

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

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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

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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.

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- 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.

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 Schramper, Mayor