

ORDINANCE NO. 2024-08

AN ORDINANCE OF THE CITY OF LOCKHART, TEXAS REGULATING SEX OFFENDER RESIDENCY WITHIN THE CITY AND ESTABLISHING CHILD SAFETY ZONES; AMENDING CHAPTER 36 OF THE CODE OF ORDINANCES ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS" BY ESTABLISHING ARTICLE III TO BE ENTITLED "REGULATION OF SEXUAL OFFENDERS;" MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 2,000 FEET OF PREMISES WHERE CHILDREN COMMONLY GATHER; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE; REPEALING ORDINANCE OR PART OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING AN EFFECTIVE DATE, A SEVERABILITY CLAUSE, FINDINGS OF FACT AND PROVIDING FOR OPEN MEETINGS.

WHEREAS, The City of Lockhart, Texas (the "City") is a home rule city having authority to utilize police power regulation for the health, safety, and general welfare of the citizens of the City; and

WHEREAS, the City Council of the City has determined there is a need to protect persons under 17 years of age from sexual predators and believe it is necessary to define and create child safety zones for the purposes of protecting persons under 17 years of age from sexual predators;

WHEREAS, the City Council of the City has determined that the recidivism rate for individuals required to register as sex offenders whose offenses were committed against children is alarmingly high based on a study performed by the U.S. Department of Justice, Office of Justice Programs, entitled Recidivism of Adult Sexual Offenders;

WHEREAS, the City is seeing an influx of new residents, including those with young children, which thereby is increasing the number of places where children congregate within the City;

WHEREAS, the City Council of the City finds that establishing a policy to restrict the residency of sex offenders to locations outside established child safety zones promotes the safety of children;

WHEREAS, the City Council of the City finds that ordinances establishing sex offender residency restrictions have been repeatedly recognized by state and federal courts as legitimate exercises of the police power and do not infringe upon the constitutional rights of convicted sex offenders; and

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code and the City Charter, provide the City authority to adopt ordinances for the good government, peace, order, and welfare of the City;

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

SECTION 1. FINDINGS OF FACT

The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

SECTION 2. AMENDMENT OF CHAPTER 36.

Chapter 36 of the Code of Ordinances of the City entitled "Offenses and Miscellaneous Provisions" is hereby amended by establishing Article III entitled "Regulation of Sexual Offenders" with the following provisions.

ARTICLE III REGULATION OF SEXUAL OFFENDERS

Sec. 36-31 Purpose and Intent.

The City Council of the City finds that sex offenders who are required to register as sexual predators under V.T.C.A., Texas Code of Criminal Procedure, Chapter 62, present an extreme threat to the health, safety and welfare of children. It is the intent of this Chapter 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.

Sec. 36-32 Definitions.

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Child. Any person under the age of 17.

Child Day Care. Any place, home, or institution which provides temporary custodial care and is regulated by the State of Texas.

Child Safety Zone. —Including, but not limited to, areas including all improved and unimproved lots where the following are located or planned to be located:

- A. Public parks;
- B. Private and public schools;
- C. Public library;
- D. Amusement arcades or video arcades;
- E. Indoor and outdoor amusement centers or amusement parks, or carnivals, circuses, fairs or fair grounds;
- F. Public, commercial and semi-private swimming pools;
- G. Child Day Care Facilities;
- H. Public or private youth soccer, football or baseball fields;
- I. Crisis center or shelter;
- J. Skate park or rink;
- K. Public or private youth center;
- L. Movie theater;
- M. Bowling alley;
- N. Scouting facilities;
- O. Any public or private group, location or activity that regularly provides athletic, civic or cultural activities that includes as participants or recipients persons who are 17 years of age or younger, including but not limited to Public Halloween Festivals, Christmas celebrations, activities or Parades and Vacation Bible Schools;
- P. Offices for Child Protective Services.

Database. 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 Lockhart Police Department.

Loiter Includes standing, sitting, the walking about aimlessly without apparent purpose; lingering; hanging out; 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, without a lawful purpose or for longer than necessary to complete a lawful purpose.

Park or Playground. Any of the following:

- A. Any land, including improvements to the land, that is administered, operated or managed by the City of Lockhart for the use of the general public as a recreational area.
- B. City recreational areas including, but not limited to, conservation area, jogging trail, hiking trail, bicycle trail, recreational center, waterpark, swimming pool, football field, soccer field or baseball field.

Permanent Residence. A place where the person abides, lodges or resides for 14 or more consecutive days.

Places where children regularly congregate. Same as Child Safety Zone.

Public Way. 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. A private or public pre-school, private or public elementary school or private or public secondary school.

Child Sex Offender. An individual who has been convicted of or placed on deferred adjudication for a sexual offense involving a person under 17 years of age for which the individual is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

Temporary Residence. A place where a person abides, lodges or resides for a period of 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 abides, lodges or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Sec. 36-33 Sex Offender Prohibition.

- A. It shall be unlawful for a Child Sex Offender to establish a permanent residence, or to establish a temporary residence within 2,000 feet of any premises comprising a school, child day care, park or playground or other places where children regularly congregate.
- B. It shall be unlawful for a person who owns, rents, leases, or inhabits property to knowingly allow a Child Sex Offender to establish a permanent residence, establish a temporary residence within 2,000 feet of any premises comprising a school, child day care, park or playground or other places where children regularly congregate.

- C. It shall be unlawful for a Child Sex Offender to enter and loiter in a Child Safety Zone.
- D. It shall be unlawful a Child Sex Offender to loiter on a public way within 300 feet of a Child Safety Zone.
- E. A Child Sex Offender shall not, on each October 30th and 31st, or any other date set by the City for trick-or-treaters, leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the premises and shall post a sign in front of the premises that reads "This residence does not recognize Halloween."

