

## ORDINANCE 01092023-1

**AN ORDINANCE OF THE CITY OF MERKEL, TEXAS, FOR THE REGULATION OF SEXUAL OFFENDERS; MAKING IT UNLAWFUL FOR CERTAIN SEXUAL OFFENDERS TO GO IN, ON, OR WITHIN 1000 FEET OF CHILD SAFETY ZONES WITHIN THE CITY; PROVIDING EXCEPTIONS TO THE ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE, INCLUDING, BUT NOT LIMITED TO A FINE NOT TO EXCEED \$500.00 AS ALLOWED BY LAW, PER DAY OF CONTINUING VIOLATION.**

**WHEREAS**, the City of Merkel (herein the "City") is a Type A general-law municipality, located in Taylor County, Texas, created in accordance with the provisions of Chapter 6 of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

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

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

**WHEREAS**, the City Council finds that regulating sex offender residency within the City and establishing child safety zones provide better protection for children gathering in the City and is necessary to protect the health, safety and general welfare of children; and

**WHEREAS**, Section 341.906 of the Texas Local Government Code allows the City to "restrict a registered sex offender from going in, on, or within a specified distance of a child safety zone" in the City.

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MERKEL, TEXAS:**

### **Sec. 1: PURPOSE, INTENT**

The City Council of the City of Merkel finds that Sex Offenders who are required to register as a sexual predator under V.T.C.A., Texas Code of Criminal Procedure, Chapter 62, present an extreme threat to the health, safety and welfare of children. 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 registered sex offenders and sexual predators are prohibited from loitering or prohibited from establishing temporary or permanent residency.

### **Sec. 2: DEFINITIONS**

## ORDINANCE 01092023-1

For the purposes of this Section, the following terms, words, and the derivations thereof shall have the meaning given herein.

**SEX OFFENDER:** Means an individual who has been convicted of or placed on deferred adjudication for a sexual offense involving a person under seventeen (17) years of age for which the individual is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

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

**TEMPORARY RESIDENCE:** Means a place where a person abides, lodges or resides for a period no longer than seven (7) 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, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

**CHILD:** Means any person under the age of eighteen (18).

**CHILD CARE FACILITY:** Means a facility licensed, certified, or registered by the Department of Family and Protective Services 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.

**CHILD SAFETY ZONE:** Means premises where children commonly gather, including schools, day-care facilities, playgrounds, public or private youth centers, public swimming pools, video arcade facilities, or other facilities that regularly hold events primarily for children. The term does not include a church, which is a facility that is owned by a religious organization and is used primarily for religious services.

**DATABASE:** Means the Texas Department of Public Safety's Sex Offender Database or the Sex Offender Registration files maintained by the Sex Offender Registration Officer of the Merkel Police Department.

**DAY-CARE CENTER:** Means a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

**LOITER:** Means standing, sitting idly, whether the person is in a vehicle or physically remaining in or around an area.

**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

## ORDINANCE 01092023-1

play stations intended for the recreation of children, such as slides, swing sets, and teeterboards

**PUBLIC WAY:** Means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, shopping centers, parking lots, transportation facilities, restaurants, shops and similar areas that are open to the use of the public.

**SCHOOL:** Means a private or public elementary school or secondary school or a day-care center.

**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.

### Sec. 3: SEX OFFENDER PROHIBITION

- A. It is an offense for a Sex Offender to establish a permanent residence or temporary residence within one thousand (1,000) feet of a Child Safety Zone.
- B. It is an offense for a Sex Offender to knowingly enter a Child Safety Zone.
- C. It is an offense for a Sex Offender to knowingly loiter on a public way within 1,000 feet of a Child Safety Zone.

