

ORDINANCE 111317E

AN ORDINANCE OF THE CITY OF HONEY GROVE, TEXAS, REGULATING REGISTERED SEX OFFENDER RESIDENCY AND ACCESS TO CERTAIN VENUES BY MAKING IT UNLAWFUL FOR REGISTERED SEX OFFENDERS TO RESIDE WITHIN FIVE HUNDRED (500) FEET OF PREMISES WHERE CHILDREN GATHER; PROVIDING THAT A CULPABLE MENTAL STATE IS NOT REQUIRED FOR COMMITTING AN OFFENSE UNDER THIS ORDINANCE; PROHIBITING SEX OFFENDERS FROM PARTICIPATING IN CERTAIN YOUTH GROUP ACTIVITIES WITHOUT PRIOR WRITTEN NOTICE; PROHIBITING COSTUMING OR MASKING BY OFFENDERS AT YOUTH GROUP ACTIVITIES; PROVIDING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR AFFIRMATIVE DEFENSES; PROVIDING FOR EXCEPTIONS; PROVIDING A PROCEDURE FOR REGISTERED SEX OFFENDERS TO OBTAIN A VARIANCE/EXEMPTION; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF; PROVIDING FOR REPEAL OF ORDINANCE 090808B; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, sex offenders are a serious threat to public safety; and

WHEREAS, the recidivism rate for released sex offenders is high, particularly for those who victimized children; and

WHEREAS, sex offenders have in the past and likely in the future will, reside within the territorial boundaries of Honey Grove, Texas; and

WHEREAS, public safety is enhanced by restrictions on Sex Offenders which reduce environmental opportunities and venues for sexual inappropriateness; and

WHEREAS, risk areas that should be addressed in terms of public safety include but are not limited to schools, day care centers, youth activity centers, public parks, playground facilities; youth oriented entertainment and holiday activities or other places where children are known to gather; and

WHEREAS, public safety is enhanced by restricting temporary or permanent residency locations of Sex Offenders within the City; and

WHEREAS, public safety is further enhanced by deterring interaction by Sex Offenders with children at events where costumes or disguises are utilized including but not limited to public Halloween events, public Christmas events, Children's theater, school mascots, and City events where costuming is permitted; and

WHEREAS, Article 42.12 (13B) of the Texas Code of Criminal Procedure allows up to a 1,000 foot safety zone for children as a condition of probation for convicted Sex Offenders,

and Section 341.906 of the Local Government Code permits a City to establish a distance barrier for Sex Offenders around Child Safety Zones; and

WHEREAS, Section 341.906(3) of the Local Government Code requires the City to establish a process whereby a Sex Offender may submit an application for exemption from restrictions set forth in this Ordinance establishing limitations on Sex offenders.

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

Article 1

LEGISLATIVE INTENT. The preamble recitations set forth above, are incorporated herein.

Article 2

DEFINITIONS. For the purposes of this Ordinance, the following terms, words, and the derivations thereof shall have the meanings given below.

(1) **Child Safety Zone:** means any premises where children commonly gather and includes public parks, private and public schools, public library, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public or commercial and semi-private swimming pools, child care facility, child care institution, public or private youth soccer, football or baseball field, crisis center or shelter, skate park or rink, public or private youth center, scouting facilities, Offices for Child Protective Services, or any facility that regularly hosts events primarily for children. The term does not include a church, as defined in Section 544.251 of the Texas Insurance Code.

(2) **Daycare Facility:** means a “Child-care institution”, a “daycare center”, and /or a “group daycare home” as those terms are defined in Section 42.002, Human Resource Code.

(3) **Minor:** means a person younger than seventeen (17) years of age.

(4) **Park:** means any land, including improvements to the land, administered, operated or managed by the City of Honey Grove for the use of the general public as a recreation area.

(5) **Permanent Residence:** means a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

(6) **Playground:** means any outdoor facility that is not on the premises of a school and that:

(A) is intended for recreation;

(B) is open to the public; and

(C) contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards. (See Section 481.134, TX Health and Safety Code).

(7) **Premises**: means real property and all buildings and appurtenances pertaining to the real property.

(8) **Public Way**: means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, shopping centers, parking lots, transportation facilities, restaurants, shops and similar areas that are open to the use of the public.

