

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF MISSION, BY ADDING A NEW CITY ORDINANCE, ESTABLISHING DEFINITIONS; PROHIBITING CHILD SEX OFFENDERS FROM ENTERING OR LOITERING IN/NEAR CHILD SAFETY AREAS; RESTRICTIONS FOR HALLOWEEN AND OTHER CHILDREN-ORIENTED HOLIDAYS/CITY EVENTS; PROVIDING FOR CRIMINAL PENALTIES; AND ORDAINING OTHER MATTERS INCIDENTAL THERETO, INCLUDING TO PROVIDE FOR ENFORCEMENT OF THE ORDINANCE AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, The City of Mission, Texas hereby finds and determines that sex offenders who prey on children are a threat to the public health, welfare, and safety of the citizens of Mission; and,

WHEREAS, The City of Mission, Texas understands that sex offenders often use physical violence to commit these heinous crimes. It is also known that many of these heinous crimes are not reported or prosecuted, making the cost to society extremely high.

WHEREAS, The City of Mission, Texas finds and determines that child sex offenders reside within the city limits of Mission, Texas.

WHEREAS, The City of Mission, Texas finds and determines that data exists, indicating that child sex offenders recidivate.

WHEREAS, The City of Mission, Texas finds and determines that this ordinance serves the City's compelling interest to protect our community against child sex offenders, by prohibiting the entry to and loitering of child sex offenders near areas where children regularly congregate, implementing restrictions for child sex offenders during children-oriented holidays & city events, and by restricting the attendance or the presence of specified sex offenders at schools, child safety areas, and children-oriented facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSION, COUNTY OF HIDALGO, TEXAS THAT THE FOLLOWING CITY ORDINANCE INCLUDE:

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms not defined here shall be construed as in ordinary and common usage.

Definitions

Child-oriented facility(s) means any public park, a public or private school , a public or private sporting facility substantially catering to minors, public recreational facilities open to minors, boy's or girl's organizations chartered by state or national organization, public or private playgrounds, amusement arcades for children, any child care facility as defined by the V.T.C.A., Human Code 42.002, or any other similar place where due to the activity provided at that place children are likely to gather or as those terms denied in V.T.C.A., Health & Safety Code 481.134.

Child safety area shall mean all improved and unimproved areas of a lot or tract of land that is used as a private or public elementary or secondary school, public or private school bus stop or school bus shelter, licensed day-care center or facility, private or public playground, private or public youth center, public swimming pool, video arcade facility, amusement park, carnival, public park when the use is intended primarily for children, public library, and any other area reasonably intended primarily for children.

In this article, “playground”, “premises”, “school”, “video arcade facility”, and “youth center” shall have the meanings assigned by V.T.C.A., Health and Safety Code 481.134.

Day-care center or facility shall mean a facility licensed by the State of Texas, which provides care, training, education, custody, treatment, or supervision of children for less than twenty-four (24) hours a day.

Public park shall mean any land, including improvements to the land, designated for the use of the general public or any athletic field that is owned, leased, operated, managed, or maintained by the city, including, but not limited to, swimming pools, soccer fields, baseball fields, softball fields, basketball courts, water parks, conservation areas, jogging trails, and hiking trails.

Child sex offenders shall mean any person require to register as a sex offender under Tex. C.C.P. CH 62, as amended, for a reportable conviction or adjudication of any of the following offenses:

- I. Continuous sexual abuse of a young child or children (V.T.C.A., Penal Code 21.02);
- II. Indecency with a child (V.T.C.A, Penal Code 21.11);
- III. Sexual Assault of a child (V.T.C.A, Penal Code 22.011);
- IV. Aggravated sexual assault of a child (V.T.C.A, Penal Code 22.021);
- V. Online solicitation of a minor (V.T.C.A, Penal Code 33.021);
- VI. Sexual performance by a child (V.T.C.A, Penal Code 43.25);
- VII. Possession or promotion of child pornography (V.T.C.A, Penal Code 43.26);
- VIII. Any other violation listed in Tex. C.C.P. 62.001 (5), as amended, involving a victim younger than 17 years of age; and/or
- IX. A violation of the laws of another state, federal law, laws of a foreign county, or the Uniform Code of Military Justice, if the violation contained elements substantially similar to the elements of the violations described (1) through (7) of this paragraph.

Reportable conviction or adjudication shall have the meaning assigned by V.T.C.A., Texas code of Criminal Procedure 62.001 (5).

Loiter shall mean standing, or sitting idly, whether or not in a motor vehicle, in and around an area.

Minor shall mean any person under eighteen (18) years of age.

Database means shall refer to the database maintained by the Texas Department of Public Safety pursuant to Tex. C.C.P. 62.001, as amended.

