

ORDINANCE NO 06072022-02

AN ORDINANCE OF THE CITY OF FLORENCE, TEXAS, TO ESTABLISH CHILD SAFETY ZONES WITHIN THE CITY'S CORPORATE LIMITS; MAKING IT UNLAWFUL FOR PERSONS REQUIRED TO REGISTER ON THE TEXAS DEPARTMENT OF PUBLIC SAFETY'S SEX OFFENDER DATABASE TO RESIDE WITHIN 1,000 FEET OF PROPERTY WHERE CHILDREN ASSEMBLE OR MEET; MAKING IT UNLAWFUL TO PROVIDE RESIDENTIAL HOUSING TO CERTAIN PREDATORY SEX OFFENDERS IN PROHIBITED AREAS; PROVIDING FOR AFFIRMATIVE DEFENSES TO VIOLATIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTIES; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE SUBSEQUENT THERETO

WHEREAS, the City of Florence, Texas (herein the "City") is a General Law Type "A" municipality authorized by the State of Texas and empowered to enact regulations, in the form of local ordinances, to ensure and protect the health, safety and general welfare of the citizens and residents of Florence; and

WHEREAS, the Florence City Council is deeply concerned about the numerous and recent documented occurrences in our State and elsewhere in which registered sex offenders, who have been convicted of sexual offenses involving children, have been released from incarceration and/or custody, only to repeat the heinous and unlawful acts for which they had been originally convicted in the communities in which they settle; and

WHEREAS, the Council is aware and pleased, in general, that the City is welcoming to and becoming an increasingly attractive place for parents with young children to live, educate and raise their families; and

WHEREAS, due to a child's innate vulnerability, the City Council feels compelled to take a protective role by adopting regulations that are designed to attempt to better protect the City's children from convicted and registered sexual predators; and

WHEREAS, the Florence City Council finds that establishing an ordinance to carefully identify, control and regulate the real properties that are available for residential use, vis-a-vis their proximity to areas frequented by children who meet, gather, or assemble in certain areas of the community, such as parks and schools, by identifying those areas used by children as "safety zones" for children and restricting the presence of those individuals who are required to register on the Texas Department of Public Safety's Sex Offender Database (the "Database"), because they have been convicted of past sexual crimes involving a child therefrom, will provide better protection for the City's children and their families; ; and

WHEREAS, the City Council of the City of Florence intends and has determined that the residency restrictions set forth in this ordinance, will help limit the contact between the convicted sexual predators who are registered in the State's Database as having offended against children of the City of

Florence, thereby reducing the temptation to reoffend and, in turn, reducing opportunities for recidivism; and

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

SECTION 1:

The City of Florence, Texas is hereby to be entitled "Regulation of Sex Offender Residency", as follows:

a.) Regulation of Sex Offender Residency Findings and Purpose-

The Florence City Council finds that recidivistic sexual crimes against children poses serious grounds for concern and a need for the City to exercise a protective role toward children in the community, by enacting regulations related to same. Further, the City has found that some convicted and previously incarcerated sex offenders, will repeat their crimes in the communities in which they reside.

The Purpose of this ordinance is to serve the City's compelling interest to promote, protect, and improve the health, safety and welfare of all its citizens, including the children and families who choose to reside in the corporate limits of the City. By creating designated child safety zones, which are area identified as those in which children regularly congregate in numbers for their activities, the City seeks to enhance the safety of our children by prohibiting certain sex offenders and sexual predators from establishing temporary and/or permanent housing and residences in those areas.

SECTION 2:

Definitions

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

Permanent Residence shall mean a place where a person houses, lodges, dwells or resides for fourteen (14) or more consecutive days.

Temporary Residence shall mean a place where a person houses, lodges, dwells 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 a person routinely houses, resides, dwells 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.

Recurring Visitor as provided by Chapter 62.059, shall mean a person who, on at least three (3) occasions during any month, spends more than 48 consecutive hours in the city.

Registered Residence shall mean the dwelling place/housing establishment within the city that a person registers or verifies under Texas Code of Criminal Procedure 62.152, as the person's residence, i.e., where a person intends to reside in the city for more than seven (7) consecutive days.

