

ORDINANCE NO. 1243

AN ORDINANCE OF THE CITY OF COLEMAN, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY OF COLEMAN, TEXAS, CHAPTER 8: “OFFENSES AND NUISANCES,” BY ADDING A NEW ARTICLE 8.09, “SEX OFFENDERS”; PROVIDING FOR DEFINITIONS; PROVIDING FOR SEX OFFENDER PROHIBITIONS, INCLUDING MAKING IT UNLAWFUL FOR SEX OFFENDERS TO ESTABLISH A PERMANENT OR TEMPORARY RESIDENCE WITHIN 1,000 FEET OF A CHILD SAFETY ZONE, TO KNOWINGLY ENTER A CHILD SAFETY ZONE, TO KNOWINGLY LOITER ON A PUBLIC WAY WITHIN 300 FEET OF A CHILD SAFETY ZONE AND TO LEAVE ON EXTERIOR PORCH LIGHTS OR INVITE TRICK-OR-TREATERS TO SOLICIT THE PREMISES; PROVIDING FOR EVIDENTIARY MATTERS; PROVIDING FOR EXCEPTIONS AND AFFIRMATIVE DEFENSES TO VIOLATIONS OF THIS ORDINANCE; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 AND THAT EACH DAY DURING OR ON WHICH A VIOLATION OCCURS SHALL BE DEEMED A SEPARATE OFFENSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Coleman (the “City”), located in Coleman County, Texas, is a home-rule municipality duly created, established, and possessing the full power of local self-government in accordance with state law, the Texas Constitution, and its Home Rule Charter; and

WHEREAS, the City has a compelling interest in protecting the health, safety, and welfare of children by reducing opportunities for sexual predators to come in contact with children; and

WHEREAS, state law does not preempt a home-rule municipality’s ordinance prohibiting registered sex offenders from living within a specified distance from locations where children typically congregate. See Tex. Att’y Gen. Op. No. GA-0256 (2007); and

WHEREAS, to protect children from sex offenders, the City Council finds it necessary to create restrictions prohibiting registered sex offenders from residing near places where children gather; and

WHEREAS, the City Council of the City (the “City Council”), finds and has determined that convicted sex offenders who are required to register on the Texas Department of Public Safety’s sex offender database pose a legitimate, significant, and serious threat to the health, safety, and welfare of the public generally, and to the safety of children who gather in areas where such offenders reside; and

WHEREAS, the City Council hereby desires to establish residency restrictions for sex offenders and to create areas around locations where children regularly congregate in concentrated

numbers and where certain registered sex offenders and sexual predators are prohibited from loitering or establishing temporary or permanent residency; and

WHEREAS, the City Council intends to establish criminal liability for violators of the prohibitions contained therein and to assess fines as punishment for convictions of offenses thereunder; and

WHEREAS, the City Council hereby finds and determines that the rules and regulations adopted herein promote the public health, welfare, and safety of the citizens of the City.

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

SECTION 1. All of the above premises are found to be true and correct legislative determinations of the City Council and they are hereby incorporated into the body of this Ordinance as if copied and set forth herein in their entirety.

SECTION 2. The Code of Ordinances of the City of Coleman, Texas, Chapter 8: “Offenses and Nuisances,” is hereby amended by adding a new Article 8.09, “Sex Offenders” which shall read in its entirety from the date of passage as follows:

“ARTICLE 8.09 SEX OFFENDERS

§ 8.09.001. Purpose and intent.

The City Council finds that sex offenders who are required to register as sexual predators under V.T.C.A., Code of Criminal Procedure, ch. 62, present an extreme threat to the health, safety, and welfare of children. It is the intent of this subchapter 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.

§ 8.09.002. Definitions.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Child. Any person under the age of 17 years of age.

Child safety zone. Means premises where children commonly gather in the City of Coleman city limits, and includes:

- (a) Any school whether public, private, or religiously affiliated; and

(b) Public parks or playgrounds; Public libraries; amusement arcades; video arcades; indoor and outdoor amusement centers; amusement parks, carnivals, circuses, fairs or fairgrounds; public, commercial or semi-public swimming pools; child care facility; public or private youth sports athletic fields; crisis centers or shelters; skate parks or rinks; public or private youth centers; movie theaters; bowling alleys; scouting facilities; any public or private group, location or activity that regularly provides athletic, civic or cultural activities that includes as participants or recipients persons who are under the age of 17, including, but not limited to, safe trick or treat, vacation bible schools and other public events held primarily for the benefit of children; or offices for child protective services, as those terms may be defined in Section Texas Health and Safety Code Section 481.134, as amended, and/or Chapter 42 of the Texas Human Resources Code, as amended.