Sec. 36-34 Evidentiary Matters.

- A. If a sex offender who 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 subchapter.
- B. It shall be prima facie evidence that this subchapter 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 17 years of age.
- C. For the purpose of determining the minimum distance of separation under this article, the distance shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises of a Child Safety Zone, or other places where children regularly congregate, as described hereinabove, or, in the case of multiple residences on one property, measuring from the nearest property line of the premises of a Child Safety Zone or other places where children regularly congregate, as described herein.
- D. In cases of a dispute over measured distances, it shall be incumbent upon the party challenging the measurement to prove otherwise.
- E. A map depicting the prohibited areas shall be created by the City of Lockhart and maintained by the Lockhart Police Department. The City of Lockhart shall review the map annually for changes. Said map will be available to the public at the Lockhart Police Department or available on the City of Lockhart Website or Lockhart Police Department Website.
- F. Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined in this article.

Sec. 36-35 Affirmative defenses.

The following shall be affirmative defenses to prosecution under this article that any of the following conditions apply:

- A. It shall be an affirmative defense under Sec. 36-33(A) if the person required to register in/on the database established their permanent residence or temporary residence and such residency has been consistently maintained and the person has complied with all of the Child Sex Offender Registration laws of the State of Texas prior to the date of the adoption of this subchapter, provided, however that if the person required to register in/on the database established the permanent or temporary residence through a lease or other rental arrangement in effect on the effective date of this article, this affirmative defense shall not apply upon termination of the

lease/rental arrangement that is in effect on the effective date of this article, and/or if that person required to register in/on the database is incarcerated for a period of one year or more, this affirmative defense shall not apply.

- B. It shall be an affirmative defense under Sec. 36-33(A) if the person required to register on the database lives in a medical facility for care where services are designed to meet a person's health or personal care needs during a short or long period of time. Medical facilities are defined as hospitals or inpatient facilities.
- C. It shall be an affirmative defense under Sec. 36-33(A) if the premises where children regularly congregate, as specified herein, within 2,000 feet of the permanent or temporary residence of the person required to register in/on the database was opened after the person established the permanent or temporary residence and the person complied with all Child Sex Offender Registration laws of the State of Texas.
- D. It shall be an affirmative defense under Sec. 36-33 if the information in/on the database is incorrect, and, if corrected, this subchapter would not apply to the person who was erroneously listed in/on the database.
- E. The person required to register in/on the database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
- F. The person required to register is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located within 2,000 feet of the premises comprising a school, child day care, park or playground or other places where children regularly congregate.
- G. The person required to register is under 18 years of age or a ward under a guardianship, who resides with a parent or guardian.
- H. The person required to register has been exempted by a court order from registration as a child sex offender under Chapter 62, Texas Code of Criminal Procedure.
- I. The person required to register has had the offense for which the sex offender registration was required reversed on appeal or pardoned.
- J. The person's duty to register in/on the database has expired.
- K. The person was within a child safety zone performing community service ruled by a magistrate.
- L. 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.
- M. The person is adhering to local school policy or is otherwise preempted from this Section by State Law.
- N. It shall be an affirmative defense to prosecution under this Ordinance if the person enters a Child Safety Zone for a legitimate purpose. A legitimate purpose includes:
 - 1. Transportation of a child that the Child Sex Offender is legally permitted to be with;
 - 2. Transportation to and from the registered sex offender's work;
 - 3. Other work-related purposes; and
 - 4. Engaging in lawful acts of commerce.

SECTION 2. PENALTY CLAUSE.

Any person who violates the provisions of this article shall be charged with a class C misdemeanor; and upon conviction shall be fined as provided for in Sec. 1-8 of this Code for each day that a violation exists, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

SECTION 3. AMENDMENT OF ORDINANCES.

The City Code of Ordinances, Chapter 36, is hereby amended to the extent of any conflict or inconsistency herewith only and all ordinance or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City, the terms and provisions of this Ordinance shall govern.

SECTION 4. SEVERABILITY.

In the event any clause, phrase, provision, sentence, or any part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Lockhart, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 5. NOTICE BY PUBLICATION

The City Secretary shall give notice of the enactment of this Ordinance by promptly publishing it or its description caption and penalty after final passage in the official newspaper of the City. This Ordinance shall take effect ten days after the date of such publication.

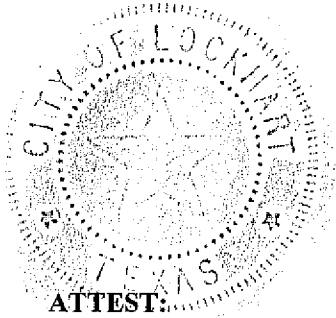
SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect immediately from and after publication in accordance with the provisions of the City Charter and the Local Government Code.

SECTION 7. OPEN MEETING COMPLIANCE

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Texas Government Code, Chapter 551.

PASSED AND APPROVED by the City Council of the City of Lockhart, Texas, on this this 19TH day of March 2024.

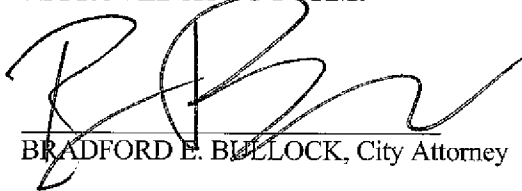


CITY OF LOCKHART, TEXAS


LEW WHITE, Mayor


JULIE BOWERMON, City Secretary

APPROVED AS TO FORM:


BRADFORD E. BILLOCK, City Attorney