Original Domicile shall mean the permanent residence, which is located within a Child Safety Buffer Zone, that a registered offender owns and resided in at the time of the conviction for the offense, which triggered the requirement to register in the database and to which the offender intends to return after release from incarceration, to continue/re- establish his/her permanent residency.

Sex Offender Registration Program-referred to as the Data Base is the Texas Sex Offender Registration program, detailed in the Texas Code of Criminal Procedure Chapter 62, which requires local law enforcement agencies to gather specific demographic, identifying, and other information from sex offenders located in their communities. Chapter 62 of the Code also requires that the Texas Department of Public Safety (DPS) maintain a sex offender data base, compilation of the registration information submitted by the local agencies.

Child Safety Zone shall mean an area (or zone) identified by the City of Florence wherein those individuals who are registered in the Sex Offender Registration Data Base are not allowed to go, pursuant to the City's ordinance. Additionally, registered sex offenders are prohibited by this ordinance from being within a specified distance of the child safety zones, which include premises where children commonly meet, gather and assemble, such as: (1) schools, day-care facilities, playgrounds, public or private youth centers, video arcade facilities, as defined by Texas Health and Safety Code 481.134, 508.224 and the Texas Government Code 508.187 (2) public parks, and (3) privately and publicly owned recreational facilities, including but not limited to parks, pools, playgrounds, community pools, child water play areas, skate parks, skate rinks, public or private buildings for civic or cultural activities for youth, libraries, hike and bike trails that children younger than 17 frequent, or youth athletic fields where an entrance, admission or rental fee is charged.

Registered Sex Offender is an individual who has a reportable conviction or adjudication or who is otherwise required to register as a condition of parole, release to mandatory supervision, or community supervision, as a requirement under Chapter 62 of the Code of Criminal Procedure.

Playground means an outdoor facility that is not on the premises of a public or private school. It is intended for recreation, is open to the public, and contains three (3) or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards, etc.

Schools and Daycares include the following:

Schools are educational facilities that can be either private or public, and include levels from elementary through secondary school.

Daycares (a/k/a pre-schools and childcare facilities) include facilities that provide licensed to care for seven (7) or more children, which provide care for families and children, for a fee, for less than 24 hours per day.

Video Arcades are facilities that are open to the public, including patronage by persons who are younger than 17 years of age and are intended, generally, for the use of pinball, video machines, etc., which contains at least three pinball or video machines in a pay-for-play type arcade.

Premises means a building or portion of a building and the grounds upon which the building is located, including any public or private driveway, street, sidewalk or walkway, parking lot, or parking garage associated with the building and premises.

Recreational Facility/Youth Center is a building or gymnasium that is intended primarily for use by persons who are younger than 17 years of age, which regularly provides activities that are offered for the enjoyment, amusement, or pleasure of children and are considered to be "fun" and/or include athletic, civic, team and cultural activities.

Public Swimming Pool/Community Pools includes any swimming pool operated for the use of the general public, with or without charge, or for the use of the members and guests of a private club/resort, including any swimming pool located on the grounds of a hotel, motel, inn, an apartment complex, or any residential setting other than single-family home where children younger than 17 years of age gather.

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

Child shall mean a person that is younger than 17 years of age in accordance with Penal Code 22.011 (c) (1)

SECTION 3:

Offenses Residency Requirements

It shall be unlawful for any person who is required by law to register with the Texas Department of Public Safety Sexual Offender Data Base to establish a permanent residence or temporary residence within 1000 feet of any Child Safety Zone. It shall be unlawful for any property owner or renter to let, rent, assign or sub-let any place, structure or part thereof, to a person who is required by law to register with the Texas Department of Public Safety Sexual Offender Data Base, when such place is located within 1000 feet of any Child Safety Zone.).

1. It shall be an affirmative defense for prosecution under this section that the property owner or renter/assignor is able to provide dated written evidence of his/her due diligence performed prior to renting/assigning or sub-leasing the property, that s/he conducted a check with the Texas Department of Public Safety and the Texas Department of Public Safety Sexual Offender Data Base on the tenant/sub-lessee/assignee's criminal history, prior to entering into the lease/sublease/assignment, and
2. The evidence provided by the violator demonstrates that the offender was not listed in the Texas Department of Public Safety Sexual Offender Data Base at the time the property owner/renter/assignee conducted the criminal history check and reviewed the Texas Department of Public Safety Sexual Offender Data Base.
3. A person who violates this section shall be subject to citation and penalty pursuant section 9, below.