Person in authority shall mean the owner, a person authorized by the owner, or a person or business with apparent authority to act for the owner, including but limited to, a manager, or a property management business. With respect to public property and for the purposes of this chapter, a police officer is considered to be authorized by the owner to demand a sex offender to leave a children-oriented facility, child safety area, or a child-oriented event.

Permanent residence shall mean a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.

Temporary residence shall mean 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 residence, or a place where a person abides, 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 residence.

Offenses

A person commits an offense if the person is a child sex offender and:

- I. Intentionally or knowingly enters a school, children-oriented facility, and child safety area.
- II. Intentionally or knowingly loiters within three hundred (300) feet of a school, children-oriented facility, child safety area or child-oriented city event.
- III. Remains on any part of the premises of a school, children-oriented facility, child safety area, or on any street, sidewalk, or other public way adjacent to any part of the premises of a school, children-oriented facility, and child safety area.
- IV. Re-enters onto any part of the premises of a school, children-oriented facility, child safety area, or on any street, sidewalk, or other public way adjacent to any part of the premises of a school, children-oriented facility, or child safety area after being asked to leave by a person in authority;
or
- V. Has established a continual pattern of unauthorized entry onto the premises of any of the premises of a school, children-oriented facility, child safety area, or on any street, sidewalk, or other public way adjacent to any part of the premises of a school, children-oriented facility, or child safety area.

Exemptions.

A child sex offender who has the right to be present at an official meeting is exempted from this section. Right to be present is defined as to have previous authorization prior to the initiation of the official meeting.

When a polling place for an election is located within a child safety area, a child sex offender is exempted from this section and may approach and enter the child safety area for the limited purpose of voting if the child sex offender qualifies to vote at such place. This exemption shall only apply to those of a child safety area that are necessary for voting, and any child sex offender found outside such areas shall be in violation of this article.

Affirmative Defenses. It is an affirmative defense to prosecution under this section:

- I. That at the time of the offense, a person prohibited from entering the following: child safety area, children-oriented facility, school, or child-oriented city event, is the parent or legal guardian of the child eighteen (18) years or younger, who resides with the person, and the child was on the premises also.
- II. Was the parent or guardian of a child attending the school, child safety area, children-oriented facility, or child-oriented city event, unless a court of competent jurisdiction has issued an order restricting the person's access to or presence near the child.
- III. Was, at the time of the offense, enrolled in and attending the school as a student
- IV. Had prior written permission from the owner or chief administrative officer or the school or children-oriented facility to be present, at the time of the offense, on the premises or on the street, sidewalk, or other public way adjacent to the premises; or
- V. Was in active transit in a motor vehicle on a public street that was direct route between locations at which the person has a legitimate business.

Halloween Restrictions.

- I. A person who is a specified sex offender and who is not required by terms of probation or parole to report a specified location on October 31st (or any other date set by the city for trick-or-treaters) as a condition of their probation or parole, shall remain at their residence of registry pursuant to Tex. C.C.P. 62.001 between 4:00 PM and 11:30 PM. Furthermore, the specified sex offender shall leave all exterior lights off with a clearly displayed sign of no less than 9.5" x 11" inches with two-inch letters "NO CANDY", posted on the front door, or otherwise invite trick-or-treaters to solicit the premises and no Halloween decorations.
- II. A person who is a specified sex offender should not wear Halloween clothing, including costumes and masks.
- III. A person who is a specified sex offender should not give out candy, or other items, to invite any children to visit their residence.

Affirmative Defenses. It is an affirmative defense to prosecution under this section:

- I. That the child sex offender was required to report and did report to a specified location on October 30th and 31st or any other date set by the City for trick-or-treaters as a condition of their probation or parole;

A culpable mental state is not required for the commission of an offense under this section and need not be alleged or proved.

Penalties.

Any person who violates any provision of this article shall be guilty of Class C misdemeanor and upon conviction, adjudication, or deferred disposition thereof shall be fined in an amount not to exceed five hundred dollar (\$500.00) for each and every offense. Each and every violation or day that such violation shall continue or exist shall be deemed a separate offense.

The City of Mission Police Department is hereby authorized to issue a citation and/or arrest any person(s) who violates any provision of this article.

Should any sentence, clause, phrase, or section of this ordinance be declared invalid by a court of competent jurisdiction, such declaration shall not affect the remaining portions of this ordinance which shall remain in full force and effect.

This Ordinance shall take effect immediately upon its passage and publication according to law.

READ, DISCUSSED, CONSIDERED AND PASSED ON THIS THE _____ DAY OF MARCH, IN THE YEAR OF 2024.

ATTEST:

Norie Gonzalez Garza , Mayor

Anna Carrillo, City Secretary