

ORDINANCE NO. 762

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HOWE, TEXAS ADDING TO CHAPTER 1 OF THE CITY CODE AND PLACING RESTRICTIONS ON CERTAIN SEX OFFENDERS; SETTING A CRIMINAL PENALTY; CONFIRMING SEVERABILITY; AUTHORIZING PUBLICATION; AND, ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City to protect its citizens, particularly its children from sexual predators; and

WHEREAS, the Texas Legislature has enacted legislation which permits general-law municipalities to place residency restrictions on certain sex offenders; and

WHEREAS, it is in the best interest of the City to enact laws placing residency restrictions on certain sex offenders; and

WHEREAS, the City Council does hereby find that the regulations adopted herein are in the best interest of the health, safety and welfare of the citizens.

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

I. ADDITION TO CITY CODE. A new section is added to Chapter 1, GENERAL PROVISIONS, of the Code Of Ordinances, as Section 29 as follows:

Section 29

A. SEX OFFENDER RESTRICTIONS

Sec. 1 Definitions

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1.1. Child safety zone. A premises where children commonly gather, including without limitation, a playground, school, day-care facility, video arcade facility, public or private youth center, or public swimming pool, as those certain terms are defined in section 481.134 of the Texas Health and Safety Code, or other facility that regularly holds events primarily for children, and having the same exclusions as provided by section 341.906 of the Texas Local Government Code.

1.2. Permanent residence. A place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

1.3. Sex Offender. A person who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure. It shall be prima facie evidence that this article applies to a sex offender if the person's record as it appears on the Texas Department of Public

Safety's sex offender database indicates that the victim was younger than seventeen (17) years of age, as provided by Chapter 62, Code of Criminal Procedure.

1.4. Temporary residence. A place where the person abides, lodges, or resides for less than fourteen (14) days in the aggregate during any calendar year and which is not the person's permanent residence, or a place where the 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.

1.5. Loiter. Remaining in a prohibited area, standing or sitting idly, whether or not the person is in a vehicle, or remaining in or around an area.

Sec. 2 Prohibited Areas; Exceptions

2.1. It is unlawful for a Sex Offender to establish a permanent residence or temporary residence within 1,000 feet of any child safety zone.

2.2. For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the property lot line of the permanent or temporary residence to the nearest property lot line of the child safety zone.

2.3. Any person violating a provision of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not to exceed \$500.00. Each day is a separate violation.

2.4. 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.

2.5. Nothing in this article shall be interpreted to modify or reduce the state's safety ban.

2.6. The following are affirmative defenses to a violation of subsection 2.1:

2.6.1. The person established the permanent or temporary residence and has complied with all the sex offender registration laws of the state prior to the date of the adoption of this section;

2.6.2. The person was a minor when he/she committed the offense and was not convicted as an adult;

2.6.3. The person is a minor;

2.6.4. The premises qualifying as a child safety zone, specified herein, within 1,000 feet of the person's permanent or temporary residence, was opened after the person established the permanent or temporary residence, and the person has complied with all sex offender registration laws of the state; or

2.6.5. The person proves that the information on the database is incorrect and that, if corrected, this section would not apply to the person.

2.7. A Sex Offender may apply for an exemption from this article by submitting an application for an exemption to the City Secretary, in the form supplied by the city, which shows the Sex Offender established residency in a residence located within 1,000 feet of a child safety zone before the date the ordinance was adopted. This exemption is only effective during the period the Sex Offender maintains residency in the residence and only applies to areas necessary for the registered sex offender to have access to and to live in the residence.

Sec. 3. Renting to person prohibited from establishing residence

3.1. It is unlawful to let, lease or rent any place, structure or part thereof with the knowledge that it will be used as a permanent or temporary residence by a Sex Offender prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this ordinance.

3.2. Any person, firm or corporation violating a provision of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not to exceed \$500.00.

3.3. Each day of occupation, rental or lease shall be a separate offense.

Sec. 4. Presence Prohibited at Child Safety Zone

4.1. It is unlawful for a Sex Offender to go in, on, or loiter within 300 feet of a child safety zone. 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.

4.2. It is an affirmative defense to prosecution of an offense under this section if the registered sex offender was in, on, or within 300 feet of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

4.3. Any person violating a provision of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not to exceed \$500.00. Each incident is a separate violation.

II. SEVERABILITY. The provisions of this Ordinance are severable. However, in the event this Ordinance or any procedure provided in this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and lawful provisions shall be of full force and effect.

III. PUBLICATION. The City Secretary of the City of Howe is hereby directed to publish in the Official newspaper of the City of Howe, the Caption, as provided by Section 52.011 of the Texas Local Government Code.

IV. EFFECTIVE DATE. This Ordinance shall become effective from and after its date of passage and publication in accordance with law.

PASSED, APPROVED AND ADOPTED this the _____ day of _____, 2019.

CITY OF HOWE TEXAS

Mayor, City of Howe, Texas

ATTEST:

City Secretary