

## ORDINANCE O-24-2298

**AN ORDINANCE AMENDING CHAPTER 62 (OFFENSES AND MISCELLANEOUS PROVISIONS) OF THE CITY OF COLLEYVILLE CODE OF ORDINANCES BY ADDING NEW ARTICLE V ENTITLED "SEX OFFENDER RESIDENCY RESTRICTIONS"; PROHIBITING CERTAIN REGISTERED SEX OFFENDERS FROM RESIDING WITHIN A CERTAIN DISTANCE WHERE CHILDREN COMMONLY GATHER; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS,** the City of Colleyville, Texas (the "City") is a home-rule municipality having full powers of self-government and may enact ordinances relative to its citizens' health, safety, and welfare that are not inconsistent with the Constitution and laws of the State; and

**WHEREAS,** the Colleyville City Council (the "City Council") finds and determines the passage of this ordinance as necessary to protect the public, health, safety, and welfare; and

**WHEREAS,** the City Council finds and determines that the regulations herein are necessary and proper for carrying out its power to protect the government interest, welfare, and good order of the City; and

**WHEREAS,** the City Council finds and determines that child sex offenders who are required to register within the Texas State Sex Offender Registry represent a serious threat to public safety; and

**WHEREAS,** the City Council has endeavored to protect the health, safety, and welfare of the public from the negative impacts associated with child sex offenders; and

**WHEREAS,** the City Council finds and determines that the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes against children; and

**WHEREAS,** the City Council finds and determines that persons convicted of offenses that involve either physical contact with minors or preparatory steps towards physical contact with minors are a greater risk to the safety of children who gather near areas where such offenders reside; and

**WHEREAS,** it is not the intent of the City Council to impose a criminal penalty, but rather to serve the City's interest in protecting the health, safety, and welfare of the public by prohibiting convicted child sexual offenders from residing in specified areas near locations where children commonly gather; and

**WHEREAS,** the provisions of this ordinance do not prohibit registered sex offenders from residing in the City; and

**WHEREAS,** the City has a compelling interest in promoting, protecting, and improving the health, safety, and welfare of the citizens of the City by creating areas around locations where children regularly congregate or may congregate in concentrated numbers wherein certain registered sex offenders are prohibited from establishing temporary permanent residency; and

**WHEREAS,** the City Council has determined that every effort should be made to protect its citizens from harm at the hands of certain sex offenders and that the City's children are worthy of protection to the greatest extent afforded under the law; and

**WHEREAS,** the City Council finds that the protection of children is paramount to creating a safe environment in which to live, work, and play in our community; and

**WHEREAS,** the City Council further finds that the adoption and enforcement of this ordinance will help foster a community by protecting the family and maintaining the City as a safe place to live, visit, and conduct business; and

**WHEREAS,** the City Council is authorized by law to adopt the provisions contained herein and has complied with all the prerequisites necessary for the passage of this ordinance, including but not limited to the Texas Open Meetings Act.

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

Sec. 1. THAT all the forgoing premises and findings are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety.

- Sec. 2. THAT Chapter 62 Offenses and Miscellaneous Provisions is hereby amended by adding a new Article V entitled “Sex Offender Residency Restrictions”, and adding Sections 62-81 through 62-97 as provided in “Exhibit A.”
- Sec. 3. THAT any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in Section 1-7 of the City of Colleyville Code of Ordinances, and upon conviction shall be punishable by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.
- Sec. 4. THAT all provisions of the Code of Ordinances of the City of Colleyville, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.
- Sec. 5. THAT if any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be judged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any portion thereof other than that portion so decided to be invalid or unconstitutional.
- Sec. 6. THAT this ordinance shall take effect immediately from and after its passage subject to the publication of the caption, as the law or charter in such cases may provide.

**AND IT IS SO ORDERED.**

The first reading and public hearing being conducted on the 17<sup>th</sup> day of September 2024.

The second reading and public hearing being conducted on the 2<sup>nd</sup> day of October 2024.

APPROVED BY A VOTE OF 7 AYES, 0 NAYS, ON THIS THE 2<sup>ND</sup> DAY OF OCTOBER 2024.

