

CITY OF BASTROP, TX
ORDINANCE NO. 2024-20

SEX OFFENDER ORDINANCE

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS ENACTING CHAPTER 8, ARTICLE 8.06, OF THE BASTROP CODE OF ORDINANCES, PROVIDING FOR RESTRICTIONS RELATED TO REGISTERED SEX OFFENDERS; AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, PROPER NOTICE AND MEETING.

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City Council of the City of Bastrop (City Council) has general authority consistent with state law and with its home-rule charter to adopt ordinances for the good government, peace, or order of the City; and

WHEREAS, Chapter 62 of the Texas Code of Criminal Procedure establishes the State of Texas sex offender registration program, which includes certain requirements to register with the local police department; and

WHEREAS, Texas Local Government Code Section 341.906, to provide for the public safety, authorizes cities to adopt ordinances restricting registered sex offenders from going in, on, or within a specified distance of premises where children commonly gather; and

WHEREAS, the City Council finds that, to provide for the public safety, adopting certain restrictions on the participation of registered sex offenders in programs or events involving minors and certain restrictions on where registered sex offenders may go or reside within a specified distance of premises where children commonly gather is reasonable and necessary for the good government, peace, or order of the City; and

WHEREAS, the City Council finds that enacting certain additions to the Bastrop Code of Ordinance, as attached in *Attachment "A"*, are reasonable, necessary, and in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bastrop, TX:

Section 1. Findings of Fact: The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

Section 2. Enactment: The title of Chapter 8 of the Bastrop Code of Ordinances shall be amended to read "General Health, Safety, and Sanitation Regulations," and a new Article 8.06, of the Bastrop Code of Ordinances is hereby

adopted and enacted and shall read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

Section 3. Repealer: To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated.

Section 4. Severability: Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

Section 5. Codification: The City Secretary is hereby directed to record and publish the attached rules, regulations, and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

Section 6. Effective Date: 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 the State of Texas.

Section 7. Proper Notice & Meeting: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED on *First Reading* by the City Council of the City of Bastrop, on this, the 25th day of June 2024.

PASSED & APPROVED on *Second Reading* by the City Council of the City of Bastrop, on this, the ____ day of _____ 2024.

APPROVED:

by: _____
Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

**CITY OF BASTROP
CODE OF ORDINANCES**

CHAPTER 8. GENERAL HEALTH, SAFETY, AND SANITATION REGULATIONS

ARTICLE 8.06 - SEX OFFENDER ORDINANCE

Sec. 8.06.001 - Definitions

- (a) For the purposes of this article, 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:

Sex Offender. An individual who, because of one or more violations, is required to register as a sex offender under: Chapter 62 of the Texas Code of Criminal Procedure; the laws of another state; federal law; the laws of a foreign country; or the Uniform Code of Military Justice.

City Park. Land located within the city limits that is owned or controlled by a unit of local government which is designated by the unit of local government for use as a park, which includes regular use for children's recreation.

City Recreation Center. City recreational areas, including but not limited to city recreational parks or other recreational facilities, as well as the soccer fields and baseball fields under the jurisdiction of a unit of local government.

Minor. A person who is under the age of seventeen (17) years of age.

Permanent Residence. A place where a person abides, lodges, or resides for seven (7) or more consecutive days.

Premises where children commonly gather. Any city park, city recreational center, private or public youth center, video arcade, public or private school, child-care facility, daycare center, or child safety zone, as those terms are defined in Texas Local Government Code Section 341.906, Texas Health and Safety Code, sections 341.064 and 481.134, and Texas Human Resources Code, section 42.002. The term does not include a church, as defined by Texas Insurance Code Section 544.251.

Property Owner. Any owner of record, person who has contractual responsibility for managing leases of the property, or person who has the legal right of possession of the property.

Temporary Residence. A place where a person abides, lodges, or resides in the City during any month in which the person on at least three (3) occasions spends more than forty-eight (48) consecutive hours in the City, and which is not the person's Permanent Residence.

Sec. 8.06.002 - Programs Involving Minors

- (a) *Generally.* A sex offender shall not participate in any program or event that includes minors as participants and regularly provides athletic, civic, or cultural activities.

- (b) *Halloween*. A sex offender shall not on each October 31st leave an exterior porch light on or otherwise invite trick-or-treaters who are minors to the premises.

Sec. 8.06.003 - Offender Registration, Reporting, and Residency Prohibition

- (a) A sex offender shall register with the City of Bastrop Police Department when establishing either a permanent or temporary residence in the City, consistent with the requirements of Chapter 62 of the Texas Code of Criminal Procedure.
- (b) A sex offender for whom the City of Bastrop Police Department is designated as that person's primary registration authority by the Texas Department of Public Safety shall report to the City of Bastrop Police Department to verify the information in the person's registration form maintained by the City of Bastrop Police Department either:
 - (1) At least once in each ninety (90) day period following the date the person first registered with the City of Bastrop Police Department, if the sex offender is subject to such a ninety (90) day reporting requirement under Article 62.058, Texas Code of Criminal Procedure, because the sex offender has been convicted two or more times for a sexually violent offense, received an order of deferred adjudication two or more times, or been convicted and received an order of deferred adjudication; or
 - (2) At least once each year, not earlier than the thirtieth (30th) day before and not later than the thirtieth (30th) day after the anniversary of the sex offender's date of birth, if the sex offender is subject to such annual reporting under Article 62.058, Texas Code of Criminal Procedure; or
 - (3) If the sex offender is subject to Article 62.202, Texas Code of Criminal Procedure, regarding persons civilly committed as a sexually violent predator, either:
 - a. If the person resides at a civil commitment center, at least once each year; or
 - b. If the person does not reside at a civil commitment center, at least once in each thirty (30) day period following either the date the person first registered with the City of Bastrop Police Department, or, if applicable, the date the person moved from a civil commitment center.
- (c) It is unlawful for a sex offender to establish a permanent or temporary residence within one thousand (1,000) feet of any premises where children commonly gather.

