

ORDINANCE NO. 2011-0101

AN ORDINANCE OF THE CITY OF BELLS, TEXAS AMENDING CHAPTER 600 OF THE CODE OF ORDINANCE BY THE ADDITION OF A NEW SECTION 01 ENTITLED "REGULATION OF SEX OFFENDERS", MAKING IT UNLAWFUL FOR CERTAIN SEXUAL OFFENDERS TO RESIDE WITHIN 1500 FEET OF PREMISES WHERE CHILDREN GATHER; MAKING IT ILLEGAL TO LOITER WITHIN 500 FEET OF THE PUBLIC WAY AROUND A CHILD SAFETY ZONE; PROVIDING EXCEPTIONS TO THE ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE, INCLUDING, BUT NOT LIMITED TO A FINE NOT TO EXCEED THE MAXIMUM AMOUNT ALLOWED BY THE LAW, PER DAY OF CONTINUING VIOLATION.

- REGULATION OF SEXUAL OFFENDER

Section General Provisions

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- 1.1 PURPOSE, INTENT

The City Council of the City of Bells, Texas finds that repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the health, safety and welfare of children. Sexual offenders are, according to the National Institute of Mental Health, extremely likely to use physical violence and to repeat their offense 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. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant. 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 sexual offenders and sexual predators are prohibited from establishing temporary or permanent residences and are prohibited from loitering or being present in or around Child Safety Zones.

- 1.2 DEFINITIONS

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

**SEX OFFENDER**-means any person required to register as a sexual offender on the Texas Department of Public Safety's Sex Offender Database (the "Database") under Chapter 62 of the Texas Code of Criminal Procedure for a reportable conviction or adjudication of any of the following violations:

- A. Indecency with a child, as described in Section 21.11 of Texas Penal Code, as amended;
- B. Sexual assault of a child, as described in Section 22.011 of the Texas Penal Code, as amended;
- C. Aggravated sexual assault of a child, as described in Section 22.021 of the Texas Penal Code, as amended;
- D. Sexual performance by a child, as described in section 43.25 of the Texas penal Code, as amended; or
- E. Possession or promotion of child pornography, as described in Section 43.26 of the Texas Penal Code, as amended.

**PERMANENT RESIDENCE** – a place where a person abides, lodges or resides for a period of fourteen (14) or consecutive days.

**TEMPORARY RESIDENCE** – 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 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 seventeen (17).

**CHILDCARE FACILITY** – an establishment subject to regulation by Licensing which provides 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 establishment operates for profit or charges for its services. A childcare facility includes the people, administration, governing body, activities on or off the premises, operations, buildings, grounds, equipment, furnishings, and materials on any facility so defined by city ordinance.

**CHILDCARE INSTITUTION** – means a childcare facility where more than 7 children are received and maintained for the purpose of providing them with care or training or both, and/or any institution so defined by city ordinance.

**CHILD SAFETY ZONE** – public parks, private and public schools, public library, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public or commercial and semi-private swimming pools, childcare facility, childcare institution, public or private youth soccer, football field, softball field or baseball field, crisis center or shelter, skate park or rink, public or private youth center, movie theater, bowling alley, scouting facilities. Offices for Child Protective Services, as those terms are defined in Sections 341.064 and 481.134 of the Health and Safety Code of the State of Texas and Section 42.002 of the Human Resources Code of the State of Texas.

**DATABASE** – 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 Bells Police Department.

**LOITER** – shall mean:

- A. to enter and remain in the prohibited area, whether or not the person is in a vehicle, for a

- time period of greater than five minutes;
- B. to repeatedly enter the prohibited area, whether or not the person is in a vehicle, more than two (2) times in twenty-four hours; or to be in an area without a valid legal reason for entering or remaining in the prohibited area; or
- C. to remain in a prohibited area after being asked to leave by a person in authority.

*Person in Authority* shall mean the chief administrative officer of the school or child-care facility, the chief administrative officer's authorized agent, or a peace officer.

