

ORDINANCE NO. 2013-0225-01

**AN ORDINANCE ESTABLISHING REGULATIONS RELATING TO SEX OFFENDERS;
INCLUDING DEFINITIONS; OFFENSES; EVIDENTIARY MATTERS INCLUDING
DISTANCES; IDENTIFYING AFFIRMATIVE DEFENSES; A SEVERABILITY CLAUSE;
ESTABLISHMENT OF PENALTIES; AND, AN ENACTING CLAUSE WITH AN
EFFECTIVE DATE.**

Sec. 1 . Definitions.

For the purposes of this article, the following terms, words, and the derivation thereof shall have the meanings given herein:

- (a) *Day care center* shall mean a child care facility that is registered, licensed or listed by the State of Texas.
- (b) *Minor*. A minor is a person younger than seventeen (17) years of age.
- (c) *Permanent residence*. A place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.
- (d) *Person* includes an individual, firm, corporation or other business entity.
- (e) *Premises where children commonly gather*. Public parks, private and public schools, amusement arcades, City of Lorena baseball/softball fields, video arcades and youth centers as defined in article 481.134 of the Health and Safety Code of the State of Texas, indoor and outdoor amusement centers that cater primarily to children, amusement parks, public commercial and semi-private swimming pools, child day care centers. For the purposes of this Code, planted street medians are not public parks.
- (f) *Child safety zone*. A zone comprised of the area within two thousand (2,000) feet of the property lines of a premises where children commonly gather, measured as set forth in Section 3 below.
- (g) *Temporary residence*.
 - (1) 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
 - (2) 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.

Sec. 2 Offenses.

(a) For each person required to register on the Texas Department of Public Safety's public sex offender database (the "database") under chapter 62, Code of Criminal Procedure, because of a reportable conviction or adjudication involving a victim younger than seventeen (17) years of age or who has been civilly committed as a sexually violent predator under chapter 841, Health and Safety Code, and is subject to outpatient treatment and supervision under that chapter, it shall be unlawful for that person to establish a permanent residence or temporary residence within a "child safety zone" as defined in Section 1.

(b) It is unlawful to lease, rent or otherwise provide any residence, dwelling, place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this section, if such place, structure or part thereof, manufactured home, trailer or other conveyance is located within a "child safety zone" as defined in Section 1.

(c) It is an offense for a sex offender to knowingly enter any "premises where children commonly gather" as defined in Section 1.

(d) It is an offense for a sex offender to knowingly loiter on a public way within three hundred (300) feet of any "premises where children commonly gather" as defined in Section 1.

(e) A sex offender shall not, on each October 30 and 31 (or any other date set by the city for trick-or-treating) between the hours of 4:00 p.m. and 11:00 p.m., leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the premises.

Sec. 3 Evidentiary matters; measurements.

(a) It shall be prima facie evidence that this article applies to such a person if that person's record appears on the database and the database indicates that the victim was less than seventeen (17) years of age.

(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:

(1) In the case of multiple residences on one (1) property, measurement is from the nearest property line of the residence premises following a straight line to the nearest property line of the premises where children commonly gather, or

(c) A map depicting the prohibited areas shall be maintained by the City of Lorena. The city shall review the map annually for changes. Said map will be available to the public at the Lorena City Hall.

Sec. 4. 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 article under Section 2.

Sec. 5 . Affirmative defenses.

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

- (a) 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 of Texas, prior to the date of the adoption of this article.
- (b) 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.
- (c) The person required to register on the database is a minor.
- (d) The premises where children commonly gather, as specified herein, within two thousand (2,000) 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 the person has complied with all sex offender registration laws of the State of Texas.
- (e) The information on the database is incorrect, and, if corrected, this section would not apply to the person who was erroneously listed on the database.
- (f) The person is required by lawful order to reside at a noncompliant location as a condition of probation or parole. [The city reserves the right to petition the applicable court or agency to modify the order].

Sec. 6. Penalty

Any person, firm or corporation violating a provision of this article shall be guilty of a Class C misdemeanor and, upon conviction of such violation, shall be punished by a penalty of fines not to exceed five hundred dollars (\$500.00) for each offense. Each day the violation continues is a separate offense.

Sec. 7.Provisions severable.

It is hereby declared to be the intention of the city council that the phrases, clauses, sentences, paragraphs, and sections of this article are severable, and if any phrase, clause, sentence, paragraph or section of this Code 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 Code, since the same would have been enacted by the city council without the incorporation in this article of any such unconstitutional phrase, clause, sentence, paragraph or section.