

ORDINANCE NO. 421

AN ORDINANCE OF THE CITY OF MANOR, TEXAS, MAKING IT UNLAWFUL FOR CERTAIN PREDATOR SEX OFFENDERS TO RESIDE WITHIN 2,000 FEET OF PREMISES WHERE CHILDREN GATHER; MAKING IT UNLAWFUL TO PROVIDE A RESIDENCE TO CERTAIN PREDATOR SEX OFFENDERS IN PROHIBITED AREAS; PROVIDING AFFIRMATIVE DEFENSES, PROVIDING FOR A VARIANCE PROCESS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF \$500.00; PROVIDING FOR AMENDMENT OF CONFLICTING PROVISIONS; PROVIDING PUBLICATION, AN EFFECTIVE DATE, AND OPEN MEETING CLAUSES.

WHEREAS, the City Council of the City of Manor, Texas (the "City") finds and declares that certain sex offenders are a serious threat to public safety and have a compelling interest to protect children from such individuals;

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

WHEREAS, the City Council finds that restricting residential property available for certain predator sex offenders will provide safeguards for children gathering in the City;

WHEREAS, the City Council finds that a 2,000 foot safety zone for children should be established applicable to individuals convicted of certain sexual offenses requiring them to be registered on the Texas Department of Public Safety's Public Sex Offenders Database;

WHEREAS, Article 42.12(13B) of the Texas Code of Criminal Procedure provides a safety zone for children as a condition of probation for those convicted of certain sexual offenses; and

WHEREAS the City Council finds that prohibiting persons that have been convicted of certain sexual offenses from establishing temporary or permanent residences within 2,000 feet of places in the City where children gather is necessary for the public safety and will limit contact of such persons with children;

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

Section 1. Adoption of Findings of Fact. The findings and recitations set out in this ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact. The City Council further finds that certain predator sex offenders are likely to repeat offenses, to have many more victims than are ever reported, and to be prosecuted for only a fraction of their actual sexual offenses. The City Council further finds that many children lack the ability to protect themselves from predator sex offenders. The Council further finds that the safety of children is paramount and the restrictions

provided in this Ordinance will serve the public safety of the children and the public welfare by providing some peace of mind to parents.

Section 2. Definitions. For the purposes of this Ordinance the following terms, words, and the derivation thereof shall have the meanings given herein.

- (a) *“Database.”* The central database, also known as the Texas Department of Public Safety Public Sex Offender Database, required to be maintained by the Texas Department of Public Safety pursuant to Article 62.005 of the Texas Code of Criminal Procedure, as amended.
- (b) *“Day-care center.”* A child care facility that is registered licensed or listed by the State of Texas.
- (c) *“Minor.”* A minor is a person younger than seventeen (17) years of age.
- (d) *“Permanent Residence.”* A place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.
- (e) *“Person.”* Includes an individual, firm, corporation, or other business entity.
- (f) *“Premises where children commonly gather.”* Including but not limited to, public parks, playgrounds, private and public schools, amusement arcades, video arcade facilities and youth centers, indoor and outdoor amusement centers that cater primarily to children, amusement parks, public swimming pools, child-care facilities, and day-care centers, as defined in Sections 341.064 and 481.134 of the Texas Health and Safety Code and Section 42.002 of the Texas Human Resources Code. For the purposes of this Ordinance, planted street medians are not public parks.
- (g) *“Recurring Visitor.”* A person who on at least three (3) occasions during any month spends more than 48 consecutive hours in the City.
- (h) *“Registrant.”* A person who has a reportable conviction or adjudication or who, pursuant to Chapter 62 of the Texas Code of Criminal Procedure, is required to register with the Texas Department of Public Safety’s Database as a condition of parole, release to mandatory supervision, or community supervision.
- (i) *“Reportable conviction or adjudication.”* A conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on those enumerated offenses set forth in Art. 62.001(5) of the Texas Code of Criminal Procedure, as amended.
- (j) *“Temporary Residence:”*

- (1) A place where a person abodes, 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
- (2) A place where a person routinely abodes, resides or lodges for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Section 3. Offenses.

- (a) It shall be unlawful for a Registrant to establish a permanent residence or temporary residence within 2,000 feet of any premises where children commonly gather.
- (b) It is unlawful for any person to lease, rent, or otherwise provide any residence, dwelling, place, structure, or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by a Registrant.

