

ORDINANCE NO. _____

AMENDING THE CODE OF ORDINANCES OF THE CITY OF MONTGOMERY, TEXAS, ORDINANCE CHAPTER 62 OFFENSES TO ADD A NEW ARTICLE IV ADOPTING REGULATIONS RELATING TO SEX OFFENDER RESIDENCY RESTRICTIONS WITHIN THE CORPORATE LIMITS OF THE CITY; DEFINING CRIMINAL OFFENSES; PROVIDING FOR AFFIRMATIVE DEFENSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A CRIMINAL PENALTY; PROVIDING FOR A REPEALING CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Montgomery, Texas (“City”) is a Type A General Law Municipality; and

WHEREAS, the City Council of the City of Montgomery (“City Council”) has governed that public safety is an important issue and concern affecting the city; and

WHEREAS, it is the intent of the City of Montgomery Police Department to safeguard its youngest citizens from sexual predators by enforcing residency restrictions for registered sex offenders in the City; and

WHEREAS, in accordance with the 2017 Texas Legislature adopted House Bill 1111, Local Government Code 341.906 enacting limitations on registered sex offenders in general law municipalities and authorizing general law municipalities to adopt by ordinance, restricting a registered sex offender from going in, on, or within a specified distance of a child safety zone in the municipality; and

WHEREAS, the provisions herein are necessary to promote and protect the health, safety, and welfare of the public by creating an environment that is protecting the city’s youngest citizens and provide an enhanced quality of life for the citizens of the City of Montgomery; and

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

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

SECTION 2. Amendment to the City of Montgomery Code of Ordinances. In accordance with Chapter 1 of the City of Montgomery Code of Ordinances the following provision is added to Chapter 62 (Offenses), as a new Article IV (Sex Offender Residency Restriction) to become and be made part of the City of Montgomery Code of Ordinances, as set forth below:

Chapter 62 – OFFENSES

Article IV. – SEX OFFENDER RESIDENCY RESTRICTION

Sec. 62-70. – Purpose, intent.

It is the purpose and intent of this article to serve the city's interest by promoting, protecting, and improving the health, safety, and welfare of its citizens by establishing safe areas around locations where children gather.

Sec. 62-71. – Definitions.

The following words and terms, and any derivations thereof, when used in this article, shall have the meanings ascribed to them, unless the context clearly indicates a different meaning.

Child safety zone means premises where children commonly gather. The term includes a school, day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children. The term does not include a church, as defined by Section 544.251, Texas Insurance Code.

Playground, premises, school, video arcade facility, and youth center have the meanings assigned by Section 481.134, Texas Health and Safety Code.

Registered sex offender means an individual who is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

Sec. 62-72. – Restrictions, limitations.

- (a) A registered sex offender is restricted from going in, on, or within 1,000 feet of a child safety zone in the city.
 - (1) For the purposes of this article, the distance shall be measured in a straight line from the closest boundary line of the child safety zone to the closest boundary line of a registered sex offender's residence.
 - (2) A registered sex offender is restricted from entering a child safety zone outside of a public right-of-way.
 - (3) A registered sex offender is restricted from loitering on a public right-of-way within 500 feet of a child safety zone.

- (4) If there is a dispute over measured distances, the city's measurement shall be prima facie evidence of a correct measurement. It shall be the burden of the person(s) disputing the city's measurement to rebut the presumption of correctness.
- (b) A registered sex offender is restricted from going in, on, or within 500 feet of any event, on any day set by the city, in which children gather.
- (c) A registered sex offender is restricted on Halloween, any day set by the city for trick-or-treaters, between the hours of 4:00 p.m. and 11:00 p.m. to leave an exterior light on or otherwise invite trick-or-treaters to solicit the residence of the registered sex offender.

Sec. 62-73. – Exemptions, procedures.

- (a) This exemption applies only to:
 - (1) Areas necessary for the registered sex offender to have access to and to live in the residence; and,
 - (2) The period the registered sex offender maintains residency in the residence.; Or,
 - (3) The child safety zone was constructed after the effective date of this ordinance.
- (b) Procedures for a registered sex offender to apply for an exemption from the ordinance.
 - (1) Submit an application for exemption. The application can be obtained from the City of Montgomery Police Department, by appointment.
 - (2) The following supporting documents are required to complete the submittal:
 - a. copy of the applicant's current and valid government-issued picture identification card;
 - b. proof of residency clearly indicating that the registered sex offender has established residency in a residence located within the specified distance of a child safety zone before the date that this ordinance is adopted.
 - (3) Upon submittal and review of the completed application with required supporting documentation, the City of Montgomery Police Department designated personnel will issue a written determination of approval or denial.
 - (4) Approval of exemption shall identify all areas necessary for the registered sex offender to have access to and to live in the residence; valid for the period of time the registered sex offender lives in the residence.
 - (5) Denial of exemption shall identify the reason for denial. Denial of exemption may be appealed to the City of Montgomery Police Chief, in writing, within 10 business days. The final decision is made by the City of Montgomery Police Chief.

Sec. 62-74. – Affirmative defense.

It is an affirmative defense to prosecution of an offense under this article that the registered sex offender was in, on or within 1,000 feet of a child safety zone for a legitimate purpose, including:

- (1) transportation of a child that the registered sex offender is legally permitted to be with;
- (2) visiting a commercial business for a legitimate business purpose;
- (3) transportation to and from work; and
- (4) other work-related purposes.

Sec. 62-75. - Enforcement; violation; penalties.

The city shall have the power to administer and enforce the provisions of this chapter as may be required by governing law. Any person who violates any provision of this article, or fails to comply therewith, or with any of the requirements thereof, shall is subject to penalties as provided in the City of Montgomery Code of Ordinances Ch. 1, Sec. 1-13.

SECTION 3. Repealing clause. All provisions of any ordinance in conflict with this ordinance are hereby repealed.

SECTION 4. Severability. Should any section, subsection, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this ordinance shall remain in full force and effect.

SECTION 5. Effective date. **Because this ordinance has a penalty for violation, it shall become effective upon its *publication in the newspaper as provided by Texas Local Government Code §52.011 (Type A)*, which date is expected to be _____.**

PASSED AND APPROVED by the City Council of the City of Montgomery, Texas, on this _____th day of _____, 2024.

CITY OF MONTGOMERY, TEXAS

Byron Sanford, Mayor

ATTEST:

Nicola Browe, City Secretary

APPROVED AS TO FORM:

Alan P. Petrov, City Attorney