

ORDINANCE NO. 2010-08-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 70 OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, RELATING TO MISCELLANEOUS OFFENSES, BY ADDING A SECTION 70-220, ENTITLED "RESIDENCY REQUIREMENTS OF SEX OFFENDERS"; PROHIBITING REGISTERED SEX OFFENDERS FROM RESIDING WITHIN TWO THOUSAND (2000) FEET OF PUBLIC PARKS, PUBLIC PLAYGROUNDS, PRIVATE OR PUBLIC SCHOOLS, LIBRARIES, PUBLIC SWIMMING POOLS, PUBLIC OR PRIVATE YOUTH CENTERS, AND CHILD DAY CARE CENTERS; PROVIDING FOR THE MEASURING OF DISTANCE REQUIREMENTS; PROVIDING FOR THE MAINTAINING AND UPDATING OF CITY MAP; DISPENSING WITH A CULPABLE MENTAL STATE; PROVIDING AFFIRMATIVE DEFENSES TO THE RESIDENCY REQUIREMENTS; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR SAID ORDINANCE TO TAKE EFFECT FROM AND AFTER ITS DATE OF PUBLICATION.

WHEREAS, the City Council of the City of McKinney, Texas, finds, determines, and declares that sex offenders are a serious threat to public safety; and

WHEREAS, the City Council of the City of McKinney, Texas, 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 of the City of McKinney, Texas, finds and determines that establishing a policy to restrict the property available for residence of sex offenders will provide better protection for children gathering in the City.

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

Section 1. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. That Chapter 70, of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by adding a new section 70-220 to said Code which shall read as follows:

"70-220 RESIDENCY REQUIREMENTS OF SEX OFFENDERS

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) **DAY CARE CENTER** means a facility providing care, training, education, custody, treatment, or supervision for thirteen (13) or more children for less than twenty-four (24) hours a day.
- (2) **MINOR** means any person less than seventeen (17) years of age.
- (3) **PERMANENT RESIDENCE** means a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.
- (4) **PREMISES** include all improved and unimproved areas on the lot where the public park, public playground, private or public school, library, public swimming pool, public or private youth center or day care center is located.
- (5) **TEMPORARY RESIDENCE** means a place where a person abides, 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 a person routinely abides, 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 address.

(B) *Offenses.*

- (1) It is unlawful for a person to establish a permanent or temporary residence within two thousand (2000) feet of any premises where children commonly gather if the person is required to register on the Texas Department of Public Safety's Sex Offender Database (the "Database") because of one or more conviction(s) involving a minor.
- (2) For purposes of this Ordinance, premises where children commonly gather are deemed to be public parks, public playgrounds, private or public schools, libraries, public swimming pools, public or private youth centers or day care centers.

(C) *Evidentiary Matters; Measurements.*

- (1) It shall be prima facie evidence that this Section applies to a person if that person's record appears on the Database and the Database indicates that the victim was less than seventeen (17) years of age.
- (2) For the purposes of determining the minimum distance separation, the requirement 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 where children commonly gather, as described herein above, or, in the case of multiple residences on one property, measuring from the nearest property line of the premises to the nearest property line of the premises where children commonly gather, as described herein.

- (3) A map depicting the prohibited areas shall be maintained by the City of McKinney. The City shall review the map annually for changes. Said map will be available to the public at the City Secretary's office.
- (4) Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by this Section.
- (5) It is a defense to prosecution under this Section that any of the following conditions apply:
 - (a) The person required to register on the Database established the permanent or temporary residence and 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, August 17 , 2010.
 - (b) The person required to register on the Database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
 - (c) The person required to register on the Database is a minor.
 - (d) The premises where children commonly gather, as specified herein, within 2,000 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.
 - (e) The information on the Database is incorrect, and, if corrected, this Section would not apply to the person who was erroneously listed on the Database.
 - (f) The person was at the time of the violation subject to community services supervision pursuant to Article 42.12(Section 13B) of the Texas Code of Criminal Procedure, as amended, and the court reduced or waived the one thousand (1000) foot restriction for a child free zone under Article 42.12, Section 13B(a)(1)(B) of the Texas Code

of Criminal Procedure, **as it applies to the person's residence.**"

- (D) *Penalty.* A person who violates any of the provisions of Section 70-2 shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed Two Thousand Dollars (\$2000.00) for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense."

Section 3. **SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 4. **REPEALER CLAUSE**

Any provision of any prior ordinance of the City whether codified or uncoded, which are in conflict with any provision of the Ordinance, are hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City whether codified or uncoded, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section 5. **EFFECTIVE DATE**

This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 23rd DAY OF AUGUST, 2011.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney