he or she has completed the terms of parole or probation, as required by the Court issuing the sentence, and is only required to report to his or her Supervising Officer regarding residency, schooling, etc.
- b. Application. The application for a variance shall be made on an application form which has been developed by the City Attorney, with the assistance of the Chief of Police. The application form shall be available at the office of the City Secretary at De Leon City Hall. The application shall include:

- (1) The Sex Offender's name, address, phone number and driver's license number;
 - (2) Reference to the provision(s) of this Ordinance for which the person is requesting a variance;
 - (3) A detailed explanation as to why the variance is requested; and
 - (4) A sworn, notarized statement from the Sex Offender's Supervising Officer:
 - (A) that the Sex Offender is not a threat to children;
 - (B) that the Supervising Officer, in his or her best judgment, believes that it would be safe to allow the Sex Offender the requested variance;
 - (C) that the Supervising Officer recommends that the City grant the requested variance; and
 - (D) that the Supervising Officer agrees to immediately notify the City Secretary if the Sex Offender fails to fulfill his or her reporting requirements under State law after a variance is granted under this Ordinance.
- c. Review and Granting Procedure. After the City Secretary determines that the application is complete, the City Secretary will include consideration of the application on the agenda for the next regularly-scheduled City Council meeting. At that meeting, the Council will take action to either accept or reject the Supervising Officer's recommendation. If the Council votes to accept the Supervising Officer's recommendation and grant the variance, the City Attorney will prepare an order to be signed by the Mayor describing the variance granted to the Sex Offender.
- d. Revocation. Each variance granted under this Ordinance shall last until and unless revoked. A variance will be automatically revoked if the Sex Offender awarded the variance fails to fulfill his or her reporting requirements under State law.

Section 5. Enforcement and Evidentiary Matters. If a police officer reasonably believes that a Sex Offender, as defined under this ordinance, is in a city park or playground or has established a residence in violation of the ordinance, the officer shall require the Sex Offender to provide his/her name, address, and telephone number. If it is established that the individual is a Sex Offender, then the officer shall notify the Sex Offender that he or she is in violation of the ordinance.

- a. If a Sex Offender who 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 prosecution in accordance with this ordinance.
- b. It shall be prima facie evidence that this ordinance applies to a person if that person appears 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 Child Safety Zone shall be measured on a straight line from the closest boundary line of the Sex Offenders residence to the closest boundary line to the Child Safety Zone.
- e. In the case of multiple residences on one property, measurement shall be from the nearest property line of the property on which the residences are located to the property line of the Child Safety Zone.
- f. In cases where there is a dispute over the measurement of distances, the person(s) challenging the measurement shall have the burden of proof.
- g. The City will prepare a map identifying the Child Safety Zones within the City which shall be made available at City Hall and or the City Police Department. The map will be reviewed and updated by the City annually.

Section 6. Penalties. Any person who violates this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed two thousand dollars (\$2,000.00), as allowed by law. Each day that a violation continues shall constitute a separate offense and shall be punishable as such.

3. **Severability.** Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstances thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

4. **Open Meetings.** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the *Open Meetings Act, Texas Govt. Code, Chapt. 551.*

5. **Effective Date.** This Ordinance shall take effect immediately upon its adoption by the City Council and publication as required by the Texas Local Government Code.

Draft 09-08-14

PASSED AND APPROVED on this 10 day of September, 2014.

PASSED, APPROVED AND ADOPTED on this 24 day of September, 2014.



ATTEST

Karen Wilkerson
Karen Wilkerson,
City Administrator/Secretary

Toby Hight, Mayor