

ORDINANCE NO. 6-15-2023-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELMENDORF, TEXAS AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 24 OFFENSES BY ADDING ARTICLE III SEX OFFENDER RESTRICTIONS; RESTRICTING SEX OFFENDERS FROM GOING IN, ON, OR NEAR PLACES WHERE CHILDREN COMMONLY GATHER; ESTABLISHING AN OFFENSE; ESTABLISHING A PENALTY; PROVIDING FOR PROCEDURES TO APPLY FOR EXEMPTION OF THIS ORDINANCE; PROVIDING FOR AN AFFIRMATIVE DEFENSE; PROVIDING REPEALING AND SEVERABILITY CLAUSES; PROVIDING AN OPEN MEETINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Elmendorf (the City) is a Type A general-law municipality of the State of Texas;

WHEREAS, Section 51.012 of the Texas Local Government Code provides that a general-law municipality may adopt an ordinance, act, law, or regulation, not inconsistent with state law that are "necessary for the government, interest, welfare, or good order" of the city,;

WHEREAS, Section 341.906 of the Local Government Code allows general-law municipalities, by ordinance, to "restrict a registered sex offender from going in, on, or within a specified distance of a 'child safety zone', excepting for a legitimate purposes," and also must provide a process whereby sex offenders who reside near a child safety zone when a restrictive ordinance is adopted can apply for an exemption from the restrictions in the ordinance; and

WHEREAS, the City Council of the City of Elmendorf, Texas finds that it is in the best interest of the health, safety, and welfare of the citizens of Elmendorf that restrictions be imposed to prevent registered sex offenders from going in, on, or near places where children commonly gather within the City.

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

Part 1. Enacted.

The City of Elmendorf Code of Ordinances is hereby amended by amending Chapter 24 Offenses by adding Article III Sex Offender Restrictions, which shall read as follows:

ARTICLE III SEX OFFENDER RESTRICTIONS

Sec. 24-60. - Definitions

Child-care Facility means a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child

who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

Child Safety Zone means Premises where children commonly gather. The term includes, but is not limited to public parks, public library, movie, theater, School, Day-care Center, Playground, public or private Youth Center, indoor and outdoor amusement centers that cater primarily to children, amusement parks, public and commercial and semi-private swimming pools, Video Arcade Facility, public or private School or Day-care Center bus stop or other facilities that regularly holds events primarily for children, whether public or private. The term does not include a Church.

Church means a facility that is owned by a religious organization and is used primarily for religious services, as defined by Section 544.251, Insurance Code.

Day-care Center means a Child-care Facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

Playground means any outdoor facility that is not on the premises of a school and that:

- (a) Is intended for recreation;
- (b) Is open to the public; and
- (c) Contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards.

Premises means real property and all buildings and appurtenances pertaining to the real property.

Registered Sex Offender means an individual who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

School means a private or public elementary or secondary school or a Day-care Center.

“Video Arcade Facility” means any facility that:

- (a) Is open to the public, including persons who are 17 years of age or younger;
- (b) Is intended primarily for the use of pinball or video machines; and
- (c) Contains at least three pinball or video machines.

Youth Center means any recreational facility or gymnasium that:

- (a) Is intended primarily for the use by persons who are 17 years of age or younger; and
- (b) Regularly provides athletic, civic, or cultural activities.

Sec. 24-61. - Prohibited Conduct.

A Registered Sex Offender shall not go in, on, or within 1,000 feet of any Child Safety Zone in

the City of Elmendorf.

Sec. 24-62. - Minimum Distance Separation.

The minimum distance of separation is measured by following a straight line from the outer property line of an area or structure designated as a Child Safety Zone for a distance of 1000 feet. No loitering of any kind may occur from the outer property line of an area or structure designated as a Child Safety Zone.

Sec. 24-63. - Offense.

- (a) For each person required to register on the Texas Department of Public Safety's "Public" sex offender database (the "database") under Chapter 62, Code of Criminal Procedure, because of a "reportable conviction or adjudication," as defined by Article 62.001, Code of Criminal Procedure, or who has been civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code, and is subject to outpatient treatment and supervision under that chapter, it shall be unlawful for that person to establish a permanent residence or temporary residence within 1,000 feet of a Child Safety Zone, as the terms are defined in Section A.
- (b) It is unlawful to lease, rent or otherwise provide any residence, dwelling, place or structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent or temporary residence by any person prohibited from establishing the permanent or temporary residence pursuant to the terms of this section, if such place, structure or part thereof, manufactured home, trailer or other conveyance is located within 1,000 feet of a Child Safety Zone, as defined in Section A.
- (c) It is an offense for a Registered Sex Offender to enter a Child Safety Zone, whether knowingly or not.

Sec. 24-64. - Penalty.

A violation of this Article shall be punishable as a Class C misdemeanor and, upon conviction therefore, a violator shall be assessed a fine not exceeding five hundred dollars (\$500.00). Each and every day a violation of this Article occurs or continues shall be a separate offense.

Sec. 24-65. - Affirmative Defenses.

- (a) It is an affirmative defense to prosecution under this Article that the Registered Sex Offender was in, on, or within 1,000 feet of a Child Safety Zone for a legitimate purpose, including but not limited to 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.
- (b) The Child Safety Zone, as specified herein, within 1,000 feet of the permanent or temporary residence of the person required to register on the database 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 of Texas.

Sec. 24-66. - Exemption.

- (a) Generally. A Registered Sex Offender who established residency in a residence located within 1,000 feet of a Child Safety Zone before the Effective Date of this Article is exempt from the prohibitions contained in this Article.
- (b) Applicability. This exemption only applies to areas necessary for the Registered Sex Offender to have access to and to live in the residence and for the period the Registered Sex Offender maintains residency in the initial established residence.
- (c) Application. To obtain an exemption under this Section, the Registered Sex Offender must submit an application to the City Administrator, in the form supplied by the City Secretary, and attached herein to this Article as “Exhibit A – Sex Offender Residency Exemption Form” that demonstrates the Registered Sex Offender established residency in a residence located within 1,000 feet of a Child Safety Zone before the date this Article from which this subsection derives was adopted.
- (d) Approval. Said exemption shall be granted by the City Administrator if the City Administrator determines, following review of the application for exemption, that the Registered Sex Offender did reside at a residence within 1,000 feet of a Child Safety Zone on the Effective Date of this Article and continues to reside at that residence.
- (e) Duration. The exemption shall expire when and if the Registered Sex Offender no longer resides at the residence listed under their approved application.

Part 2. Severability

The provisions and sections of this Ordinance shall be deemed to be independent, and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.

Part 3. Repeal of Conflicting Ordinances

All ordinances or part of ordinances in conflict herewith are hereby repealed to the extent of the conflict with this Ordinance.


Part 4. Publication

The City Secretary is authorized and direct to publish the caption and penalty prescribed by this Ordinance in accordance with State Law.

Part 5. Effective Date

This Ordinance shall be in force and effect from and after its publication.

Passed and approved by the City Council this 15th day of June 2023.


Michael Gonzales, Mayor

ATTEST:


Roxanne DeLeon, City Secretary

