

CITY OF LAVON, TEXAS

ORDINANCE NO. 2023-09-02

Establish Sex Offender Residency Regulations

AN ORDINANCE OF THE CITY OF LAVON, TEXAS, ESTABLISHING RESIDENCY REGULATIONS FOR REGISTERED SEX OFFENDERS; PROHIBITING SEX OFFENDERS FROM RESIDING WITHIN 1,500 FEET OF A CHILD SAFETY ZONE; PROVIDING A SAVINGS AND REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Lavon (the "City") is a home rule municipality created in accordance with the laws of the State of Texas and governed by its Charter; and

WHEREAS, City Council of the City (the "City Council") desires to protect the health, safety, and welfare of its citizens; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City finds that sex offenders are a serious threat to public safety, especially those who commit their crimes against children; and

WHEREAS, the City finds that establishing an Ordinance to restrict the location of sex offender residences will provide increased protection for children gathering in the City; and

WHEREAS, the City finds that application of this Ordinance does not unduly restrict the ability of the regulated persons to live and reside within the City; and

WHEREAS, certain states have established a child safety zone of 2,000 feet and courts have upheld that distance as a reasonable restriction (see *Weems v. Little Rock Police Department*, 453 F.3d 1010 (8th Cir. 2006), cert. denied, 127 S. Ct. 2128 (Arkansas law); *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), cert. denied, 546 U.S. 1034 (Iowa law); and

WHEREAS, the City finds that placing restrictions on the locations where sex offenders may reside will protect the health, safety, and welfare of its citizens.

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

SECTION 1. All the above matters stated herein are found to be true and correct factual findings of the City Council, and are incorporated herein by reference as if copied in their entirety.

SECTION 2. The City of Lavon Code of Ordinances Chapter 8 “Offenses and Additional Provisions”, Article 8.09 “Sex Offender Residency” is hereby adopted to be read in its entirety as follows:

ARTICLE 8.09 SEX OFFENDER RESIDENCY

§ 8.09.001 Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where 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, or video arcade facility, as those terms are defined in V.T.C.A., Health and Safety Code § 481.134. Such premises may be located within the Lavon city limits, the Lavon extraterritorial jurisdiction, or within the municipal boundary or extraterritorial jurisdiction of any other municipality or county.

Minor means a person younger than 17 years of age.

Permanent residence means a place where a person abides, lodges, or resides for 14 or more consecutive days.

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

Temporary residence means a place where a person abides, lodges, or resides for 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 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

§ 8.09.002 Offenses.

It is unlawful for a sex offender to have a permanent residence or temporary residence within 1,500 feet of a child safety zone. For the purposes of this article, planted street medians are not public parks.

§ 8.09.003 Evidentiary matters; measurements.

- (a) It shall be prima facie evidence that this article applies to a person if that person's record appears on the Texas Department of Public Safety's sex offender database and the database indicates that the victim was a minor as defined herein.
- (b) For the purposes of determining the minimum distance separation, the requirement 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, as described herein above, or, in the case of multiple residences on one property, measuring from the nearest property line of the premises to the nearest property line of the premises where children commonly gather, as described herein.

- (c) A map depicting the prohibited areas shall be maintained by the city. Said map will be available to the public for inspection in the city secretary's office and at the Lavon police department.

§ 8.09.004 Culpable mental state not required.

Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by this article.

§ 8.09.005 Affirmative defenses.

It is an affirmative defense to prosecution that any of the following conditions apply:

- (1) The person required to register on the database established the permanent or temporary residence and has complied with all of the sex offender registration laws of the state prior to the date of the adoption of the ordinance from which this article is derived;
- (2) The person required to register on the database was a minor when he committed the offense requiring such registration and was not convicted as an adult;
- (3) The person required to register on the database is a minor;
- (4) The premises where child safety zone is located, as specified herein, within 1,500 feet of the permanent or temporary residence of the person required to register on the database was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state; or
- (5) A sex offender may apply to the city council for an exemption from this article. The procedures governing this procedure shall be on file with the office of the city secretary.

§ 8.09.006 Penalty.

A violation of any provisions of this article shall be deemed to be a misdemeanor and, upon conviction of such violation, shall be punishable by a fine as provided in section 1.01.009 of the City of Lavon Code of Ordinances. Each day on which the provisions of this article are violated shall constitute a separate offense.


SECTION 3. 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.

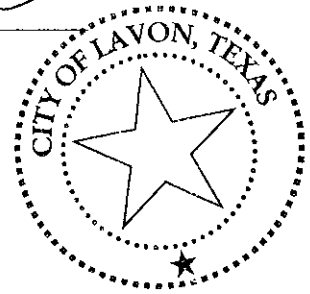
SECTION 4. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 5. Penalty. A violation of any provisions of this article shall be deemed to be a misdemeanor and, upon conviction of such violation, shall be punishable by a fine as provided in section 1.01.009 of the City of Lavon Code of Ordinances. Each day on which the provisions of this article are violated shall constitute a separate offense.

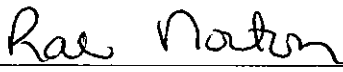
SECTION 6. Effective Date. This ordinance shall take effect immediately from and after its passage and publication, as the law and Charter in such case may provide.

PASSED AND APPROVED by the City Council of the City of Lavon, Texas this 5th day of September 2023.


Vicki Sanson, Mayor



ATTEST:


Rae Norton, City Secretary