

Ordinance # 19-2018

City of Comanche Registered Sex Offender Ordinance

An Ordinance of the City of Comanche, Texas creating areas around locations where children regularly congregate in concentrated numbers; wherein certain sexual offenders and sexual predators are prohibited from entering; or establishing temporary residences or permanent residences.

Section I. Purpose and Intent

(A) Repeat sexual offenders, sexual offenders that use physical violence and sexual offenders who prey on children are sexual predators who represent an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence. to repeat their offenses and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes.

(B) This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(C) 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 of Comanche by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from entering or establishing temporary residences or permanent residences.

Section 2. Definitions

For the purpose of this Ordinance the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Permanent Residence: The primary residence (home) of an entity, party, individual at a situated address as defined in the *Black's Law Dictionary*.

Public Way: Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, common areas of schools, shopping centers, parking lots, parks, playgrounds, transportation facilities, theaters, restaurants, shops, bowling alleys, taverns, cafes, arcades, and similar areas that are open to the use of the public.

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

Registered Sex Offender: Means an individual who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure (*Local Government Code, Section 341.906*).

Child: Any person under seventeen (17) years of age.

Child Care Facility or Day Care Facility: A facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption, to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers (*Human Resource Code, Section 42.002*).

Child Safety Zone: Means premises where children commonly gather. The term includes a school, daycare, 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 in the *Insurance Code, Section 544.251*.

Loitering: Term that describes "to hang about and doing nothing in a public place" as defined in the *Black's Law Dictionary*.

"Park" or "Playground": Any outdoor facility that is not on the premises of a school and that is intended for recreation, is open to the public; and contains three (3) or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards as defined in the *Health and Safety Code, Section 481.134*.

School: A private or public elementary or secondary school or a day-care center, as defined by *Section 42.002, Human Resources Code*.

Section 3. Authority

The 85th Texas Legislature added House Bill 1111 Limitations on Registered Sex Offenders in General-Law Municipalities, which went into effect on September 1, 2017. House Bill 1111 adds Section 341.906 to subchapter Z, Chapter 341, Subtitle A, Title 11, of the Local Government Code and allows a General Law Municipality, by Ordinance, to restrict a registered sex offender from going in, on, or within a specified distance of a child safety zone in the municipality. The distance may not be more than one thousand (1,000) feet.

Local Government Code, Title 11, Subtitle A, Chapter 431, Section 341.906 reads as follows:

Sec. 341.906. LIMITATIONS ON REGISTERED SEX OFFENDERS IN GENERAL-LAW MUNICIPALITIES.

(a) In this section:

(1) "Child safety zone" means premises where children commonly gather. The term includes a school, daycare, 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, Insurance Code*.

(2) "Playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by *Section 481.134, Health and Safety Code*.

"Playground" means any outdoor facility that is not on the premises of a school and that is intended for recreation, is open to the public; and contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards.

"Premises" means real property and all buildings and appurtenances pertaining to the real property.

"School" means a private or public elementary or secondary school or a day-care center, as defined by *Section 42.002, Human Resources Code*.

"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 machines, and contains at least three pinball or video machines.

"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 (*Health and Safety Code sec. 481.134*).

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

(b) To provide for the public safety, the governing body of a general-law municipality by ordinance may restrict a registered sex offender from going in, on, or within a specified distance of a child safety zone in the municipality.

(c) It is an affirmative defense to prosecution of an offense under the ordinance that the registered sex offender was in, on, or within a specified distance of a child safety zone for a legitimate purpose, including transportation of a child that the registrant is legally permitted to be with, transportation to and from work,

and other work-related purposes.

(d) The ordinance may establish a distance requirement described by Subsection (b) at any distance of not more than one thousand (1,000) feet.

(e) The ordinance shall establish procedures for a registered sex offender to apply for an exemption from the ordinance.

(f) The ordinance must exempt a registered sex offender who established residency in a residence located within the specified distance of a child safety zone before the date the ordinance is adopted. The exemption must apply 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.

Section 4. Sexual Offenders Residence Prohibition; Exceptions

(A) It is unlawful for any person who is required to register as a sex offender under Chapter 62 Code of Criminal Procedure, regardless of whether the adjudication was deferred, to establish a permanent residence or temporary residence within one thousand (1,000) feet of any premises of a Child Safety Zone, including but not limited to, a school, daycare, 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, Insurance Code

(B) For the purpose 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 of a Child Safety Zone as described herein.

(C) Exceptions.

(1) A person was younger than 17 years of age when he or she committed the offense and was not convicted as an adult.

(2) The person is younger than 17 years of age and residing with his or her adult legal guardian, said adult legal guardian, who does not have to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(3) The Child Safety Zone, as specified herein, within one thousand (1,000) feet of the person's permanent residence was opened after the person established the permanent residence and complied with all sex offender registration laws of the state.

(D) Any person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure and has already established a permanent residence inside of a Child Safety Zone prior to the passing of this Ordinance into effect, said person(s) shall be permitted to be inside the Child Safety Zone only for the purposes of being on their permanent residential property, and traveling to and from their permanent residential property. Said persons will not loiter on a public way located inside the Child Safety Zone. All other persons who have to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure after the effectiveness of this Ordinance shall follow and adhere to every section included herein.

(E) Any person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure may request an exemption from the applicability of a Child Safety Zone under the following circumstances:

(1) The person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure has established a permanent residence located within a Child Safety Zone prior to the adoption of this Ordinance.

(2) The person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure is employed and said employment requires the person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure to travel through or remain in a Child

Safety Zone through the normal course of their duties, and was employed with the same entity prior to the date of the adoption of this Ordinance.