SECTION 4:

Halloween

Any person that is registered with the Texas Department of Public Safety Sexual Offender Data Base involving a victim or an intended victim who was younger than 17 years of age shall not have their exterior light on, shall not display seasonal decorations or sound effects, or otherwise invite, tempt or lure a child, Trick-or-Treaters, or anyone younger than 17 years of age onto or into their Permanent Residence, Temporary Residence, or where they are a Recurring Visitor on October 31 each year, or on the date celebrating Halloween in the city.

SECTION 5:

Public Parks

It shall be unlawful for any person to enter a public park if they are required to register with the Texas Department of Public Safety Sexual Offender Data Base because of a violation of law involving a victim or an intended victim who was younger than 17 years of age, if they are currently on probation or parole, Registered sex offenders residing within the corporate limits of the City, who are no longer on probation or parole, who desire to enter/use public parks must submit a written request for permission to do so, and may not enter public parks within the City, until provided express written permission by the Chief of Police, pursuant to their request, if such is granted. The request and reply will be maintained in the Sex Offenders Registration file.

Election Policing Places in Public Parks: If a recreation/civic facility in a public park is used as a 'polling place' for an election, the registered sex offender may enter the facility for the limited purpose of voting, if he/she is a qualified and registered voter for the election being held.

This limited privilege to enter the park for voting shall extend only to those parts of the park and/or recreation/civic facility that is designated for polling and any registered sex offender found outside of those specified areas shall be considered in violation of this section of this ordinance, and shall be subject to citation and penalties, provided for herein..

Official Public Meetings Held in Public Parks: A registered sex offender who has the right to be present at an official public meeting, convened by a governing body, shall have the limited privilege of entering the public park or recreational/civic facility for such time as is necessary to attend the posted public meeting or function but only on the site identified for the meeting, and not on other surrounding public park property. A registered sex offender shall leave the public park immediately after the meeting is closed. Any form of loitering or lingering shall be a violation of this section of this ordinance punishable by citation and penalty.

The privilege shall only extend to those parks of the public park or recreation/civic facility that are commonplace for meetings of that kind. Any registered sex offender found outside those areas mentioned for the official meeting shall be in violation of this section of this ordinance.

SECTION 6:

Loitering

It is unlawful for any person to loiter on a public way or premises within 500 feet of any Child Safety Zone if the person is required by law to register with the Texas Department of Public Safety Sexual Offender Data Base because of a violation of law involving a victim or an intended victim who was younger than 17 years of age.

SECTION 7:

Evidentiary

For the purpose of this ordinance and to determine the minimum distance of separation under this Article, the distance shall be measured by following a perpendicular line from the outer property line of the property to the nearest property line of the Child Safety Zone.

The City of Florence Police Department shall maintain a map showing the Child Safety Zones. This map is to be reviewed and updated annually for changes, and

The map shall be made available to the public on the City of Florence website.

In cases of dispute over measured distances, it shall be incumbent upon the person(s) challenging the measurement to prove evidence of measurement contrary to that stated by the City on its official Child Safety Zone Map.

SECTION 8:

Affirmative Defenses

Nothing in this ordinance shall be interpreted to modify or reduce (1) Texas Government Code 508.187 Child Safety Zone or Criminal Code of Procedures Chapter 42A (2) or the Texas Department of Criminal Justice Parole Division guidelines established against released offenders who are under supervision.

A person, as described in this Article that is required to register and is registered in the Texas Department of Public Safety Sexual Offender Data Base and residing within 1000 feet of a Child Safety Zone, as specified herein, does not commit a violation of this ordinance if any of the following apply:

The person established the permanent or temporary residence and has complied with all sex offender registration laws of the State of Texas, prior to the date of the adoption of this Ordinance;

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

The person is a minor;

The premises where the Child Safety Zone is established, as specified herein, within 1000 feet of the person's permanent or temporary residence was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the State of Texas; or

The person proves that the information on the Texas Department of Public Safety Sexual Offender Data Base is incorrect and that, if corrected, this Article would not apply to the person.

