

ORDINANCE NO. 492024

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MUNDAY ESTABLISHING RESIDENCY RESTRICTIONS FOR SEX OFFENDERS THAT PROHIBIT RESIDENCY OF A REGISTERED SEX OFFENDER WITHIN ONE THOUSAND (1,000) FEET OF A CHILD SAFETY ZONE; PROVIDING DEFINITIONS; PROVIDING RESIDENCE LOCATION RESTRICTIONS, ADOPTING PROCEDURES TO APPLY FOR EXEMPTIONS FROM THE ORDINANCE AND PROVIDING A SCOPE OF EXEMPTION; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF A FINE IN AN AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500) FOR EACH OFFENSE, AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED UPON EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING FOR PUBLICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Munday ("City Council") seeks to provide for the public health, safety, and welfare of its citizens; and

WHEREAS, the City Council has determined and declares that sex offenders remain a serious threat to public safety, and

WHEREAS, the City Council finds from the available evidence that the recidivism rate for released sexual offenders is alarmingly high, especially for those who commit crimes upon children; and

WHEREAS, the City Council determines that establishing a policy to designate areas of the City as Child Safety Zones will provide better protection for children gathering in the City; and

WHEREAS, the City of Munday has the authority to enact ordinances necessary to protect the public welfare and good or good order of the municipality; and

WHEREAS, Section 341.906 of the Local Government Code 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;

WHEREAS, the City of Munday, Texas desires to ensure that the citizens of the City are protected from criminal activity to the maximum extent afforded by

controlling law in order to advance the public health, safety, and welfare, and benefit the citizens of the City to the maximum extent possible;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUNDAY, TEXAS:

SECTION 1. Incorporation of Premises:

The above and foregoing recitals are true and correct and are findings incorporated into this Ordinance and made a part thereof for all purposes.

SECTION 2. Ordinance Adopted. The following Ordinance establishing residency restrictions for sex offenders prohibiting residency of a Registered Sex Offender within one thousand (1000) feet of a child safety zone is hereby adopted and shall be and read as follows:

Section 2.01. Definitions

- (A) "Child or minor" means any person under seventeen (17) years of age.
- (B) "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, public youth sports facility, school bus stop located within the City of Munday's corporate limits or other facility that regularly holds events primarily for children. The term does not include a church, as defined by Texas Insurance Code, Section 544.251, as amended.
- (C) "Child-care Facility or Day 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 (*Human Resource Code, Section 41.002*).
- (D) "City" means City of Munday
- (E) "Loitering" means, whether on foot, on bicycle, or in a vehicle, wandering or remaining idle in essentially one location, including sitting, lounging, loafing, walking about aimlessly, or repeatedly frequenting the same location, or repeatedly circling or driving by on a bicycle or in a motor vehicle. Term that describes "to hang about and doing nothing in a public part" as defined in *Black's Law Dictionary*.
- (F) "Playground or Park" 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*.

- (G) "Permanent Residence" means the primary residence (home) of an entity, party, individual at a situated address as defined in the *Black's Law Dictionary*.
- (H) "Premises" means real property and all buildings and appurtenances pertaining to real property.
- (I) "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, 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.
- (J) "Registered Sex Offender" or "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*).
- (K) "School" means a private or public elementary or secondary school, or a day-care center, as defined herein.
- (L) "School Bus Stop" means any area designated by the Munday Independent School District as a school bus stop where children regularly gather for the purpose of boarding and debarking from a school bus.
- (M) "Temporary Residence" means 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 person of four ore more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

SECTION 3. 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 Munday 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 Munday Police Department or other designated primary registration authority. The approval for the request for exemption shall be at the discretion of the Munday 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 offender under Chapter 62 Texas Code of Criminal Procedure turns 17 years of age.

SECTION 4. Evidentiary Matters

It shall be prima facie evidence that this ordinance applies to a person if that person's record appears on the Database and the Database indicates that the victim was a Minor at the time of the sexual offense.

A map depicting Child Safety Zones shall be maintained by the City of Munday. The City shall review the map at least annually for changes. Said map will be available to the public at the City Secretary's office. Failure to keep, maintain, or update the map shall in no way affect the enforceability of any part of this Ordinance. It is solely the responsibility of a person governed by this Ordinance to determine whether he or she is within a Child Safety Zone.

SECTION 5. Culpable Mental State Not Required

Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by this Ordinance.

SECTION 6. 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 closet 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 7. 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 Offenders(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 closet 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 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 Section 6 Offenses (Solicitation on Halloween) shall be subject to prosecution under this ordinance.

SECTION 8. Penalties

- (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, Class C, 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.
- (C) Each day of the continuance of such violation shall be considered a separate offense and shall be punished separately. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 9. Repeal Provision

All parts of any other ordinance in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

SECTION 10. Severance


It is hereby declared to be the intention of the City Council that the phrases, sentences, paragraphs, and sections of this Ordinance are severable. If any part of this Ordinance is for any reason found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such finding shall not affect any of the remaining phrases, clauses, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of the part found to be invalid, illegal, or unenforceable.

SECTION 11. Effective Date

This Ordinance shall be effective upon the publication of its caption and penalty as required by law and the City Secretary is hereby directed to implement such publication.

PASSED by the City Council of the City of Munday, Texas, on this 9th day of April, 2024.

CITY OF MUNDAY



Robert Bowen, Mayor

Attest:



Shanon Cross, City Secretary