Section 4. Evidentiary Matters; Measurements.

- (a) It shall be *prima facie* evidence that this Ordinance 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.
- (b) For the purposes of determining the minimum distance separation, 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 where children commonly gather. Provided that, in the case of multiple residences on one property, measurement shall be from the nearest wall of the building or structure occupied or the parking/driveway, whichever is closer, following a straight line to the nearest property line of the premises where children commonly gather.
- (c) In cases of a dispute over measured distances, it shall be incumbent upon the person challenging the measurement to prove otherwise.
- (d) A map depicting the 2,000 foot child safety zones shall be maintained by the City and is attached hereto as an Exhibit A. The Chief of Police or their designee shall review, update or modify the map as deemed necessary. The map will be available to the public at the Manor Police Department.

Section 5. Affirmative Defenses and Exceptions. It is an affirmative defense to prosecution that any of the following conditions apply, provided that there is no court order in effect applicable to the Registrant that provides otherwise:

- (a) The Registrant 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.

(b) The Registrant was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.

(c) The Registrant is a minor.

(d) The premises where children commonly gather, as specified herein, within 2,000 feet of the Registrant's permanent or temporary residence, was opened after the Registrant established the permanent or temporary residence and the Registrant 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 Ordinance would not apply to the person who was erroneously listed on the Database.

Section 6. Request for Variance.

(a) A person may request a variance from the terms of this Ordinance based upon the grounds set forth herein.

(b) A request for a variance from the terms of this Ordinance shall be submitted in writing to the City Secretary and shall include the following information:

- (1) The person's name and address;
- (2) The offense(s) requiring registration on the Database for which the person was convicted;
- (3) Date(s) of conviction(s);
- (4) The specific grounds supporting the person's request for a variance; and
- (5) Any other information requested by the City.

(c) The Chief of Police may grant a variance request based upon the grounds set forth in Section 6. The Chief of Police shall issue a written ruling on a variance request within fifteen (15) business days of receiving a completed application. The Chief of Police's ruling may be appealed to the City Council by submitting a written request for appeal to the City Secretary within ten (10) days from the date of the Chief of Police's ruling or the deadline for issuance of a ruling, in the event the Chief of Police does not make a ruling within the required time period. Upon receipt of a written appeal, the City Secretary shall schedule the appeal for the next regularly scheduled City Council meeting for which notice can be lawfully posted.

(d) In addition to the grounds set forth in herein, the City Council may grant a variance if it finds that the facts and circumstances demonstrate that the Registrant's temporary or permanent residence within the child safety zone will not be a danger to children. A variance requested under this subsection (d) may be granted by the City Council only. A person who seeks a variance under this section shall apply for a variance as provided in Section 6(b). Upon receipt of a completed application, the City Secretary shall schedule the variance request for the next regularly scheduled City Council meeting for which notice can be lawfully posted. The person requesting the variance shall be notified of the City Council's decision in writing.

(e) A variance granted under this section may include waiving the application of Section 3 to the Registrant, or reducing the size of the safety zone as it applies to the Registrant.

Section 7. Penalty. Any person firm or corporation violating a provision of this Section shall be guilty of Class C misdemeanor and upon conviction of such violation shall be punished by a penalty not to exceed \$500.00 for each offense. Each day the violation continues shall constitute a separate offense.

Section 8. Amendment of Conflicting Ordinances. All ordinances or parts of ordinances in conflict with this Ordinance are hereby amended to the extent of a conflict herewith. In the event of a conflict between another ordinance of the City and this Ordinance, this Ordinance shall control.

Section 9. Severability. If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 10. Open Meetings. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Tex. Gov't Code.

Section 11. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

PASSED AND APPROVED on first reading this 2014 day of AUGUST, 2014.

Attest:

Frances Aguilar
Frances M. Aguilar, City Secretary

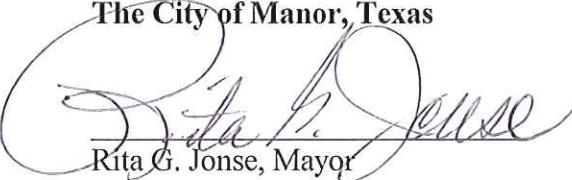
The City of Manor, Texas

Rita G. Jonse, Mayor

Exhibit "A"

Child Safety Zone Map