(9) **Registered Sex Offender**: means an individual who has been convicted or placed on deferred adjudication for a sexual offense involving a child for which the individual is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(10) **School**: means a private or public elementary or secondary school or a daycare center, as defined as Section 42.002 Human Resources Code,

(11) **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, 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.

(12) **Video Arcade Facility**: means any facility that is open to the public, including persons who are 17 years of age or younger; is intended primarily for the use of pinball or video games; and contains at least three pinball or video stations.

(13) **Youth Center**: Means any recreational facility or gymnasium that is intended primarily for use by persons who are 17 years of age or younger; and regularly provides athletic, civic, or cultural activities.

(14) **Youth Group Activity**: means any gathering of 2 (two) or more minors to participate in structured activities, primarily for youth, and including but not limited to Boy and Girl Scouts, 4-H, bands, and School UIL events.

Article 3

OFFENSES.

(1) For each person required to register on the Texas Department of Public Safety's Sex Offender Database, or who otherwise is required by court order to register annually as a sex offender, because that individual committed a sexual violation involving a victim who was less than sixteen (16) years of age;

It Is Unlawful for such person to establish a permanent residence or temporary residence within Five Hundred (500) Feet of any premise where children commonly gather, which includes but is not limited to child safety zones, daycare facilities, parks, play grounds, schools, video arcade facilities, or youth centers, public swimming pools, homeowner associations swimming pools, apartment swimming pools where multiple families have access,

commercial amusement center primarily designed or marketed for minors. If any term used herein is not defined in this Ordinance, the term(s) shall have the common ordinary meaning or the meaning appearing in section 481.134, Texas Health and Safety Code, as it exists or may be amended. For the purposes of this Chapter, planted street medians are not public parks.

(2) **Prohibited Participation:** A sexual offender as described in Article 3(1) above, **may not participate** in youth group activities wearing a costume or mask that covers or distorts identifying facial characteristics. In addition, a sexual offender as described in Article 3(1) above may not participate in "Halloween" on October 30th or 31st of each year between the hours of 4:00 p.m. and midnight by leaving on an exterior porch light or other lights at his or her residence or otherwise inviting/ soliciting trick-or-treaters onto the offender's premises.

(3) A registered Sex Offender as defined herein **may not enter** a Child Safety Zone.

(4) A registered Sex Offender **may not participate** in Youth Group Activities unless the Sex Offender has disclosed in writing to the sponsor of the Youth Group, the nature, date and location of the sexual offense.

Article 4

DISTANCE DETERMINATIONS: A determination of the minimum distance (separation) for the distance barrier set out in this Ordinance shall be measured by a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where child either resides, attends school, engages in gaming activities or otherwise where children are commonly gathered. In the case multiple residences on one property, the measurement shall be from the nearest property line of the premises to the nearest property line of the protected location as set out herein.

AFFIRMATIVE DEFENSE: It is an Affirmative Defense to prosecution that the measured distance is less than the distance barriers set forth in this Ordinance.

Article 5

CULPABLE MENTAL STATE NOT REQUIRED. A culpable mental state is not required to be alleged nor is evidence of a culpable mental state required for the proof of an offense as defined by this Ordinance.

Article 6

EXCEPTIONS. A person does not commit an offense under Article 3 if the person:

(1) Is in or is traveling immediately to or from a Parole Office, a Probation Office, or a premises at which the person is participating in a program or activity required as a condition of release; a residential facility in which the person is required to reside as a condition of release; a private residence in which the person is required to reside as a condition of release; or any other premises, facility or location that is designed to rehabilitate or reform the individual; or the individual is authorized by the Parole Division or the Probation Office to be on the

premises or location at which the person has legitimate business including a church, synagogue, or other established place of religious worship, workplace, a healthcare facility, or a location of a funeral.

(2) The person required to register as a sex offender, established a permanent or a temporary residence, and complied with all sex offender registration laws of the State of Texas prior to the date of the adoption of this Ordinance (or predecessor Ordinance); provided, however, such person shall be required to continuously comply with all Sex Offender registration laws of the State of Texas, as they exist or may be amended, after the adoption of this Ordinance. Failure to maintain compliance with registration laws, forfeits this exception.

(3) The person required to register on the Database or otherwise, was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.

(4) The person required to register on the Database or otherwise is a minor.

(5) The person required to register is less than eighteen (18) years of age or a Ward under a guardianship, who resides with a parent or the guardian.

