

ORDINANCE NO. 10032022-01

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF ELKHART, TEXAS MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 1,000 FEET OF ANY DEFINED PREMISE WHERE CHILDREN COMMONLY GATHER; PROVIDING THAT A CULPABLE MENTAL STATE IS NOT REQUIRED FOR COMMITTING AN OFFENSE UNDER THIS REGULATION; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR AFFIRMATIVE DEFENSES; PROVIDING A PENALTY FOR VIOLATION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Elkhart, Texas, is a Type A general-law municipality located in Anderson County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City Council finds and declares that sex offenders are a threat to public safety; and

WHEREAS, the City Council finds from the evidence that the recidivism rate for released sex offenders is significant, especially for those who commit their crimes against children; and

WHEREAS, the City Council finds from the evidence that restrictions on the proximity of sex offenders to schools or other facilities that might create temptation to repeat offenses are one way to minimize the risk of recidivism; and

WHEREAS, the City Council finds that establishing a policy to restrict the property available for residence of registered sex offenders will provide better protection for children gathering in the City; and

WHEREAS, the 2017 Texas Legislature adopted House Bill 1111, effective September 1, 2017, which adds Section 341.906 to Chapter 341 of the Texas Local Government Code, expressly authorizing the governing body of a general-law municipality to restrict registered sex offenders from being within a specified distance of a child safety zone in the municipality; and

WHEREAS, the City Council of the City of Elkhart, Texas, desires to establish the statutory child safety zones and distance restrictions for registered sex offenders in order to protect the health, safety, and welfare of its residents.

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

SECTION 1. SEX OFFENDER RESIDENCY

The findings set forth in this Ordinance are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. DEFINITIONS

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

Minor: A person under the age of 17.

Permanent residence: Means a place where a person abides, lodges, or resides for 14 or more consecutive days.

Child Safety Zone: Means premises where children commonly gather. The term includes all improved and unimproved areas on a lot where a park (excluding planted street medians), private or public school (excluding in-home schools), video arcade facility, skate park, playground, child care facility, community or residential swimming pool, City-owned indoor or outdoor recreational facility, or private recreational facility, including any such facility owned by a residential property owners' association or for which an entrance, admission, or rental fee is charged. The term does not include a church, as defined by Section 544.251, Insurance Code.

Playground, premise, school, video arcade facility, and youth center: Shall have the meanings assigned by Section 481.134, Health and Safety Code.

Sex Offender: Means a person required to register as a sex offender pursuant to Chapter 62, Code of Criminal Procedure, on the Texas Department of Public Safety's Sex Offender Database because of a reportable conviction or adjudication involving a minor.

Temporary residence: Means a place where a person abides, lodges, or resides for a period of 14 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 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 unlawful for a sex offender to establish a permanent residence or temporary residence within 1,000 feet of any child safety zone.

(b) It is unlawful for a person who owns, rents, leases, or inhabits property within the City of Elkhart, Texas, to knowingly allow a sex offender to establish a permanent residence or temporary residence within 1,000 feet of any child safety zone.

(c) 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 4. CULPABLE MENTAL STATE IS NOT REQUIRED

Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined in this Ordinance.

SECTION 5. EVIDENTIARY MATTERS; MEASUREMENT

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

(b) For the purpose of determining the minimum distance of separation, the requirements shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the child safety zone, or, in the case of multiple residences on one property, measuring from the nearest property line of the premises to the nearest property line of the child safety zone.

(c) A map depicting the prohibited areas shall be created by the City and maintained by the City Secretary in consultation with law enforcement officers having jurisdiction in the City of Elkhart. The City shall review the map annually for changes. Said map will be available to the public at the office of the City Secretary.

SECTION 6. EXEMPTIONS; AFFIRMATIVE DEFENSES

(a) A person who established residency in a temporary or permanent residence located within 1,000 feet of a child safety zone before October 3, 2022 is exempt from the application of this Ordinance.

(b) A person subject to this Ordinance may seek an exemption from its application by submitting a request in writing to the City Secretary specifying the background, reason, and scope of the requested exemption. The City Secretary may seek additional information from the requestor, and shall issue a written determination on the requested exemption within 10 business days from the filing of the request. The requestor may appeal to the City Council from the determination of the City Secretary by filing such appeal request in writing to the City Secretary within 10 business of the City Secretary's determination.

(c) It is an affirmative defense to prosecution that any of the following conditions apply:

(1) 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.

(2) The person required to register on the database is a minor.

(3) The child safety zone within 1,000 feet of the permanent or temporary residence of the sex offender, was designated, declared and/or determined, after the person established the permanent or temporary residence and complied with all sex offender registration laws of the State of Texas.

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

SECTION 7. PENALTY

Any person, firm, corporation, agent, or employee thereof 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 guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed \$200.00 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 8. GOVERNMENTAL FUNCTION; LIABILITY

All of the regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety, and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this Ordinance, acting for the City in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 9. INJUNCTIVE RELIEF

Any violation of this Ordinance can be enjoined by a suit filed in the name of the City 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 the City.

SECTION 10. CUMULATION CLAUSE

This Ordinance shall be cumulative of all provisions of the Code of Ordinances of the City of Elkhart, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such Code, in which event the conflicting provisions of such Code are hereby repealed.

SECTION 11. SEVERABILITY CLAUSE

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

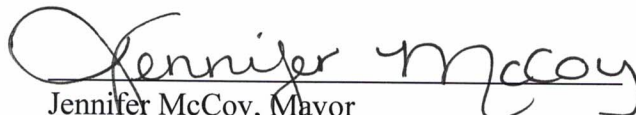
SECTION 12. PUBLICATION CLAUSE

The City Secretary of the City of Elkhart, Texas, is hereby directed to publish the caption and penalty clause of this Ordinance one time in the official newspaper of the City, as authorized by Section 52.011 of the Local Government Code.

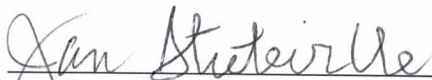
SECTION 13. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage and publication as required by law.

PASSED AND APPROVED ON this 3rd day of October, 2022.


Jennifer McCoy, Mayor

ATTEST:


Jan Stuteville, City Secretary