

ORDINANCE NO. 07-19

AN ORDINANCE OF THE CITY OF DANBURY, TEXAS, FOR THE PURPOSE OF REGULATING THE RESIDENCES OF SEXUAL OFFENDERS; CONTAINING A PREAMBLE; CONTAINING A SHORT TITLE; MAKING FINDINGS AND EXPRESSING INTENT; DECLARING CERTAIN NUISANCES; CONTAINING DEFINITIONS; REQUIRING CERTAIN SEX OFFENDERS TO REGISTER WITH THE POLICE DEPARTMENT; PROHIBITING CERTAIN SEX OFFENDERS FROM RESIDING WITHIN ONE THOUSAND (1,000) FEET OF PREMISES WHERE CHILDREN GATHER; REQUIRING A SURVEY OF DISTANCES BETWEEN A PROPOSED RESIDENCE OF A SEXUAL OFFENDER AND PLACES WHERE CHILDREN COMMONLY GATHER; REQUIRING THE PROPERTY OWNER TO PAY FOR THE SURVEY; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING METHODS OF MEASURING DISTANCES; REGULATING MULTIPLE RESIDENCES; REQUIRING LANDLORDS TO SEARCH THE TEXAS DEPARTMENT OF PUBLIC SAFETY SEXUAL OFFENDER DATABASE FOR A PROSPECTIVE TENANT'S NAME OR TO HAVE THE POLICE DEPARTMENT DO SO; PROHIBITING PROPERTY OWNERS FROM KNOWINGLY RENTING TEMPORARY OR PERMANENT RESIDENCES TO CERTAIN SEXUAL OFFENDERS; REQUIRING CERTAIN SEXUAL OFFENDERS TO DISPLAY CERTAIN SIGNS AT THEIR RESIDENCES AND AT CERTAIN LOCATIONS OUTSIDE SUCH RESIDENCES, STATING "SEXUAL OFFENDER RESIDENCE"; PROVIDING THAT EXISTING SEXUAL OFFENDER RESIDENCES ARE NOT EXEMPT FROM SIGNS AT HALLOWEEN; PROVIDING THAT ANY PERSON VIOLATING THIS ORDINANCE SHALL BE GUILTY OF A MISDEMEANOR AND ASSESSED A FINE OF NOT MORE THAN FIVE HUNDRED (\$500.00) DOLLARS; PROVIDING THAT EACH DAY ANY SUCH VIOLATION CONTINUES OR OCCURS SHALL CONSTITUTE A SEPARATE OFFENSE; PROVIDING FOR CIVIL ENFORCEMENT BY A LAWSUIT FOR INJUNCTIVE, DECLARATORY, AND/OR OTHER RELIEF; PROVIDING THAT REMEDIES ARE CUMULATIVE; CONTAINING SAVINGS CLAUSES; PROVIDING FOR THE REPEAL OF ORDINANCES NOS. 06-09 AND 07-16, EXCEPT AS TO VIOLATIONS OCCURRING BEFORE THE EFFECTIVE DATE OF THIS ORDINANCE AND REMEDIES THEREFOR; CONTAINING A SEVERANCE CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS DESCRIPTIVE CAPTION HAS BEEN PUBLISHED TWICE IN THE FACTS NEWSPAPER; AND PROVIDING FOR PROOF OF VARIOUS ELEMENTS.

WHEREAS, the City of Danbury, Texas, ("the City") is a Type A General-Law Municipality; and

WHEREAS, Section 51.012 of said Code authorizes the governing body of a Type A General-Law Municipality to adopt any ordinance, not inconsistent with state

law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic; and

WHEREAS, Section 54.001(a) of said Code authorizes the governing body of a Type A General-Law Municipality to enforce each ordinance of the municipality and to punish a violation thereof; and

WHEREAS, Section 217.002 of said Code authorizes the governing body of a Type A General-Law Municipality to adopt this ordinance; and

WHEREAS, the City Council of the City is deeply concerned about the numerous and recent occurrences in our state and elsewhere, whereby convicted sex offenders who have been released from custody repeat the unlawful acts for which they had been originally convicted; and

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

WHEREAS, the City is becoming an increasingly attractive place for younger families with small children; and

WHEREAS, the City Council desires to establish a policy which provides maximum protection of the lives of children residing in the City; and

WHEREAS, Article 42.12(13B) of the Code of Criminal Procedure provides a one thousand (1,000) foot safety zone for children as a condition of probation for those convicted of certain sexual offenses; and

WHEREAS, the City Council has determined and hereby declares that the adoption of this ordinance is necessary to the health, safety and general welfare of the inhabitants of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DANBURY, TEXAS, DULY ASSEMBLED:

Section One. Short Title.