(6) The person required to register has been exempted by a court order from registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(7) The person required to register has had the offense for which the sex offender registration was required, reversed on appeal or pardoned.

(8) The premises where children commonly gather, as specified herein is within Five Hundred (500) feet of a permanent or temporary residence of the person required to register on the Database; however, the youth premises or gathering place was established after the person established the permanent or temporary residence and complied with all sex offender registrations laws of the State of Texas, as they exist or may be amended. Such person shall be required to continuously maintain compliance with all of the sex offender registration laws of the State of Texas, as they exist or may be amended. Failure to maintain compliance with registration laws, forfeits this exception.

(9) The information on the Database is incorrect, and, if corrected, this Ordinance would not apply to the person.

(10) Nothing in this Ordinance shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.

AFFIRMATIVE DEFENSES:

It is an additional affirmative defense to prosecution to an offense under this ordinance that the registered sex offender was in, on, or within a specified distance of a child safety zone or other safety zone or other places where children generally gather, for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with; or transportation directly to and from the sex offender's work, and other work-related purposes.

Article 7

Variance-Application for Exemption:

(1) A Registered Sex Offender who is otherwise covered by this ordinance may seek an exemption from the ordinance, and any amendments thereto, by filing an application for exemption with the City.

(2) **Procedure:** The City shall prepare and maintain in the City Secretary's office an official application form; however, a specific form is not required in order to apply for an exemption.

A registered sex offender must formally submit an application for exemption, in writing, to the City Secretary.

The City Secretary may review the application for completeness of information. If incomplete the application will be returned along with either (1) the official form or (2) indications addressing needed information to proceed.

Once accepted by the City Secretary, the application for exemption shall be forwarded to the Mayor, who after review, will schedule an agenda item not less than 90 (ninety days) from the date of the submission of the application. The agenda item must include a public hearing and a permit a vote on the application. The City will provide written notice of the application and the hearing date to organizations, sponsors, and/or residents of child safety zones which are addressed explicitly or by implication in the application. The Applicant shall also receive notice of the hearing date.

The City Council will conduct a Public Hearing, during which time the City may review any and all pertinent or relevant information and may accept oral or written statements from any person.

Following the Public Hearing, the City Council will decide, by majority vote, whether to grant or deny any such application for exemption.

The decision on whether or not to grant an exemption may be based on all state, federal, municipal, or any other Governmental agency regulations, and in addition any laws, conditions, terms or factors, including but not limited to, whether the Sex Offender has shown remorse, has rehabilitated, recidivism, and other habits, and/or any other factors related to the City's interest in promoting, protecting and improving health, safety, and welfare for the community.

An exemption maybe conditional or limited as to any term or conditions under the Ordinance, and in relation to address and/or time.

A written copy of the acceptance or the denial of the application must be provided to the Applicant within a reasonable time.

APPEAL: If a Registered Sex Offender objects to the decision made by the City Council on the Application for Exemption, that individual may appeal to a Court of competent jurisdiction no later than twenty (20) days from the date of the decision.

The determination of the City Council is final if there is no timely appeal.

Article 8

PENALTY PROVISION. Any person, firm, corporation or entity violating this Ordinance , as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of FIVE HUNDRED DOLLARS (\$500.00). Each continuing day's violation under this Ordinance shall constitute a separate offense and shall be punishable as such.

INJUNCTIVE RELIEF ALSO AVAILABLE: The City may also pursue any civil, injunctive remedies, including restraining order, in addition to or in conjunction with the Penalty Provision set forth above.

Article 9

SEVERABILITY. Should any Article, 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. Honey Grove hereby declares that it would have passed this Ordinance, and each Article, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more Articles, subsection, sentences, clauses and phrases be declared unconstitutional or invalid.

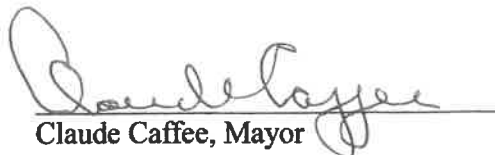
Article 10

SAVINGS/REPEALING CLAUSE: All provisions of any Ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Article 11

EFFECTIVE DATE. This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED AND APPROVED by the City Council of the City of Honey Grove, Texas this 13th day of November , 2017.


Claude Caffee, Mayor

ATTEST:


City Secretary Jaci Garner

Publication Date: November 31, 2017