(3) The person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure has legal custody of a child, and must enter a Child Safety Zone for the purpose of transporting said child to and from school.

(F) The person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure requesting an exemption from a Child Safety Zone may request said exemption using the Comanche Police Department approved Request for Exemption form. The person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure must submit a request for exemption on each date that the person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure is required to report to the Comanche Police Department or other designated primary registration authority. The approval for the request for exemption shall be at the discretion of the Comanche Police Department.

(G) Any exemption granted to a person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure shall terminate immediately;

(1) On the date the person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure establishes a new permanent residence,

(2) On the date the person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure gains new employment or is terminated from their current employment.

(3) On the date the child of whom person who has to register as a sex offender under Chapter 62 Texas Code of Criminal Procedure is no longer enrolled in school, or

(4) On the date the child of whom person who has to register as a sex off ender under Chapter 62 Texas Code of Criminal Procedure turns 17 years of age.

Section 5. Property Owners Prohibited from Renting Real Property to Sexual Offenders

It is unlawful to let or rent any place, structure, residence, apartment, or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this Ordinance, if such place, structure, residence, apartment, or part thereof, manufactured home, trailer, or other conveyance, is located within one thousand (1,000) feet of any Child Safety Zone, including but not limited to, a school, daycare, 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, Insurance Code.

Section 6. Length of Time Applicable

(A) A person assigned a risk level of one, two, or three pursuant to the Texas Code of Criminal Procedure Article 62.007 shall have no exemption as to the length of time this Ordinance is applicable.

Section 7. General Penalty

(A) Any person who violates any provision of this code for which another penalty is not specifically provided shall, upon conviction, be guilty of a misdemeanor and subject to a fine not to exceed:

(1) Two Thousand Dollars (\$2,000) in all other cases provided, however, that no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state.

(B) If the maximum penalty provided by this code for any such offense is greater than the maximum penalty provided for the same similar offense under the laws of the state, then the maximum penalty for violation as provided by state statute shall be the maximum penalty under this code. Each day any violation of this code or of any ordinance shall continue, shall constitute a separate offense.

Section 8. Offenses

The following are considered offenses under this ordinance:

(A) It is an offense for a sex offender to establish a permanent residence or temporary residence within one thousand (1,000) feet of real property comprising a Child Safety Zone. The distance of one thousand (1,000) feet shall be measured on a straight line from the closest boundary line of the sex offender's residence to the closest boundary line of the Child Safety Zone.

(B) It is an offense for a Sex Offender to knowingly loiter on a public way or any property within one thousand (1,000) feet of a Child Safety Zone.

(C) It is an offense for a Sex Offender to enter or remain in a Child Safety Zone.

(D) A sex offender shall not on each October 31, or any other date set by the City for Halloween Trick-or-treating, as understood within the context of Halloween, leave an exterior porch light on or otherwise invite Trick-or-Treaters to solicit the premises where the Sex Offender(s) resides or is visiting.

(E) It is an offense under this ordinance for any person to let or rent any place, structure, residence, apartment, or part thereof, including and manufactured home, trailer, recreational vehicle, or vehicle of any type with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such residence pursuant to the terms of this ordinance, if such place, structure, or vehicle, or part thereof, is located within one thousand (1,000) feet of premises defined in this ordinance as a Child Safety Zone.

Section 9. Enforcement and Evidentiary Matters

If a police officer reasonably believes that a sex offender(s), as defined under this ordinance, is in violation of any provision of this ordinance herein, the officer shall require the sex offender(s) to provide his/her full name, date of birth, address, telephone number, Texas driver's license and/or Texas identification card number and the license plate number and state of any motor vehicle or motorcycle in the possession of said Sex Offender(s). If it is established that the individual(s) is a sex offender, then the officer shall notify the sex offender(s) that he/she or they are in violation of this ordinance.

(A) If a sex offender who is prohibited from being in a Child Safety Zone is found in a Child Safety Zone by a police officer, the sex offender shall be subject to prosecution in accordance with this ordinance. Said Sex Offender(s) shall be issued a citation, and then be escorted by the Officer out of the Child Safety Zone.

(B) The distance of one thousand (1,000) feet from a child safety zone shall be measured on a straight line from the closest boundary of the child safety zone.

(C) The distance of one thousand (1,000) feet from a child safety zone shall be measured on a straight line from the closest boundary line of the sex offender's residence to the closest boundary line to the child safety zone.

(D) In the case of multiple residences on one property, measurement shall be from the nearest property line of the property on which the residences are located to the nearest property line of the child safety zone.

(E) In cases where there is a dispute over the measurements of distances, the person(s) challenging the measurement shall have the burden of proof.

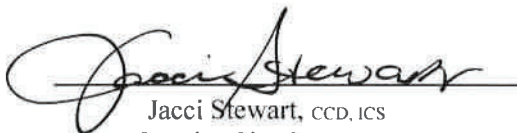
(F) Any Sex Offender found in violation of subsection D under **Offenses** (Solicitation on Halloween) shall be subject to prosecution under this ordinance.

PASSED AND APPROVED this 13th day of November, 2018.



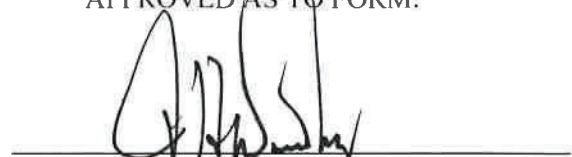
Ronnie Clifton, Mayor

ATTEST:



Jacqui Stewart, CCD, ICS
Interim City Secretary

APPROVED AS TO FORM:



James H. Dudley, City Attorney