

ORDINANCE NO. 763

AN ORDINANCE OF THE CITY OF EVERMAN, TEXAS, MAKING IT UNLAWFUL FOR CERTAIN SEXUAL OFFENDERS TO RESIDE WITHIN 1000 FEET OF PREMISES WHERE CHILDREN GATHER; MAKING IT ILLEGAL TO LOITER WITHIN 300 FT OF THE PUBLIC WAY AROUND A CHILD SAFETY ZONE; PROVIDING EXCEPTIONS TO THE ORDINANCE; AND PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE, INCLUDING, BUT NOT LIMITED TO A FINE NOT TO EXCEED \$ 2,000.00 AS ALLOWED BY LAW, PER DAY OF CONTINUING VIOLATION. PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Everman, is a home rule municipality located in Tarrant County, Texas, created in accordance with the provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas and its City Charter;

WHEREAS, the City of Everman desires to adopt an ordinance establishing Child Safety Zones and specific restrictions on sex offender residencies, in accordance with state law.

WHEREAS, the City of Everman has determined that it is in the best interest of the community to adopt a Sex Offender Residency and Child Safety Zone ordinance.

SECTION 1: PURPOSE and/or INTENT OF ORDINANCE

The City Council of Everman, Texas 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 recognized threat to the health, safety and welfare of children. It is the intent of this section 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 Section, the following terms, words and the derivations thereof shall have the meaning given herein.

SEX OFFENDER- Means 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.

PERMANENT RESIDENCE- Means a place where the person lodges or resides for 14 or more consecutive days.

TEMPORARY RESIDENCE- Means a place where a person 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 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.

CHILD- Means any person under the age of seventeen (17).

CHILD CARE FACILITY- 1) Day-care facility means a facility licensed by the State of Texas, which provides care, training, education, custody, treatment, or supervision for children for less than 24 hours a day; 2) A commercial day care center, provides regular care to any number of adults or children for less than twenty-four (24) hours a day. 3) 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.

CHILD SAFETY ZONE- Means 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, public or private youth sports venues, crisis center or shelter, skate park or rink, public or private youth center, movie theater, bowling alley, scouting facilities and Offices for Child Protective Services.

DATABASE- Means 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 Everman Police Department.

LOITER- Means standing, sitting idly, whether or not the person is in a vehicle or remaining in or around an area.

PARK OR PLAYGROUND- Means one of the following:

A. Any land, including improvements to the land that is administered, operated or managed by the City of Everman for the use of the general public as a recreational area.

B. City recreational areas include, but are not limited to, conservation area, jogging trail, hiking trail, bicycle trail, recreational center, water park/splash pad, swimming pool, or youth sports venues.

C. Any private land that is used by the general public as a recreational or park area, including, but not limited to, a park or playground maintained by a community home owners' association.

PLACES WHERE CHILDREN REGULARLY CONGREGATE- Same as Child Safety

Zone.

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, shopping centers, parking lots, transportation facilities, restaurants, shops and similar areas that are open to the use of the public.

SCHOOL- Means a private or public pre-school, private or public elementary school or private or public secondary school.

SECTION 3: SEX OFFENDER PROHIBITION

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, park or play ground 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.

D. A Sex Offender, shall not, on each October 30th and 31st (or any other date set by the City for trick-or-treaters) between the hours of 4:00 p.m. and 11:59 p.m., leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the premises.

SECTION 4: PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO REGISTERED SEX OFFENDERS.

A. It is unlawful to let, sublet 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 chapter, if such place, structure, or part thereof, manufactured home, trailer, or other conveyance is located within 1,000 feet, as defined in Section 5 of this ordinance, from a Child Safety Zone, as defined in section 2.

SECTION 5: 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 Ordinance.

B. It shall be prima facie evidence that this section 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, 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, 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 of Everman and maintained by the Everman Police Department. The City of Everman shall review the map annually for changes. Said map will be available to the public at the Everman Police Department or available on the Everman Police Department website.

SECTION 6: 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 ordinance has been consistently maintained and the person has complied with all of the Sex Offender Registration laws of the State of Texas, prior to the date of the adoption of this ordinance.

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 of Texas.

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 required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located 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.

F. 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.

G. 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

H. The person required to register has had the offense for which the sex offender registration was

required, reversed on appeal or pardoned.

I. The person's duty to register on/in the Database has expired.

J. 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 7: PENALTIES

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance 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 8: SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

PASSED AND APPROVED this _____ day of _____, 2020.

MAYOR RAY RICHARDSON

ATTEST:

Mindi Parks, City Secretary