This ordinance shall be known and may be cited as the "Sexual Offender Ordinance of the City of Danbury, Texas."

Section Two. Findings and Intent.

The City Council of the City makes the following findings and expresses the following intent:

(1) Repeat sexual offenders, sexual offenders that use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat offenses, and most commit many offenses.

(2) The cost of sexual offender victimization to society at large, while incalculable, is clearly exorbitant.

(3) It is the intent of this ordinance to serve the City's compelling interest to promote, protect, and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders are prohibited from establishing temporary or permanent residences.

(4) The City Council hereby finds and declares that sexual offenders residing in places prohibited by this ordinance constitute a nuisance, and any conduct prohibited by this ordinance constitutes a nuisance, and any violation of this ordinance constitutes a nuisance.

(5) The City Council hereby finds that all statements of fact in the preamble or any other portion of this ordinance are true.

Section Three. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the following meanings, except where the context clearly indicates a different meaning:

ABANDON: A permanent or temporary residence shall be deemed abandoned for purposes of this ordinance, if the sexual offender does not reside overnight at such residence for any nights during any 180 day period. The abandonment of a residence shall not excuse any violations of this ordinance occurring before such abandonment.

CONVICTED or CONVICTION: For purposes of this ordinance, the terms "convicted" or "conviction" also include a deferred adjudication or deferred disposition, regardless whether the conditions of such deferral were successfully completed.

PERMANENT RESIDENCE: A place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.

"SEXUAL OFFENDER" or "SEX OFFENDER" in this ordinance shall mean either of the following:

A. A person who is registered or is required by law to register anywhere with any local law enforcement for inclusion on the Texas Department of Public Safety Sexual Offender Database for an offense in which the victim was less than seventeen years of age;

B. A person who is included or is required by law to be included anywhere on the Texas Department of Public Safety Sexual Offender Database for an offense in which the victim was less than seventeen years of age.

The fact that a person appears on the Texas Department of Public Safety Sex Offender Database shall be prima facie proof that the person is required by law to register somewhere with some local law enforcement for inclusion in that database. The Texas Department of Public Safety Sex Offender Database shall be prima facie proof of all facts therein stated, for purposes of any prosecution under this ordinance.

TEMPORARY RESIDENCE: A place where the 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 the 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 persons' permanent residence.

Section Four. Local Registration Requirement.

Each sexual offender who has a permanent residence or temporary residence, as defined in this ordinance, in this City shall register with the Police Department of this City within three days after establishing each such permanent or temporary residence. This registration requirement is separate from any registration requirement under Texas law. This registration requirement applies regardless whether Texas law would require the sexual offender to register with local law enforcement in this City. This registration requirement is for inclusion on a sexual offender database of this City, not for inclusion on the Texas Department of Public Safety Sexual Offender Database.

If a person is required by Texas law to register with local law enforcement in this City for inclusion on the Texas Department of Public Safety Sexual Offender Database, then such registration pursuant to Texas law satisfies the registration requirements of this section as to the particular address covered in the registration pursuant to Texas law. However, it is possible for a sexual offender to have multiple residences under this ordinance. The registration requirement under this section applies to each permanent residence and temporary residence of the sexual offender in this City.

The manner and content of the registration required by this section shall be the same as would apply to a registration pursuant to Texas law with local law enforcement for inclusion in the Texas Department of Public Safety Sexual Offender Database.

Section Five. Residence Prohibited; Measurement.

(A) It shall be unlawful for any person who is a sexual offender to establish a permanent residence or a temporary residence within one thousand (1,000) feet of any premises where children commonly gather, including but not limited to a primary or secondary public or private school, a day care facility, playground park, ball park, public or private youth center, public swimming pool or video arcade facility, as those terms are defined in Article 481.134 of the Health and Safety Code.