**PARK OR PLAYGROUND** – means one of the following:

- A. Any land, including improvements to the land that is administered, operated or managed by the City of Bells for the use of the general public as a recreational area.
- B. city recreational areas include, but are not limited to, conservation area, jogging trail, hiking trail, bicycle trail, recreational center, water park, swimming pool, soccer field, football field, softball field or baseball field.

**PLACES WHERE CHILDREN REGULARLY CONGREGATE** – same as Child Safety Zone.

**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 pre-school, private or public elementary school, day care facility or private or public secondary school.

### • 1.3 SEX OFFENDER PROHIBITION

- A. It is an offense for a Sex Offender to establish a permanent residence or temporary residence within one thousand five hundred (1500) feet of the real property comprising a school, child-care facility, child-care institution, park or play ground or other places where children regularly congregate.
- 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 500 feet of a Child Safety Zone.
- D. A Sex Offender, shall not, on each October 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> (or any other date set by the City for trick-or-treaters) 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.

### • 1.4 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 section 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 five hundred (500) feet from a Child Safety Zone shall be measured on a straight line from the closest boundary of the Child Safety Zone.
  - D. the distance of one thousand five hundred (1,500) feet from a place where children congregate 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.
  - E. In the case of multiple residences on one property, measuring from the nearest property line of the residences to the nearest property line of the school, child-care facility, child-care institution, park or playground or other places where children regularly congregate.
  - 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 Bells and maintained by the Bells Police Department. The City of Bells shall review the map annually for changes. Said map will be available to the public at the Bells Police Department or available at the City Bells.

#### • 1.5 EXCEPTIONS

- A. The person required to register in/on the Database established the permanent residence or temporary residence and residency has been consistently maintained and the person has complied with all of the Sex Offender Registration laws of the State of Texas, prior to the date of the adoption of this ordinance.
- B. The place where children regularly congregate, as specified herein, within one thousand five hundred (1,500) feet of the permanent or temporary residence of the person required to register on/in the Database was opened after the person established the permanent or temporary residence and complied with all Sex Offender Registration laws of the State of Texas.
- C. The information on/in the Database is incorrect, and, if corrected, this Section would not apply to the person who was erroneously listed on/in the Database.
- D. The person required to register on/in the Database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
- E. The person required to register is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located within one thousand five hundred (1,500) feet of the real property comprising a school, child-care facility, child-care institution, park or playground or other places where children regularly congregate.
- F. The person required to register is under eighteen (18) years of age or a ward under a guardianship, who resides with a parent or guardian.
- G. The person required to register has been exempted by a court order from registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or
- H. The person required to register has had the offense for which the sex offender registration was required, reversed on appeal or pardoned.
- I. The person's duty to register on/in the Database has expired.
- J. 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.

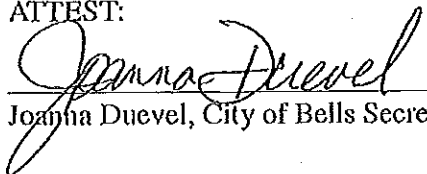
#### • 1.6 PENALTIES

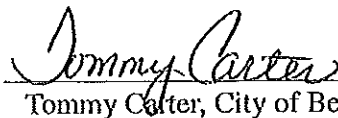
Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed the maximum amount allowed by law. Each day that a violation is permitted to exist shall constitute a separate offense and shall be punishable as such.

All provisions of the Code of Ordinances of the City of Bells, codified or uncoded, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Bells, codified or uncoded, not in conflict with the provisions of this Ordinance shall remain in full force and effect.


PASSED AND APPROVED this 15 day of FEBRUARY, 2011.

ATTEST:

  
Joanna Duevel, City of Bells Secretary

  
Tommy Carter, City of Bells Mayor

Approved as to form and legality:

  
Kenneth Roesler, City of Bells Attorney