### Sec. 4: EVIDENTIARY MATTERS

- A. If a Sex Offender that is prohibited from being in a Child Safety Zone is found in a Child Safety Zone by a Police Officer, the Sex Offender is subject to punishment in accordance with this Ordinance.
- B. It shall be prima facie evidence that this Ordinance applies to such a person if that person's record appears in/on the Database and the Database indicates that the victim was less than seventeen (17) years of age.
- 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 of the Child Safety Zone.
- D. For the residency restriction, 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 of the school, child care facility, child care institution, park or playground or other places where children regularly congregate.

## ORDINANCE 01092023-1

- E. In the case of multiple residences on one property, the distance shall be measured from the nearest property line of the residences to the Child Safety Zone.
- F. In cases of a dispute over measured distances, it shall be incumbent upon the person(s) challenging the measurement to prove otherwise.
- G. A map depicting the prohibited areas shall be created by the City of Merkel and maintained by the Merkel Police Department. The City of Merkel, Chief of Police or designee shall review the map annually for changes. Said map will be available to the public at the Merkel Police Department and available on the City of Merkel Website affixed to this Ordinance.

### **Sec. 5: EXCEPTIONS**

- A. The information on/in the Database is incorrect, and, if corrected, this Ordinance would not apply to the person who was erroneously listed on/in the Database.
- B. The Sex Offender was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
- C. The Sex Offender is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located within one thousand (1,000) feet of the Child Safety Zone.
- D. The Sex Offender is under eighteen (18) years of age or a ward under a guardianship, who resides with a parent or guardian.
- E. The Sex Offender has been exempted by a court order from registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.
- F. The Sex Offender has had the offense for which the sex offender registration was required, reversed on appeal, or pardoned.
- G. The person's duty to register on/in the Database has expired.
- H. Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.

### **Sec. 6: AFFIRMATIVE DEFENSE**

It is an affirmative defense to prosecution under this Ordinance that the sex offender was in, on, or within 1,000 feet of a Child Safety Zone for a legitimate purpose. For purposes of this section, a "legitimate purpose" means transportation of a child that the Sex Offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

**ORDINANCE 01092023-1**

**Sec. 7: EXEMPTION**

- A. A Sex Offender who established residency in a residence within 1,000 feet of a Child Safety Zone before the date this Ordinance takes effect, and a Sex Offender who lives within 1,000 feet of a Child Safety Zone that was established after the Sex Offender established permanent residency, may apply for an exemption from this Ordinance, provided the Sex Offender complies with the processes contained in this Section 7.
- B. This exemption only allows for the Sex Offender to use areas necessary for the Sex Offender to have access to and live in the residence.
- C. To obtain an exemption under this Section 7, the Sex Offender must make application to the Chief of Police. Said application shall contain the Sex Offender's name, address, phone number, and proof of residency acceptable to the Chief of Police.
- D. Said exemption shall be granted by the Chief of Police if the Chief of Police determines that the Sex Offender did reside at a residence within 1,000 feet of a Child Safety Zone on the effective date of this Ordinance or when a Child Safety Zone was opened or established, and continues to reside at that residence.
- E. The exemption shall expire when and if the Sex Offender no longer resides at the residence that is within 1,000 feet of a Child Safety Zone.

**Sec. 8: PENALTIES**


Any person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof may be fined an amount not to exceed \$500.00 as allowed by law. Each day that a violation is permitted to exist shall constitute a separate offense and shall be punishable as such.

**PASSED, APPROVED, AND ADOPTED** this 9 day of January 2023.

ATTEST:

  
\_\_\_\_\_  
Evelyn Morse, City Secretary

SIGNED:

  
\_\_\_\_\_  
Mary Schrampler, Mayor

## Phillip Conklin

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**From:** Eileen Hayman <eileen@txmunicipallaw.com>  
**Sent:** Friday, January 6, 2023 10:27 AM  
**To:** Evelyn Morse; Phillip Conklin  
**Cc:** Sharon Wells  
**Subject:** Sex Offender Ordinance  
**Attachments:** Ordinance 01092023-1 Child Safety Zones EMH 01-06-23.pdf; Ordinance 01092023-1 Child Safety Zones EMH 01-06-23 Clean.docx; Local Gov't Code Sec 341.906 Limitations on Registered Sex Offenders in General-Law Cities.pdf; Human Resources Code Sec 42.002 Definitions.pdf; Health & Safety Code Sec 481.134 Drug-Free Zones.pdf

Evelyn and Chief,

Attached for your review is a marked up version of the ordinance I was provided (in PDF) and a clean version (in Word) incorporating all of my changes.