(B) For purposes of this ordinance, the distance between the residence of a sexual offender and a place where children commonly gather shall be measured in a straight line between the nearest points on the property line of the sexual offender's residence and the property line of the place where children commonly gather.

(C) Before establishing a permanent residence or temporary residence anywhere in this city, a sexual offender shall deliver to the Police Chief of this city a survey, certified by a Registered Professional Land Surveyor in Texas, showing the distances between the residence and each place where children commonly gather that is within 1,500 feet of the residence, measured in the manner required by this ordinance. The owner of the residence in question shall pay for the survey.

Section Six. Affirmative Defenses.

(A) The following are affirmative defenses to a prosecution for a violation of any part of this ordinance:

(1) The sexual offender is a minor.

(2) The sexual offender was a minor at the time of the offense and was not convicted as an adult.

(3) If a person is a sexual offender as defined in this ordinance solely because the person is registered with local law enforcement for inclusion on the Texas Department of Public Safety Sexual Offender Database for an offense in which the victim was less than seventeen years of age, it is an affirmative defense to prosecution under any portion of this ordinance that the person is not actually required to register with local law enforcement for inclusion on that database for an offense in which the victim was less than seventeen years of age.

(4) If a person is a sexual offender as defined in this ordinance solely because the person is included on the Texas Department of Public Safety Sexual Offender Database for an offense in which the victim was less than seventeen years of age, it is an affirmative defense to prosecution under any portion of this ordinance that the person is not actually required to be included on said database for an offense in which the victim was less than seventeen years of age.

(B) Except as provided in subsection (C) of this section, the following are affirmative defenses to a prosecution for a violation of any part of this ordinance except Section Four (registration) and Subsection 9(B) (signs at Halloween):

(1) The permanent or temporary residence in question of the sexual offender was established before the effective date of this ordinance in compliance with all applicable sex offender registration laws of the State of Texas and has not been abandoned as the sexual offender's residence.

(2) The premises where children commonly gather, as specified herein, within one thousand (1,000) feet of the permanent or temporary residence of the sexual offender was established after the sexual offender established his or her permanent or temporary residence in compliance with all applicable sexual offender registration laws of the State of Texas, and such residence has not been abandoned as the sexual offender's residence.

(3) If before the effective date of this ordinance, the sexual offender has established a permanent or temporary residence in the City, and the sexual offender is ordered by a court to move out of that residence permanently or temporarily, and if the court order is not issued in a criminal case for a violation of any law listed in the definition of "Sexual Offender" in this ordinance, then those facts are an affirmative defense to prosecution under this ordinance for any offense under any section of this ordinance (except under Section Four) involving the establishment of the new residence in the City and/or the reestablishment of the prior residence, on one or more occasions, including but not limited to the sign requirements of this ordinance.

(C) The affirmative defenses in subsection (B) of this section are not defenses to an offense under Section Nine (signs), if the defendant is convicted for an offense that is committed after the effective date of this ordinance, and the conviction makes the person a sexual offender as defined in this ordinance, regardless whether the person was already a sexual offender before that conviction.

Section Seven. Multiple Residences.

The establishment of a permanent or temporary residence shall not prevent the simultaneous existence of any other residence. It is possible for a person to have multiple permanent residences, multiple temporary residences, or one or more permanent residences and one or more temporary residences. This subsection shall not be construed to authorize any residence prohibited by this ordinance.

Section Eight. Landlord Must Check Database for Permanent Resident. Prohibition Against Renting. Affirmative Defense.

(A) Before renting property for use as a permanent residence as defined herein, the landlord shall either: (1) search the Texas Department of Public Safety Sexual Offender Database for the prospective Tenant's name; or (2) make a written request for the Police Department of the City to do so and receive written notice from the Police Department of the results of such search. The search required by this section shall not be required before renting property for use as a temporary residence, as defined herein. For purposes of this section, a landlord shall not be required to anticipate whether a person will renew a short term rental agreement enough times to establish a permanent residence. However, regardless of any other provision, after a tenant has leased a property for fourteen consecutive days, regardless whether the lease was renewed on one or more occasions in order to total at least fourteen consecutive days, the landlord shall search the database or have the police department do so as required by this section, before renewing the lease after the fourteenth day for any length of time.

