

ORDINANCE NO. 2021-24

**ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS
AMENDING TITLE XIII OF THE CITY OF HARKER HEIGHTS
MUNICIPAL CODE BY ESTABLISHING A NEW CHAPTER 132
“REGULATION OF SEX OFFENDER RESIDENCY”; PROVIDING
DEFINITIONS; CREATING “CHILD SAFETY ZONES”;
PROHIBITING THE ESTABLISHMENT OF RESIDENCES AND
CERTAIN ACTIVITIES BY SEX OFFENDERS IN CHILD SAFETY
ZONES; PROVIDING AFFIRMATIVE DEFENSES; ESTABLISHING
OTHER PROVISIONS RELATING TO MENTAL STATE AND NON-
ASSUMPTION OF DUTIES; PROVIDING A SEVERABILITY
CLAUSE; PROVIDING A PENALTY AND PROVIDING AN
EFFECTIVE DATE**

WHEREAS, the City of Harker Heights, Texas (“City of Harker Heights”) is a home rule city; and

WHEREAS, the City Council of the City of Harker Heights has determined and declares that sex offenders are a threat to public health, safety, welfare and morals; and

WHEREAS, the City Council determines that a policy establishing child safety zones to be applied regarding the residence of registered sex offenders and prohibiting registered sex offenders participating in Halloween will provide better protection for children within the City of Harker Heights; and

WHEREAS, the City Council, in accordance with the Charter of the City of Harker Heights, state law and all other applicable laws and ordinances, have given required notices and have held required public hearings regarding the amendment to the Municipal Code set forth herein; and

WHEREAS, the Council desires to provide for the health, safety, morals, and general welfare of the citizens of the City of Harker Heights by and through the exercise of its police powers;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS AS FOLLOWS:

Section 1. All of the above premises are found to be true and correct legislative findings of the City of Harker Heights and are hereby approved and incorporated into the body of this Ordinance as if copied in its entirety.

Section 2. Title XIII of the Code of Ordinances of the City of Harker Heights is hereby amended by establishing Chapter 132 "Regulation of Sex Offender Residency" as follows:

CHAPTER 132 - REGULATION OF SEX OFFENDER RESIDENCY

Sec. 132.01. - Definitions.

For purposes of these regulations the following terms, words, and derivations thereof shall have the meanings given herein:

Child. See minor.

Child safety zone. Shall mean a zone extending 1,000 feet from the property line of the following facilities: private and public schools, child daycare centers, private and public playground, public or private youth center, commercial and public swimming pools, video and amusement arcades, private and public parks, indoor and outdoor amusement centers catering primarily to minors, and amusement parks. The zone includes the facilities themselves.

Day care center. Shall mean a childcare facility that is registered, licensed, or listed by the state.

Minor. Shall mean a person younger than 17 years of age.

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

Person. Shall mean an individual, firm, partnership, corporation, company, association, syndicate, or any legal entity, whether he, she, or it is acting for himself, herself, or itself or as the servant, employee, agent or representative of another.

Playground. Shall have the meaning assigned by V.T.C.A., Health and Safety Code chapter 481.134, as amended.

Temporary residence. Shall mean a place where a person resides, lodges, or abides for a period of four or more consecutive or nonconsecutive days in any month, or for a period of less than 14 days in the aggregate during any calendar year, which is not the person's permanent residence.

School. Shall have the meaning assigned by V.T.C.A., Health and Safety Code chapter 481.134, as amended.

Sex offender. For purposes of this chapter, shall mean a person required to register on the state department of public safety's "public" sex offender database under V.T.C.A., Code of Criminal Procedure chapter 62 due to a reportable conviction or adjudication involving a victim younger than 17 years of age or a person who has been civilly committed as a sexually violent predator under V.T.C.A., Health and Safety Code chapter 841 and is subject to outpatient treatment and supervision under that chapter.

Video and Amusement Arcades. Shall have the meaning assigned to video arcade facility by V.T.C.A., Health and Safety Code chapter 481.134, as amended.

V.T.C.A. Shall mean the Vernon's Texas Codes Annotated or Vernon's Texas Codes and Statutes Annotated as amended.

Youth Center. Shall have the meaning assigned by V.T.C.A., Health and Safety Code chapter 481.134, as amended.

Sec. 132.02. - Offenses.

(a) It is unlawful for a sex offender to establish a permanent or temporary residence within the child safety zone as defined in section 132.01.

(b) It is unlawful to lease, rent or otherwise provide any residence, dwelling, place, structure (or part thereof), manufactured home, trailer, or other habitation located in a child safety zone to a sex offender with the knowledge that it will be used as a permanent or temporary residence by such person.

(c) It is an offense for a sex offender to knowingly enter onto the premises of private and public schools, child daycare centers, private and public playground, public or private youth center, commercial and public swimming pools, video and amusement arcades, private and public parks, indoor and outdoor amusement centers catering primarily to minors, and amusement parks within the city limits of the city.

(d) A sex offender shall not leave on an exterior light or otherwise invite trick-or-treaters to solicit a permanent or temporary residence between the hours of 4:00 p.m. and 11:00 p.m. on each October 30 and 31, or any specific date set by the City Council for trick-or-treaters.

Sec. 132.03. - Evidentiary matters; measurements.

(a) It shall be prima facie evidence that this article applies to such a person if that person is a sex offender as defined in section 132.01.

(b) For the purposes of determining the minimum child safety zone separation, the following shall apply:

(1) The distance shall be measured by following a straight line from the nearest property line of the permanent or temporary residence to the nearest property line of the facility where the child safety zone applies.

(c) A map, available in the city police department, depicting the child safety zones in the city shall be maintained and reviewed annually for changes by the city.

Sec. 132.04. - Culpable mental state not required.

Neither allegation, nor evidence, of a culpable mental state is required for the proof of the offense defined by this chapter under subsection 132.01(a) or subsection 132.02(d).

Sec. 132.05. - Affirmative defenses.

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

- (1) The sex offender established the permanent or temporary residence and has complied with all of the sex offender registration laws of the state, prior to April 27, 2021.
- (2) The person required to register on the database was a minor when he or she 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 facility to which the child safety zone applies was opened after the person established a permanent or temporary residence and the person is compliant with all sex offender registration laws of the state.
- (5) The information on the database is incorrect, and if corrected, this chapter would not apply to the person who was erroneously listed on the database.

Section 3. If any section, article, paragraph, sentence, clause or phrase of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portion shall remain in full force and effect.

Section 4. Any person who intentionally or knowingly violates or fails to comply with any provision of this Ordinance shall be fined, upon conviction, in an amount not to exceed \$2,000.00, and each day any violation continues shall constitute a separate offense.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS, THIS THE 27th DAY OF APRIL, 2021.



CITY OF HARKER HEIGHTS

By: 
Spencer H. Smith, Mayor

ATTEST:



Juliette, Helsham, City Secretary