Sec. 8.06.004 - Property Owners Prohibited from Renting Real Property to Sexual Offenders

- (a) It is unlawful for a property owner to let or rent any place, structure or part thereof, manufactured home or trailer, with the knowledge that it will be used as a permanent residence or temporary residence by any sex offender prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this article, if such place, structure or part thereof, manufactured home, trailer, or other conveyance, is located within one thousand (1,000) feet of any premises where children commonly gather.

Sec. 8.06.005 – Enforcement: Penalty; Affirmative Defenses; Evidentiary Matters

- (a) *Penalty*. Any firm, corporation or person who violates any provision contained in the provisions of this article is guilty of a misdemeanor, and upon conviction, shall be fined in

an amount not to exceed five hundred dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

(b) *Affirmative defenses.* It is an affirmative defense to prosecution that any of the following conditions apply:

- (1) The sex offender established the permanent or temporary residence and has complied with all the sex offender registration laws of the state, prior to the date of the adoption of this article;
- (2) The person was a minor when he/she committed the offense and was not convicted as an adult;
- (3) The person is a minor;
- (4) The premises where children commonly gather, as specified herein, within one thousand feet (1,000) of the permanent or temporary residence of the sex offender was opened, established or created after the date the sex offender had established the permanent or temporary residence and complied with all sex offender registration laws of the state;
- (5) The information on the state's sex offender registry database is incorrect, and if corrected, this article would not apply to the person; or
- (6) At the time of the violation, the person was subject to community services supervision pursuant to Article 42A of the Texas Code of Criminal Procedure or a period of supervision as a condition of parole pursuant to Chapter 508 of the Texas Government Code, and the court or parole board reduced or waived the 1,000-foot restriction as it pertains to the person's residence.
- (7) For a violation of Section 8.06.002, the person posted a sign at the entrance to the person's residence on October 31st stating "No Trick-or-Treating", or substantially similar language expressly discouraging trick-or-treating at the residence, and such sign was posted by or before 3:00pm and remained posted through 11:59pm on October 31st.
- (8) The person applied for and was approved for an exemption under Section 8.06.006 specific to the violation.

(c) *Evidentiary Matters.*

- (1) Neither allegation, nor evidence, of a culpable mental state is required for the proof of an offense defined by this article, except for a violation under Section 8.06.004, which requires knowledge on the part of the property owner.
 - a. For purposes of Section 8.06.004, a property owner has knowledge that the property will be used as a permanent residence or temporary residence by a sex offender if either the sex offender's status on the state's sex offender registry database is disclosed to the property owner in an application to lease the property or through a related background check of the prospective tenant, or if the property owner is made aware of the sex offender's status on the state's sex offender registry database by any other means.

- (2) It shall be prima facie evidence that this article applies to such a person if that person's record appears on the state's sex offender registry database.
- (3) *Measurements.* 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 hereinabove.
 - a. In the case of multiple residences on one (1) property, measurement is from the nearest wall of the building or occupied structure or the parking/driveway, whichever is closer to the nearest property line of the premises to the nearest property line of the premises where children commonly gather, as described herein.
 - b. The city will maintain a map depicting the prohibited areas. The city shall annually review the map for changes. Said map will be available to the public, at the city police department.
 - c. In cases of a dispute over measured distances, it shall be incumbent upon the person(s) challenging the measurement to prove otherwise.
- (4) Nothing in this section is intended to modify or reduce a "child safety zone" implemented by a court or parole panel under other law.

Sec. 8.06.006 – Exemptions

- (a) Exemptions from the terms of this article shall not be contrary to the laws of this State or the public interest, but may be granted on an event-by-event basis where or when, owing to special conditions, a literal enforcement of the provisions of this article (1) will result in unnecessary hardship, such as interfering with the person's ability to attend school or to hold a job, and (2) is broader than necessary to protect the public, given the nature and circumstances of the special conditions.
- (b) A sex offender shall have the right to make an appeal for an exemption from a provision of this article by making a request to the chief of police, in writing, stating the provision from which an exemption is sought, the event for which an exemption is sought, the special conditions which would cause a literal enforcement of the provision to result in unnecessary hardship, and any other relevant factors showing that granting an exemption would be in the public interest.
- (c) Special conditions and factors that may be considered by the chief of police on whether to grant an exemption include, but are not limited to, the following:
 - (1) Whether a literal enforcement of the provisions of this article in the event-specific instance will result in unnecessary hardship, such as interfering with the person's ability to attend school or to hold a job;
 - (2) Whether a literal enforcement of the provisions of this article in the event-specific instance is broader than necessary to protect the public, given the nature and circumstances of the special conditions;
 - (3) If the person is subject to a period of community supervision under Texas Code of Criminal Procedure Article 42A, or a period of supervision as part of parole under

- Texas Government Code Chapter 508, whether the person has served at least two years of such period of supervision;
- (4) If the person was subject to community services supervision pursuant to article 42.12, section 13B Article 42A of the Texas Code of Criminal Procedure or a period of supervision as a condition of parole pursuant to Chapter 508 of the Texas Government Code, the court or parole board reduced or waived the 1,000-foot restriction as it pertains to the person's residence, or otherwise established conditions less restrictive than those of set forth in this article.
 - (5) Whether the person is seeking the exemption as part of a program to reunite with the person's family; and
 - (6) Whether the person's written request seeking the exemption has specified how the person intends to cope with any stressful situations that occur.
- (d) The decision of the chief of police, which may be made based solely on the written appeal without further hearing, shall be final.