Mayor Bobby Lindamood	<u>Aye</u>	Mark Alphonso, Place 2	<u>Aye</u>
Mayor Pro Tem Brandi Elder	<u>Aye</u>	Ben Graves, Place 4	<u>Aye</u>
Deputy Mayor Pro Tem Scotty Richardson	<u>Aye</u>	Tim Raine, Place 6	<u>Aye</u>

Kimberly Holt Gunderson, Place 5  
**ATTEST:**

\_\_\_\_\_  
Aye  
**CITY OF COLLEYVILLE**

Christine Loven, TRMC  
City Secretary

Bobby Lindamood  
Mayor

**APPROVED AS TO FORM:**

Nicole Corr  
City Attorney

## EXHIBIT A

### “Chapter 62 – OFFENSES AND MISCELLANEOUS PROVISIONS...”

#### ARTICLE V. – SEX OFFENDER RESIDENCY RESTRICTIONS

##### SEC. 62-81. – 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:

*Child* or *children* means any person under the age of seventeen (17).

*Child-care facility* means a facility that provides care, supervision, training, or education of an unrelated child or children under fourteen (14) years of age for less than twenty-four (24) hours a day that occurs in a place other than the child’s own home. This definition also encompasses each of the following two separate categories of use:

- (1) Day-care operation – center based. An operation providing care for children under fourteen (14) years of age, for less than twenty-four (24) hours per day, at a location other than the caregiver’s home.
- (2) Day-care operation – home based. An operation providing care for children under fourteen (14) years of age, for less than twenty-four (24) hours per day, at the caregiver’s home.

*Child safety zone* means an area (or zone) identified by the City of Colleyville wherein children commonly gather. This term encompasses video arcade facilities, movie theaters, public or private parks, public or private recreational facilities, child water play area, recreational areas, libraries, athletic fields, jogging trails, hiking trails, equestrian trails, and bicycle trails. Furthermore, this term includes the following additional terms:

- (1) Schools – any school whether public, private, or religiously affiliated, and includes institutions of higher education such as college, community college, or trade school.
- (2) Child-care facilities – as defined above.
- (3) Playgrounds – any outdoor facility that is not on the premises of a school and that is intended for recreation and contains three or more facilities intended for the use of children such as slides, swing sets, or teeterboards.
- (4) Swimming pools - any swimming pool that is operated for the use of the general public and is with or without a fee. This includes swimming pools that are located on the grounds of a hotel, club/resort, or apartment complex. This does not include pools located on the property of a single-family residence.
- (5) Youth center – any recreational facility or gymnasium that is intended for the use of Children (as defined above) and regularly provides athletic, civic, or cultural activities.

*Database* means, as applicable, the Texas Department of Public Safety's Sex Offenders Database, pursuant to the SORNA (Sex Offender Registration and Notification Act), and Texas Code of Criminal Procedure, this article, or the sex offender registration files maintained by the Colleyville Police Department.

*Halloween* means the holiday typically observed on or about October 31<sup>st</sup>, when children go door to door to collect candy or treats.

*Loitering* means and includes walking about aimlessly without apparent purpose; lingering; hanging around; lagging behind; the idle spending of time; delaying; sauntering and moving slowly about, where such conduct is not due to physical defects or conditions.

*Permanent residence* means a place where a person abides, lodges, or resides for twelve (12) or more consecutive days.

*Risk level* means the level attributed to registered sex offenders according to their assumed ability and capability to re-offend. Licensed individuals do the assessment, which allows the accurate assignment of a particular risk level. These risk levels are rated as follows:

- (1) Low Risk
- (2) Moderate Risk
- (3) High Risk
- (4) Civil Commitment
- (5) Not Reported – predominantly federal level cases due to the federal prison system not assigning risk levels as a requirement.

*Sex offender* means a person who is required to register into the Database and at least one of the following:

- (1) was convicted of committing or adjudicated to have committed a sex crime under state or federal law; or
- (2) was granted deferred adjudication for a sex crime under state or federal law; or
- (3) was convicted of, adjudicated to have committed, or granted deferred adjudication for an offense that is based on sexually motivated conduct.

*Temporary residence* means a place where a person abides, lodges, or resides for a period of twelve (12) or more consecutive or non-consecutive days during any calendar year, and is not the person's permanent address, or a place where a person routinely abides, lodges, or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent address.