The person was, at the time of violation, subject to Community Services Supervision pursuant to Article 42A of the Texas Code of Criminal Procedure and the court reduced or waived the footage restriction for the Child Safety Zone for (1) specific locations and (2) during specific dates and times. 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, childcare facility, child care institution, park or play ground or other places where children regularly congregate,

The person required to register, claims an Original Domicile as defined by this article and can provide clear and convincing evidence of same and can demonstrate the offender has not established a permanent residence at another location after release from incarceration (not including a court ordered residency in any type of half-way house or probationary housing). If it is shown the person has established a permanent residence at another location then the affirmative defense no longer applies. A person claiming this affirmative defense under this section shall provide the Chief of Police or designee with any documents or information required to verify the Original Domicile.

SECTION 9:

Penalty Provisions-

Any violation of this ordinance may be enjoined by a suit filed in the name of the City of Florence, 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 Florence.

- (1) Any person who shall intentionally, knowingly, recklessly or with criminal negligence violate any provision contained in this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500.00. Each day of violation shall constitute a separate offense.

SECTION 10:

Appeal Process/Exemption Hearing-

A person who is required to register on the Sex Offender Registration Program (referred to herein as the Data Base) due to a violation involving a victim younger than 17 years of age may petition the City Council of Florence, in writing, for an appeal/exemption from the requirements in this article. The City Council may authorize an exemption from the application of this article to the registered individual when, in its opinion, excessive hardship, not financial in nature, will result to the registered individual from compliance with the ordinance and the registered individual provides the Council with documentation that s/he poses no danger to the children of the community, e.g. provides a satisfactory professional, individualized, recidivist assessment which sufficiently demonstrates to the Council that the exemption sought should be granted, in the case brought. In granting an exemption, the Council shall take into account the probable effect the exemption will have upon the public health, safety and welfare of the children and families of the community.

No exemption shall be granted without first having held a public hearing on the exemption petition.

No exemption shall be granted unless the City Council makes written findings assessing the following factors:

The person lives with his/her family in the only home available and affordable to the family;
Compelling medical reason exists for the registered individual to reside in the home with the family ;

The number of victims of the appealing registered individual;

The diversity of victims;

The person's relationship to the victims;

A history of juvenile sex offenses;

A history of adult sex offenses;

A history of abuse or neglect;

A history of long-term separation from parents and/or spouse;
A history of family violence;
Past and current Employment status;
A history of substance abuse problems; and
Evidence of a chaotic, antisocial and/or criminal lifestyle indicated by their contact with law enforcement history and/or arrest record.
Fact findings of the City Council pertaining to the pertinent issues, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the City Council meeting at which such exemption is granted. Exemptions may be granted only when in harmony with the general purpose and intent of this Article, health, safety and general welfare of the citizens, and the children of the city shall be of paramount concern and importance when making a determination on appeals for exemptions.

SECTION 11:

Council decisions relating to exemption requests shall be in the sole discretion of the City Council, and are final and non-appealable.

SECTION 12:

A registered individual may only submit a request for an exemption, once within any 12-month period.

All ordinances or parts of ordinances in conflict with this Ordinance are hereby amended to the extent of a conflict herewith. In the event of a conflict between another ordinance of the City and this Ordinance, this Ordinance shall control.

SECTION 13:

Severability

If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 14:

Open Meeting-

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 time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Local Government Code.

SECTION 15:

The Secretary of the City of Florence is hereby directed to publish this Ordinance, or its caption and penalty clause, in the official city newspaper, prior to this Ordinance taking effect, in accord with State law.

SECTION 16:

If any provision or part of a provision of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, that holding shall not invalidate or impair the validity, force or effect of any other part or provisions of this ordinance or Code of Ordinances, of the City of Florence, Texas.

SECTION 17:

This Ordinance supersedes and repeals all ordinances or parts of ordinances, if any, in conflict herewith, however, such present ordinances shall remain in full force and effect until the effective date of this Ordinance.

SECTION 18:

This Ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of State of Texas.

Passed and Approved on First Reading on this, the 7 Day of June, 2022

Passed and Enacted Second Reading on this, the 12 Day of July, 2022

ENACTED:

Mary Condon
Mary Condon, Mayor

ATTEST:

Amy Crane
Amy Crane, City Secretary