(B) No person shall knowingly rent any real or personal property to a sexual offender either for use as a temporary or permanent residence, if:

- (1) such residence constitutes a violation of this ordinance by the sexual offender; and

(2) either:

- (a) the landlord knows the tenant is a sexual offender as defined in this ordinance; or
- (b) the Texas Department of Public Safety Sexual Offender Database shows that the tenant is a sexual offender as defined in this ordinance.

(C) It shall be an affirmative defense to prosecution for a violation of subsection (B) of this section that the lease became binding before the effective date of this ordinance and the landlord has not voluntarily extended the lease after the effective date of this ordinance.

Section Nine. Required Posting of Signs.

(A) Subsection 6(B) is an affirmative defense to this subsection. Every sexual offender, as defined in Section 3 of this ordinance, shall at all times display signs as required by Subsection 9(C).

(B) Subsection 6(B) is not an affirmative defense to this subsection. Every sexual offender, as defined in Section 3 of this ordinance, including sexual offenders described in Subsection 6(B), shall display signs as required by Subsection 9(C) from 8:00 a.m. each October 31st until 8:00 a.m. each November 1st.

(C) The signs required by this section shall be white signs stating 'SEXUAL OFFENDER RESIDENCE', in at least two (2') inch high black block lettering with strokes at least one-quarter inch wide, at the following places: (1) on all exterior entrances to the sexual offender's and shall be displayed; (2) on each sidewalk leading into the residence at the point on such sidewalk nearest to a property line of the residence; and (3) for each entrance without a sidewalk, at the property line directly in front of such entrance.

Section Ten. Penalty and Continuing Offenses.

Any person violating any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof shall be assessed a fine of not more than Five Hundred (\$500.00) Dollars; and each calendar day or portion of a calendar day such violation continues or recurs shall constitute a separate offense.

Section Eleven. Other Remedies.

The City may enforce this ordinance by a civil suit for injunctive relief, declaratory relief, and/or any other remedies provided by law or equity. All offenses, penalties, enforcement methods, and remedies herein shall be cumulative, and none of them shall be in lieu of any others.

Section Twelve. Savings Clause.

(A) Nothing contained in this ordinance shall cause any rights heretofore vested to be altered, affected or impaired in any way, and all such rights may be hereafter enforced as if this ordinance had not been adopted.

(B) This ordinance is cumulative of and in addition to all other ordinances of the City on the same subject and all such ordinances are hereby expressly saved from repeal. However, where this ordinance and another ordinance conflict or overlap, whichever imposes the more stringent regulations or penalties shall prevail.

(C) No offense committed and no fine, forfeiture or penalty incurred prior to the effective date of this ordinance shall be affected by the adoption of this ordinance but the punishment for any offense committed and the recovery of any fines or forfeitures incurred prior to such date shall take place as if this ordinance had not been adopted.

(D) Regardless of any other provision, this ordinance amends and supersedes Ordinance No. 06-09 (the original sex offender ordinance) and Ordinance No. 07-16 (a prior amendment thereto); provided, however, that those ordinances shall remain in effect according to their terms only as to any violation of either of those ordinances committed before the effective date of this ordinance, and as to any remedies for such violation.

(E) If any part of this ordinance, of whatever size, is ever declared invalid or unenforceable for any reason by a court of competent jurisdiction, the remainder of this order shall remain in full force and effect.

Section Thirteen. Effective Date and Publication. Proof of Publication.

This ordinance shall take effect and be in force from and after its descriptive caption has been published on two consecutive days in The Facts, a daily newspaper published in the City of Clute, Texas, having general circulation within the corporate limits of the City.

The City Secretary shall attach to the original of this ordinance one or more affidavits, certified copies thereof, by the publisher of The Facts or by the publisher's agent, showing the dates on which the caption of this ordinance was published. In any prosecution under this ordinance, a certified copy of such affidavit(s) shall be prima facie proof of such publication.

READ, PASSED AND ADOPTED this 11th day of October
2007.

CITY OF DANBURY, TEXAS

By: Fred Williamson
Fred Williamson, Mayor

ATTEST:

Jenny Brogger
Jenny Brogger, City Secretary