Here are my comments regarding the changes:

- Recitals – I included the provision of state law that allows general law cities to adopt sex offender restrictions. I believe the city who drafted the ordinance I received was home rule.
- Section 2 – Definitions – I changed existing definitions and added new definitions to mirror state law definitions. We can only do what state law allows us to do.
- Section 3 – As previously stated yesterday, I made the limit on residency and loitering the same. There is no authority in state law which allows us to prevent enticing trick-or-treaters on Halloween.
- Section 4 – We cannot restrict the right of property owners to rent to sex offenders. The sex offender is the one who is culpable. I removed this section.
- Section 4 (formerly Section 5) – I just included clarifying language. Also, since “child safety zone” is a defined term in the definitions section, I included that defined term.
- Section 5 (formerly Section 6) – First two subsections were moved to new Section 7, Exemption (more explanation will follow in this email). Other changes were to use defined terms of Sex Offender and Child Safety Zone.
- Section 6 – This is required by state law.
- Section 7 – Exemptions – State law requires us to allow sex offenders to apply for “an exemption” to the ordinance. I have provided that the exemption is pre-existing residency. Since we have to provide an exemption, this is the easiest one to provide so I have included it here rather than stating it is an automatic exception.
- Section 8 – Penalties – I have removed the reference to “firm, corporation” etc. because we are not going to be prosecuting against corporations.
- Adoption Language – Nothing in state law requires us to have a public hearing to adopt this ordinance. Additionally, there is no requirement for this ordinance to be adopted after two readings. Adoption on two readings is usually a requirement of a charter of a home rule city, but there is nothing in state law which requires general law cities to adopt ordinances after 2 readings. Also, there is no requirement that I sign the ordinance to approve it.

Please let me know if you have any questions! I’ve also attached the state law provisions for your information.

Eileen

EILEEN M. HAYMAN  
PARTNER



MESSER + FORT + McDONALD

certified

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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, day-care facility, 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.

(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 registered sex offender 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 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.

Added by Acts 2017, 85th Leg., R.S., Ch. 997 (H.B. 1111), Sec. 3, eff. September 1, 2017.



Sec. 481.134. DRUG-FREE ZONES. (a) In this section:

(1) "Minor" means a person who is younger than 18 years of age.

(2) "Institution of higher education" means any public or private technical institute, junior college, senior college or university, medical or dental unit, or other agency of higher education as defined by Section 61.003, Education Code.

(3) "Playground" means any outdoor facility that is not on the premises of a school and that:

(A) is intended for recreation;

(B) is open to the public; and

(C) contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards.

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

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

(6) "Video arcade facility" means any facility that:

(A) is open to the public, including persons who are 17 years of age or younger;

(B) is intended primarily for the use of pinball or video machines; and

(C) contains at least three pinball or video machines.

(7) "Youth center" means any recreational facility or gymnasium that:

(A) is intended primarily for use by persons who are 17 years of age or younger; and

(B) regularly provides athletic, civic, or cultural activities.

(8) "General residential operation" has the meaning assigned by Section 42.002, Human Resources Code.

