

CITY OF BEVIL OAKS, TEXAS

ORDINANCE NO. 261

AN ORDINANCE OF THE CITY OF BEVIL OAKS, "REGULATION OF SEX OFFENDER RESIDENCY," THEREBY ESTABLISHING CHILD SAFETY ZONES WITHIN THE CITY'S CORPORATE LIMITS, MAKING IT UNLAWFUL FOR PERSONS REQUIRED TO REGISTER ON THE TEXAS DEPARTMENT OF PUBLIC SAFETY'S SEX OFFENDER DATABASE TO RESIDE WITHIN 1,000 FEET OF PROPERTY WHERE CHILDREN ASSEMBLE OR GATHER, AND PROHIBITING RENTING OR LEASING RESIDENTIAL HOUSING TO PREDATORY SEX OFFENDERS; PROVIDING DEFINITIONS, EXCEPTIONS, AFFIRMATIVE DEFENSES, AND EXEMPTIONS TO RESIDENCY VIOLATIONS; PROVIDING A SEVERABILITY CLAUSE; 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 CUMULATIVE REPEALER CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bevil Oaks ("City"), located in Jefferson County, Texas, is a Type-A, general law municipality authorized under Texas state law to legislate in the best interests of its residents; and

WHEREAS, Section 51.001 of the Texas Local Government Code provides, in part, that the City "may adopt . . . an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality . . . and is necessary or proper for carrying out a power granted by law to the municipality"; and

WHEREAS, Section 51.012 of the Texas Local Government Code provides, in part, that a municipality may adopt an ordinance "that is necessary for the government, interest, welfare, or good order of the municipality as a body politic"; and

WHEREAS, the City Council of the City of Bevil Oaks, Texas ("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 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 laws of the State of Texas address the threat that convicted sex offenders pose to children by providing safety zones for children from those who have previously committed crimes against children; and

WHEREAS, the City Council, pursuant to its authority granted to it by Texas Local Government Code, Section 341.906, may adopt an ordinance that restricts a registered sex offender from going in, on, or within a specified distance of a child safety zone in the city; 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 deems it necessary to adopt such rules for the safeguarding of public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEVIL OAKS, 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 Bevil Oaks, Texas, "Regulation of Sex Offender Residency," which shall read in its entirety from the date of passage as follows:

REGULATION OF SEX OFFENDER RESIDENCY

Article 1 - Definitions

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

Child. A person younger than 17 years of age, in accordance with Section 22.011(c)(1) of the Texas Penal Code.

Child safety zone. A premises where children commonly gather, including, without limitation, a playground, school, day-care facility, video arcade facility, public or private youth center, or public swimming pool, as those terms are defined in section 481.134 of the Texas Health and Safety Code, or other facility that regularly holds events primarily for children, and having the same exclusions as provided by Section 341.906 of the Texas Local Government Code.

Database. The Texas Department of Public Safety Sex Offender database.

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

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

Sex offender. A person who is required to register on the Texas Department of Public Safety's sex offender database because of a violation involving a victim who was less than sixteen (16) years of age. It shall be prima facie evidence that this Ordinance applies to a sex offender if the person's record as it appears on the Texas Department of Public Safety's sex offender database indicates that the victim was less than sixteen (16) years of age.

Temporary residence. A place where the person abides, lodges, or resides for fewer than fourteen (14) days or fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent residence, or a place where the person routinely abides, resides, or lodges for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence."

Article 2: Offenses; exceptions; evidentiary matters; affirmative defenses; exemptions

(a) It is unlawful for a sex offender to establish a permanent residence or temporary residence within 1,000 feet of any child safety zone in the City of Bevil Oaks.

(b) It is unlawful for a sex offender to go in or on any property within 1,000 feet of a child safety zone in the City of Bevil Oaks.

(c) Nothing in this Ordinance shall be interpreted to modify or reduce the state's child safety ban. A sex offender residing within 1,000 feet of a child safety zone does not commit a violation of this section if:

(1) The person established the permanent or temporary residence and has complied with all the sex offender registration laws of the state, prior to the date of the adoption of this section;

(2) The person was a minor when he/she committed the offense and was not convicted as an adult;

(3) The person is a minor;

(4) The child safety zone within one 1,000 feet of the person's permanent or temporary residence became a child safety zone after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state;

(5) The person proves that the information on the database is incorrect and that, if corrected, this section would not apply to the person;

(6) The person has been exempted by a court order from registration as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure; or

(7) The person has had the offense for which the sex offender registration was required reversed on appeal or pardoned.

(8) The person's duty to register on/in the database has expired.

(d) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the property lot line of the permanent or temporary residence to the nearest property lot line of the child safety zone, as defined herein.

(e) Other than the intent to establish a residence, no culpable mental state is required to be proven by the prosecution as an element of this offense.

(f) It shall be prima facie evidence that this Ordinance applies to a person if that person's information appears on the database.

(g) A map depicting the prohibited areas shall be maintained by the City and shall be reviewed and updated annually for changes. The map shall be available to the public for inspection at Bevil Oaks city hall and shall be made available to the public on the City's official web site. Article 2(d) shall precisely delineate the child safety zone. To the extent there is any difference between property affected by Article 2(d) or described in the map, then Article 2(d) controls application of this Ordinance.