Database. The Texas Department of Public Safety's Sex Offender Database pursuant to the Sex Offender Registration and Notification Act, Texas Code of Criminal Procedure, Chapter 62, or the sex offender registration files maintained by the sex offender registration officer of the city police department.

Loitering. Standing, sitting idly, whether or not the person is in a vehicle or remaining in or around an area.

Public Park or playground. Means one of the following:

(1) Any land, including improvements to the land, that is administered, operated, or managed by the city for the use of the public as a recreational area.

(2) City recreational areas include, but are not limited to, conservation areas, jogging trails, hiking trails, bicycle trails, recreational centers, waterparks, swimming pools, football fields, soccer fields or baseball fields.

Permanent residence. A place where the person lives, abides, lodges, or resides for fourteen (14) or more consecutive days.

Public way. 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.

Sex offender. An individual who has been convicted of or placed on deferred adjudication for a sexual offense involving a person under 17 years of age for which the individual is required to register as a sex offender under V.T.C.A., Code of Criminal Procedure, ch. 62.

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.

§ 8.09.003. Sex offender prohibitions.

- (a) It is an offense for a sex offender to establish a permanent residence or temporary residence within 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 300 feet of a child safety zone.
- (d) A sex offender shall not, on each October 30th and 31, 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.

§ 8.09.004. Evidentiary matters.

- (a) It shall be prima facie evidence that this subchapter 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 17 years of age.
- (b) The distance of 300 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 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 child safety zone.
- (d) In the case of multiple residences on one property, measurement shall be made from the nearest property line of the residences to the nearest property line of the child safety zone.
- (e) In cases of a dispute over measured distances, it shall be incumbent upon the person(s) challenging the measurement to prove otherwise.
- (f) A map depicting the prohibited areas shall be created by the city and maintained by the city police department. The city shall review the map annually for changes. Said map will be available to the public at the city police department or available on the city website or the city police department website.

§ 8.09.005. Exceptions; Affirmative Defenses.

The following shall be exceptions and/or affirmative defenses to prosecution for violation of this article:

- (1) 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 sex offender registration laws of the state, prior to the date of the adoption of this subchapter.
- (2) The child safety zone, as specified herein, within 1,000 feet of the permanent or temporary residence of the sex offender required to register in/on the database was opened or established after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state.
- (3) The information in/on the database is incorrect, and, if corrected, this subchapter would not apply to the person who was erroneously listed in/on the database.

- (4) The person required to register in/on the database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
- (5) The person required to register is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution located within 1,000 feet of the child safety zone.
- (6) The person required to register is under 18 years of age or a ward under a guardianship, who resides with a parent or guardian.
- (7) The person required to register has been exempted by a court order from registration as a sex offender under V.T.C.A., Code of Criminal Procedure, ch. 62.
- (8) The person required to register has had the offense for which the sex offender registration was required, reversed on appeal, or pardoned.
- (9) The person's duty to register in/on the database has expired.
- (10) Nothing in this subchapter 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.
- (11) The person is otherwise preempted from this section by state law.
- (12) It is an affirmative defense to prosecution of an offense under this ordinance that the 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 sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes."

SECTION 3. MISCELLANEOUS

A. PENALTY: A person who fails to comply with any requirement of this code commits a class C misdemeanor punishable by a fine not less than two hundred and fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00); except that:

- (a) Proof of a culpable mental state is expressly not required for a conviction of an offense under this article, unless specifically required in this article or state law.
- (b) Each violation is considered a separate offense.
- (c) Each day that a violation occurs is a separate offense.
- (d) In addition to the penalties described above, the city may pursue other remedies that the City may have under state or federal law.

B. SEVERABILITY: If any section, subsection, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holdings shall not affect the validity of the remaining portions thereof.

C. SAVINGS CLAUSE: All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

D. EFFECTIVE DATE: This ordinance shall be in full force and effect from and after its final passage and publication thereof as required by the Charter of the City of Coleman and State law.

PASSED AND APPROVED on First Reading this 4th day of January, 2024;

PASSED, APPROVED AND ADOPTED on Second/Final Reading this 18th day of January, 2024;

/s/
TOMMY SLOAN, Mayor

ATTEST:

/s/
BETTY BIVINS, City Secretary

APPROVED AS TO FORM:

/s/
PAT CHESSER, City Attorney