Sec. 42.002. DEFINITIONS. In this chapter:

- (1) "Child" means a person under 18 years of age.
- (2) "Division" means the division designated by the department to carry out the provisions of this chapter.
- (3) "Child-care facility" means 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.
- (4) "General residential operation" means a child-care facility that provides care for seven or more children for 24 hours a day, including facilities known as residential treatment centers and emergency shelters.
- (5) "Continuum-of-care residential operation" means a group of residential child-care facilities that operate under the same license or certification to provide a continuum of services to children.
- (6) "Cottage home operation" means cottage family homes that:
  - (A) are identified on the operation's license;
  - (B) share a child-care administrator who is responsible for oversight for all homes within the operation; and
  - (C) are all in or near the same location as defined by department rule.
- (7) "Day-care center" means a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.
- (8) "Group day-care home" means a child-care facility that provides care at the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.
- (9) "Family home" means a home that provides regular care in the caretaker's own residence for not more than six children under 14 years of age, excluding children who are related to the caretaker, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including children who are related to the caretaker, does not exceed 12 at any given time. The term does not include a home that provides care exclusively for any number of children who are related to the caretaker.

(10) "Cottage family home" means a family residential setting with one or more homes operating under the license of a cottage home operation and in which:

(A) each home has at least one houseparent who lives at the home while children are in care; and

(B) based on the size of the home and the children's needs, each home cares for not more than six children.

(11) "Agency foster home" means a facility that provides care for not more than six children for 24 hours a day, is used only by a licensed child-placing agency or continuum-of-care residential operation, and meets department standards.

(12) "Child-placing agency" means a person, including an organization, other than the natural parents or guardian of a child who plans for the placement of or places a child in a child-care facility, agency foster home, or adoptive home.

(13) "Facilities" includes child-care facilities, child-placing agencies, and continuum-of-care residential operations.

(14) "State of Texas" or "state" does not include political subdivisions of the state.

(15) "Religious organization" means a church, synagogue, or other religious institution whose purpose is to support and serve the propagation of truly held religious beliefs.

(16) "Children who are related to the caretaker" means children who are the children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the caretaker, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(17) "Regular care" means care that is provided at least:

(A) four hours a day, three or more days a week, for three or more consecutive weeks; or

(B) four hours a day for 40 or more days in a period of 12 months.

(18) "Controlling person" means a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies of a facility or family home.

(19) "Residential child-care facility" means a facility licensed or certified by the department that operates for all of the 24-hour day. The term includes general residential operations, child-placing agencies, specialized child-care homes, cottage home operations, continuum-of-care residential operations, and agency foster homes.

(20) "Before-school or after-school program" means a child-care facility that provides care before or after, or before and after, the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend prekindergarten through grade six.

(21) "School-age program" means a child-care facility that provides supervision, along with recreation or skills instruction or training, and may provide transportation, before or after the customary school day, for at least two hours a day, three days a week, to children attending prekindergarten through grade six. A school-age program may also operate during school holidays, the summer period, or any other time when school is not in session.

(22) "Children's product" means a product that is designed or intended to be used by a child under 13 years of age or used by a caregiver during the care of a child under 13 years of age. The term does not include:

(A) an item that is not designed or intended to be used solely or primarily by a child under 13 years of age or in the care of a child under 13 years of age;

(B) a medication, a drug, food, or another item that is intended to be ingested; or

(C) clothing.

(23) "Other maltreatment" means:

(A) abuse, as defined by Section 261.001, Family Code; or

(B) neglect, as defined by Section 261.001, Family Code.

(24) "Specialized child-care home" means a child-care facility that:

(A) based on the size of the home and the children's needs, provides care for not more than six children for 24 hours a day; and

(B) has a director and has at least one houseparent who lives at the home while children are in care.

(25) "Grounds" means, with regard to property, the real property, whether fenced or unfenced, of the parcel of land on which is located any appurtenant building, structure, or other improvement, including a public or private driveway, street, sidewalk or walkway, parking lot, and parking garage on the property.

Acts 1979, 66th Leg., p. 2359, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2812, ch. 759, Sec. 1, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 1052, Sec. 4.01, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 984, Sec. 1, eff. June 15, 1989; Acts 1997, 75th

Leg., ch. 1022, Sec. 23, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.90, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 46 (S.B. 95), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(34), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1323 (S.B. 471), Sec. 3, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 44, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 29, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 12, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 18, eff. September 1, 2021.