(h) The City shall place permanent signs on any "child safety zone" premises indicated that the property is considered a "Child Safety Zone" and include any other information the Mayor or City Council deems useful. The presence of a "Child Safety Zone" sign is not a required element for purposes of enforcing this Ordinance, rather a method of providing notice to the general public in addition to the map notations described in Article 2(g).

(i) It shall be an affirmative defense to prosecution under this Ordinance if the person was in, on, or within 1,000 feet of a child safety zone for a legitimate purpose. A legitimate purpose includes:

(1) Transportation of a child that the registered sex offender is legally permitted to be with;

(2) Transportation to and from the registered sex offender's work; and

- (3) Other work-related purposes.
- (j) It shall be an affirmative defense to prosecution under this Ordinance if:
 - (1) The property owner or renter/assignor provides dated, written evidence of his/her due diligence performed before renting/assigning or sub-leasing the property, and that s/he conducted a check with the Texas Department of Public Safety and the Texas Department of Public Safety Sexual Offender Database on the tenant/sublessee/ assignee's criminal history before entering into the lease/sublease/assignment; and
 - (2) The evidence provided by the violator demonstrates that the sexual offender was not listed in the Texas Department of Public Safety Sexual Offender Database at the time the property owner/renter/assignee conducted the criminal history check and reviewed the database.

Article 3 - Prohibitions against renting or leasing property to a registered sex offender; penalty

- (a) It shall be unlawful for the owner, lessee, or occupant (collectively, the "lessor") of any place, residence, structure, or dwelling to rent or lease the same, or any part thereof, to a sex offender, with the knowledge that it will be used as a temporary or permanent residence of such person, if such place, residence, structure, dwelling, or other conveyance is located within 1,000 feet of an existing child safety zone.
- (b) The lessor, as above described, of any place, residence, structure, dwelling, or other conveyance shall be deemed to have knowledge that another person is a sex offender if such person's information appears on the database.

Article 4 - Exemptions

- (a) A sex offender who established residency in a residence located within 1,000 feet of a child safety zone before the adoption of this Ordinance is exempt from this Ordinance. This exemption applies only to:
 - (1) Areas necessary for the sex offender to have access to and to live in the residence; and
 - (2) The period the sex offender maintains residency in the residence.
- (b) A sex offender may apply for an exemption from this Ordinance by submitting to the City Secretary an application for exemption, in the form supplied by the City, accompanied by an affidavit that shows the sex offender established residency in a residence located within 1,000 feet of a child safety zone before the date this Ordinance is adopted.
- (c) The Mayor or Mayors Appointee shall determine whether an application for exemption may be granted. The Mayor or Mayors Appointee may grant an exemption only if:
 - (1) Such exemption is not contrary to the public interest or to the public health, safety, or welfare;
 - (2) Such exemption shall not increase duties for the City staff;
 - (3) The exemption fits within the spirit of this Ordinance; and
 - (4) The application of the requirements of this Ordinance in the particular circumstances would create an unnecessary or undue hardship.
- (d) The Mayor or Mayors Appointee shall send to the applicant written notice of the decision to grant or deny an exemption and, if applicable, a statement of the right to an appeal to the City Council.

(e) Any person who is denied an exemption under this section may appeal the decision of the Mayor or Mayors Appointee by filing with the City Secretary a written request for a hearing before the City Council. The request for an appeal must be submitted within ten (10) days after the notice of the Mayor or Mayors Appointee is sent.

(f) City Council decisions relating to application requests are within the sole discretion of the Council, and the Council's decision as to any such request is final and non-appealable.

Article 5 - Penalties

(a) Any person, firm, corporation, or other entity that violates any provision of this Ordinance shall be deemed guilty of a Class C misdemeanor and, upon conviction, shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(b) The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. If the City Council determines that a violation of this Ordinance creates a threat to the public safety, the City is authorized to bring suit in district court to enjoin the person, firm, corporation, or other entity from engaging in the prohibited activity. The City is not required to give bond as a condition to the issuance of injunctive relief.”

SECTION 3. It is the intent of the City Council that each clause, phrase, sentence, paragraph, section, or subsection of this Ordinance be deemed severable, and should such clause, phrase, sentence, paragraph, section, or subsection be declared invalid or unconstitutional by a court of competent jurisdiction, such declaration of invalidity or unconstitutionality shall not be construed to affect or impair the validity of those provisions of this Ordinance left standing, or the validity of any other ordinance of the City of Bevil Oaks.

SECTION 4. The City of Bevil Oaks Code of Ordinances shall remain in full force and effect save and except as amended herein.

SECTION 5. This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Bevil Oaks, and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION 6. Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined a sum not to exceed Five Hundred Dollars (\$500.00) for each offense, and each and every violation or day such violation continues or exists shall be deemed a separate offense.

SECTION 7. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of Bevil Oaks, and this Ordinance shall take effect and shall be in full force from and after the date of its final passage and publication as provided by law.

SECTION 8. The City Secretary is hereby directed to engross and enroll this Ordinance by copying the exact Caption and Effective Date clause in the minutes of the City Council and by filing this Ordinance in the Ordinance records of the City.

SECTION 9. This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law.

PASSED, APPROVED, and ADOPTED by the City Council of the City of Bevil Oaks, Texas, on this 5th day of May, 2022.

Barbara Emmons

Barbara Emmons, Mayor
City of Bevil Oaks, Texas

Doug Mullins

Doug Mullins, City Council Secretary
City of Bevil Oaks, Texas