## **SEC. 62-82. – OFFENSES.**

- (a) It is unlawful for a sex offender to occupy a permanent or temporary residence within two thousand (2,000) feet of a child safety zone. This section applies to all sex offenders regardless of risk level.
- (b) It is unlawful for a sex offender to knowingly loiter within five hundred (500) feet of a child safety zone.
- (c) It is unlawful to lease, rent, or otherwise provide any residence, dwelling, place, structure or part thereof, manufactured home, trailer, or any other conveyance, with the knowledge that it will be used as a permanent or temporary residence by any person prohibited from establishing such residence under the terms of this article, if such residence, dwelling, place, structure, or part thereof, manufactured home, trailer, or other conveyance is located within two thousand (2,000) feet of a child safety zone.
- (d) It shall be unlawful for a sex offender to have an outdoor street-facing light aglow or to hand out any type of candy or other treat during Halloween.

## **SEC. 62-83. – CITY NOTIFICATION REQUIREMENTS.**

- (a) All sex offenders shall notify the Colleyville Police Department in writing at least seven (7) days prior to establishing a permanent or temporary residence in the City of Colleyville. Such written notification shall, at a minimum, include the following information:
  - (1) The full legal name of the sex offender; and
  - (2) The address of the property upon which the sex offender intends to occupy as a permanent or temporary residence.
- (b) Upon receipt of a notification required by subsection (a), the City of Colleyville will notify the owner(s) of all real property located within a five hundred (500) foot radius of the sex offender's permanent or temporary address. This notification will consist solely of information that is made available to the public through the Texas Department of Public Safety's Sex Offender Database or SORNA.

## **SEC. 62-84. – MEASUREMENTS.**

To determine the minimum distance separation, the requirement shall be measured by following a straight line from the nearest portion of the property line of the sex offender's permanent or temporary residence to the nearest property line of the child safety zone.

## **SEC. 62-85. – CULPABLE MENTAL STATE.**

Neither allegation nor evidence of a culpable mental state is required to prove an offense under this article.

## **SEC. 62-86. – DEFENSES TO PROSECUTION.**

It shall be a defense to prosecution under this article if:

- (a) the sex offender established a permanent or temporary residence before the date of the adoption of this article and is in compliance with all applicable state and federal sex offender registration laws, rules, and regulations.
- (b) the sex offender was a minor when they committed the offense requiring registration with the Database and was not convicted as an adult.
- (c) the sex offender required to register with the Database is a minor as defined by the Texas Penal Code.
- (d) the child safety zone was first opened to the public after the sex offender established residency and the sex offender is in compliance with all applicable state and federal sex offender registration laws, rules, and regulations.
- (e) the information in the Database is proven to be incorrect, and, if corrected, this article would not otherwise apply in whole, or in relevant part, as the case may be.
- (f) the sex offender is a duly qualified and registered voter and enters a child safety zone for the sole purpose of going onto a recreation or civic facility to vote in a duly called election, and only for so long as is reasonably necessary for the person to cast their vote in such election.
- (g) a sex offender, who has the right to be present at a meeting held by a governmental entity held in a child safety zone, shall have the limited privilege of entering the child safety zone for such time as reasonably necessary to attend the meeting, but only on the premises identified in the official public notice for the public meeting and not on the surrounding property if the surrounding property is within a child safety zone.

## **SEC. 62-87. APPEAL PROCEDURE.**

A sex offender subject to the provisions of this article may appeal the



applicability of one or more provisions herein as follows:

- (a) The individual appealing the applicability of any provision in this article must deliver a written and notarized letter of appeal to the city secretary. The letter of appeal shall, at a minimum, include:
  - (1) the person's name and contact information;
  - (2) a brief description of the basis for appeal, including reference to the specific section(s) of this article being appealed;
  - (3) all supporting documentation necessary to make a final determination on the appeal; and
  - (4) such other information as the city secretary may reasonably require.

It is not required that the letter of appeal contain any information considered confidential by law.

- (b) Upon receipt of a completed letter of appeal, the city secretary will forward the appeal to the city manager's office. Within thirty (30) days of receipt of the completed letter of appeal, the city manager, in coordination with the mayor, shall schedule a public hearing on the appeal to be held at a regular or special meeting of the city council.
- (c) The city council may hear and review any information relevant to the appeal, including oral or written statements from any person with information relevant to the appeal.
- (d) Upon conclusion of the public hearing, the city council shall grant or deny the appeal, in whole or in part, by a majority vote of the entire council. A decision granting an appeal may be subject to such conditions and limitations as the city council deems appropriate. The decision of the city council shall be final.
- (e) The city secretary shall provide the appellant written notice of the city council's final decision. A written copy of the official minutes of the meeting shall serve as the record of appeal, which shall be retained in the city's files in conformance with the city's records retention policy.

**Secs. 62-88—62-99. - Reserved."**