

ORDINANCE NO. 2021-_____

AMENDING THE CITY OF NEW BRAUNFELS, TEXAS, CODE OF ORDINANCES CHAPTER 82, OFFENSES AND MISCELLANEOUS PROVISIONS BY ADOPTING RESTRICTIONS APPLICABLE TO SEX OFFENDERS INCLUDING RESIDENCY AND DISTANCE REQUIREMENTS FROM CHILD SAFETY ZONES AND AN EXEMPTION HEARING PROCESS; SETTING A PENALTY OF NOT MORE THAN \$2000.00; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERABILITY REPEALER AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, sex offenders are a serious threat to public safety; and

WHEREAS, neither the State of Texas nor the City of New Braunfels currently imposes restrictions on where registered sex offenders may reside; and

WHEREAS, while some sex offenders do rehabilitate, the recidivism rate for released sex offenders is alarmingly high, particularly for those who commit sex crimes against children; and

WHEREAS, restricting registered sex offenders from accessing areas where children often congregate will provide better protection for the City's children.

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

Section 1

The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

Section 2

That Chapter 82 is amended by adding Article 2, Sex Offender Restrictions, beginning with section 82-29 as follows:

ARTICLE 2 – SEX OFFENDER RESTRICTIONS

Sec. 82-29. Definitions

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

Child safety zone. A premises where children commonly gather. The term includes a public or private school, public or private day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, city or state park, or any other facility that regularly holds events primarily for children.

Permanent residence. A place where a person abides, lodges, or resides for 14 or more consecutive days.

Playground. Any outdoor facility that is not on the premises of a school and that:

- (1) Is intended for recreation;
- (2) Is open to the public or is open to a neighborhood or multi-family residential property containing more than two families; and
- (3) Contains at least one play station intended for the recreation of children, such as slides, swing sets, and teeterboards.

Premises. Real property and all buildings and appurtenances pertaining to the real property.

Registered sex offender. An individual who is required to register as a sex offender under chapter 62, Texas Code of Criminal Procedure.

School. A private or public elementary or secondary school or a day-care center, as defined by section 42.002, Texas Human Resources Code.

Temporary residence. A place where a 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 a person routinely abides, resides, or lodges for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Video arcade facility. Any facility that:

- (1) Is open to the public, including persons who are 17 years of age or younger;
- (2) Is intended primarily for entertainment or recreational purposes; and
- (3) Contains at least three pinball or video machines.

Youth center. Any recreational facility or gymnasium that:

- (1) Is intended primarily for use by persons who are 17 years of age or younger; and
- (2) Provides athletic, civic, or cultural activities.

Sec. 82-30. Offense

(a) Generally. A registered sex offender may not go in, on, or within 1,000 feet of a child safety zone in the city.

(b) Evidentiary matters; measurements.

(1) It shall be prima facie evidence that this ordinance applies to a person if that person's information appears on the central database maintained by the Texas Department of Public Safety as required by article 62.005 of the Texas Code of Criminal Procedure.

(2) For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the child safety zone.

(c) Culpable mental state not required. Neither allegation nor evidence of a culpable mental state is required for the offense defined under this section.

(d) Affirmative defenses. It is an affirmative defense to prosecution that any of the following conditions apply:

(1) The registered sex offender entered into a residential lease, rental agreement, or purchase of a residence in a child safety zone prior to the date of the adoption of this ordinance.

(2) The registered sex offender was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.

(3) The registered sex offender is a minor or a ward under guardianship.

(4) The child safety zone, as specified herein, within 1000 feet of the permanent or temporary residence of the registered sex offender was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state.

(5) The registered sex offender maintains a permanent or temporary residence at a jail, prison, juvenile facility or other correctional institution or facility.

(6) The information on the sex offender registry database is incorrect, and, if corrected, this ordinance would not apply to the person who was erroneously listed on the database.

(7) 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.

(8) The registered sex offender was in, on, or within a specified distance of a child safety zone for purposes of attending a religious service, education, counseling, volunteering, or working at a church as defined by section 544.251, Texas Insurance Code.

(e) Exemption hearing.

(1) A registered sex offender may petition the police chief or the police chief's designee, in writing, for an exemption from the requirements of this ordinance.

(2) The police chief or the police chief's designee shall exempt a registered sex offender who established residency in a residence located within the specified distance of a child safety zone before the date this ordinance is adopted. This exemption applies only to:

(A) Areas necessary for the registered sex offender to have access to and to live in the residence; and

(B) The period the registered sex offender maintains residency in the residence.

(3) The police chief or the police chief's designee may authorize an exemption from this ordinance when, in their opinion, undue hardship will result from compliance or an individualized recidivist assessment indicates an exemption should be granted. In granting an exemption, the police chief or the police chief's designee shall consider the probable effect the exemption will have upon the public health, safety, and welfare of the community.

(4) No exemption shall be granted under subsection (e)(3) above without first having held a public hearing on the exemption petition and unless the police chief or the police chief's designee makes written findings regarding the petitioner's criminal and personal history as well as the petitioner's current circumstances requiring the exemption.

(5) Such findings of the police chief or the police chief's designee, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the hearing at which such exemption is granted. Exemptions may be granted only when in harmony with the general purpose and intent of this ordinance so that the public health, safety, and welfare may be secured, and that substantial justice may be done.

Sec. 82-31. Prohibition against renting or leasing

(a) It shall be unlawful for the owner, lessee or occupant (collectively referred to as "lessor") of any place, residence, structure, dwelling, or other conveyance, with knowledge that it will be used as a temporary or permanent residence of such person, to rent or lease the same, or any part thereof, to a registered sex offender, if such place, residence, structure, dwelling, manufactured dwelling, mobile home, camping trailer or other conveyance is located within 1000 feet of any child safety zone.

(b) An owner, lessee, or occupant (collectively referred to as "lessor") of any place, residence, structure, dwelling, or other conveyance, shall be deemed to have knowledge that another person is a registered sex offender if such person's record appears on the central database maintained by the Texas Department of Public Safety on the earlier of:

(1) The date of receipt of a lease application, rental application or similar document by lessor or lessor's officers, agents, employees, or volunteers; or

(2) The date the person first occupies lessor's place, residence, structure, dwelling, manufactured dwelling, mobile home, camping trailer or other conveyance.

Sec. 82-32. Penalties

(a) The City shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance shall be liable for prosecution for criminal violations.

(b) Criminal prosecution. Except as may otherwise be provided herein, any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$2000.00. Except as may otherwise be provided herein, each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a class C misdemeanor.

Section 3. Severability

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

Section 4. Repealer

All provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect and all ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

Section 5. Effective Date

This Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, publication in a newspaper of general circulation, and filing with the City Secretary's Office. The City Secretary shall cause the published notice to include the caption of the ordinance at least once within ten (10) days after final passage by City Council.

PASSED AND APPROVED: First reading this _____ day of _____, 2021

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CITY OF NEW BRAUNFELS, TEXAS

By: _____
Rusty Brockman, Mayor

ATTEST:

Caitlin Krobot, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney