



City of Orchard

ORDINANCE NO. 96-2011

AN ORDINANCE OF THE CITY OF ORCHARD, TEXAS, DEFINING CERTAIN TERMS; MAKING IT UNLAWFUL FOR CERTAIN REGISTERED SEX OFFENDERS TO RESIDE WITHIN 1000 FEET OF PREMISES WHERE CHILDREN GATHER; PROHIBITING PROPERTY OWNERS FROM RENTING REAL PROPERTY TO CERTAIN REGISTERED SEX OFFENDERS; PROVIDING EXCEPTIONS TO THE ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE; PROVIDING FOR LENGTH OF TIME OF APPLICATION; REPEALING ORDINANCES OR PART OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERABILITY CLAUSE; AND PRESCRIBING AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Commission of the City of Orchard, Texas, are deeply concerned about the numerous and recent occurrences in our state and elsewhere, whereby convicted sex offenders who have been released from custody repeat the unlawful acts for which they had been originally convicted; and

WHEREAS, the Mayor and City Commission of the City of Orchard, Texas, find from the evidence the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes on children; and

WHEREAS, the City is becoming an increasingly attractive place for families with small children; and

WHEREAS, the Mayor and City Commission of the City of Orchard, Texas desire to establish a policy which provides maximum protection of the lives and persons of the City of Orchard; and

WHEREAS, Section 42.12(13B) of the Texas Code of Criminal Procedure, provides a 1000 foot safety zone for children, as a condition of probation for those convicted of certain sexual offenses; and

WHEREAS, Section 62.051 of the Texas Code of Criminal Procedure, provides that certain offenders of crimes, including sexual offenses, to register with the State of Texas; and

WHEREAS, this ordinance shall apply Section 62.007 of the Code of Criminal Procedure that assigns risk assessment levels to convicted sex offenders and shall be applicable as follows:

Person designated as a Level ONE (1) risk assessment or no risk assessment level shall come under the requirement of this ordinance for as long as they are on probation for the offense. Once that person's probation period has ended, this ordinance shall no longer be applicable to that person.

Person designated as a Level TWO (2) or THREE (3) risk assessment come under the requirements of this ordinance indefinitely

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code provide the City authority to adopt ordinances for the good government, peace, order and welfare of the municipality.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ORCHARD, TEXAS:

The facts and matters set forth in the preamble of this ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

Section One (1): Findings and Intent

Repeat sexual offenders, sexual offenders that use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses 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.

It is the intent to enact a nonpunitive civil regulatory measure that promotes health and safety.

Section Two (2): Definitions

The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Permanent residence” means a place where the person abides lodges or resides for 14 or more consecutive days.

“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 period of 4 or more consecutive or nonconsecutive days in any month and which is not the person’s permanent residence.

Section Three (3): Sexual Offenders Residence Prohibition; Penalties; Exceptions

- (a) It is unlawful for any person who has been convicted of a violation of Section 43.25 Penal Code, Section 43.26 Penal Code, Section 22.02 Penal Code, Section 21.08 Penal Code, Section 21.11 Penal Code, Section 25.02, regardless of whether the adjudication was deferred, in which the victim of the offence was less than sixteen (16) years of age, to establish a permanent residence or temporary residence within 1000 feet if any premises where children commonly gather, including but not limited to, a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility, as those terms are commonly defined and may be further defined in Section 481.134 of the Health and Safety Code of the State of Texas.
- (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 where children commonly gather, as described herein.
- (c) Penalties. Any person, firm or corporation who violates this ordinance shall be guilty of a Class C Misdemeanor, and upon conviction thereof shall be

punished by a fine not to exceed FIVE HUNDRED AND NO/100'S DOLLARS (\$500.00).

- (d) Exceptions. A person residing within 1000 feet of those places where children commonly gather, as specified herein does not commit a violation of this ordinance if any of the following apply:
 - (1) The person established the permanent or temporary residence and has complied with all the sex offender registration laws of the State of Texas, prior to the date of the adoption of this ordinance.
 - (2) The person was minor, when he/she committed the offense and was not convicted as an adult.
 - (3) The person is a minor.
 - (3) The premises where children commonly gather, as specified herein, within 1000 feet of the person's permanent or temporary residence was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the State of Texas.

Section Four (4): Property Owners Prohibited from Renting Real Property to Sexual Offenders; Penalties

- a) It is unlawful to let or rent any place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the term of this ordinance, if such place, structure or part thereof, manufactured home, trailer, or other conveyance is located within 1000 feet of any premises where children commonly gather, including but not limited to, a school, day care facility, playground, public or private youth center, public swimming pool, or video arcade facility, as those terms are commonly defined and may be further defined in Section 481.134 of the Health and Safety Code of the State of Texas.
- b) Any person, firm or entity who violates this ordinance shall be guilty of a Class C Misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed FIVE HUNDRED AND NO/100'S (\$500.00).

Section Five (5): Length of Time Applicable

- (a) The length of time with which this ordinance is applicable to an offender shall be as follows:
 - i. A person assigned a risk level of ONE (1) pursuant to Section 62.007 of the Texas Code of Criminal Procedure or has no risk assessment level assignment shall be exempt from this ordinance upon the completion of that person's probationary period for the offense described in Sections 3(a) and 5(a) above, as applicable.
 - ii. A person assigned a risk level of TWO (2) or THREE (3) pursuant to Section 62.007 of the Texas Code of Criminal Procedure shall have no exemption as to the length of time this ordinance is applicable.

Section Six (6): Repeal

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

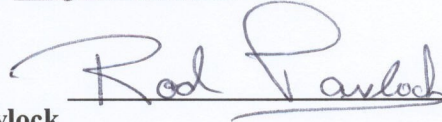
Section Seven (7): Severability

If any section, subsection or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

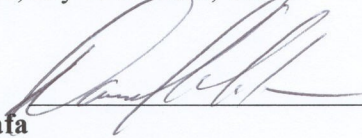
Section Eight (8): Effective Date

This ordinance shall be effective from and after the date of its final passage.

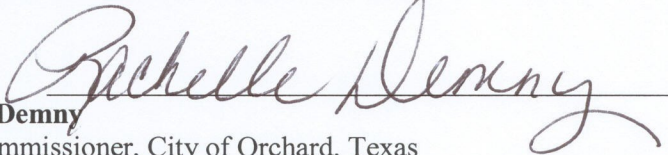
PASSED and APPROVED this 12th day of October, 2011.



Rod Pavlock
Mayor, city of Orchard, Texas

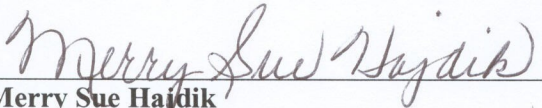


David Kolafa
Commissioner, City of Orchard, Texas



Rachelle Demmy
Commissioner, City of Orchard, Texas

ATTEST:



Merry Sue Hajdik
City Secretary, City of Orchard, Texas