

**ORDINANCE No. 2018-297
CITY OF SHOREACRES, TEXAS**

AN ORDINANCE AMENDING SHOREACRES CITY CODE ADDING CHAPTER 38, ARTICLE III, SECTIONS 38-101 THROUGH 38-107 REGULATING THE RESIDENCY OF SEX OFFENDERS; PROHIBITING RESIDENCE NEAR PREMISES WHERE CHILDREN COMMONLY GATHER; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING PENALTY FOR VIOLATION; PROVIDING A SEVERABILITY CLAUSE; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

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

That the Shoreacres City Code Chapter 38 – Offenses is hereby amended by adding Article III – Regulation of Sex Offender Residency, sections to be numbered 38-101 through 38-107.

That the Shoreacres City Code is hereby amended by adding a section, to be numbered 38-101, which section reads as follows:

Sec. 38-101. - Finding and intent.

The city council finds that repeat sex offenders, sex offenders that use physical violence and who are convicted of preying on children are sexual predators who present an extreme threat to the health, safety, and welfare of children. Sex offenders are likely to use physical violence, to repeat an offense, have many more victims than are ever reported, are prosecuted for only a fraction of their actual sexual offenses, and children not only lack the ability to protect themselves but additional measures should be taken to keep known sex offenders from having access to children in areas where children generally feel safe.

It is the intent of this article 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 establishing temporary or permanent residency (with affirmative defenses).

That the Shoreacres City Code is hereby amended by adding a section, to be numbered 38-102, which section reads as follows:

Sec. 38-102. - 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:

Child safety zone. A premise where children commonly gather. The term includes a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility or other facility that regularly holds events primary for children. The term does not include a church, as defined by Section 544.251, Insurance Code.

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

Person is an individual, firm, corporation, or other business entity as defined by V.T.C.A., Penal Code Ch. 1.07(a)(38).

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

- (A) Is intended for recreation;
- (B) Is open to the public; and
- (C) Contains three or more play stations intended for the recreation of children, such as slides, swing sets and teeterboards.

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

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

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

Temporary residence is:

- (a) A place where a person abides, lodges or resides for 14 or more days in the aggregate during any calendar year and which is not the person's permanent address; or
- (b) 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:

- (A) Is open to the public, including persons who are 17 years of age or younger;
- (B) Is intended primarily for the use of pinball or video machines; and
- (C) Contains at least three pinball or video machines.

Youth Center. Any recreational facility or gymnasium that:

- (A) Is intended primarily for the use by persons who are 17 years of age or younger; and
- (B) Regularly provides athletics, civic or cultural activities.

That the Shoreacres City Code is hereby amended by adding a section, to be numbered 38-103, which section reads as follows:

Sec. 38-103. - 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 of Shoreacres, Texas.

(b) Evidentiary matters; measurements.

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

(2) 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 child safety zone.

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

That the Shoreacres City Code is hereby amended by adding a section, to be numbered 38-104, which section reads as follows:

Sec. 38-104. - 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 of rental agreement prior to the date of the adoption of this article.

(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 1,000 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 of Texas.

(5) The registered sex offender maintains a permanent or temporary residence as 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 article 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.

That the Shoreacres City Code is hereby amended by adding a section, to be numbered 38-105, which section reads as follows:

Sec. 38-105. – Exemption hearing.

- (1) A person may petition the city council, in writing, for an exemption from the requirements of this article.
- (2) The city council shall exempt a registered sex offender who establishes 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 residence in the residence.
- (3) The city council may authorize an exemption from this article when, in its opinion, undue hardship will result from compliance or an individualized recidivist assessment indicates an exemption should be granted. In granting an exemption, the council shall take into account the probable effect the exemption will have upon the public health, safety and welfare of the community.
- (4) No exemption shall be granted under 38-105 without first having held a public hearing on the exemption petition and unless the city council 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 city council, together with the specified facts upon which such findings are based, shall be incorporated into the official minutes of the council meeting at which such exemption is granted. Exemptions may be granted only when in harmony with the general purpose and intent of this article so that the public health, safety and welfare may be secured and that substantial justice may be done.

That the Shoreacres City Code is hereby amended by adding a section, to be numbered 38-106, which section reads as follows:

Sec. 38-106. – 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 1,000 feet of any child safety zone.
- (b) An owner, leesees, 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 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.

That the Shoreacres City Code is hereby amended by adding a section, to be numbered 38-107, which section reads as follows:

Sec. 38-107. - Penalties.

- (a) The city shall have the power to administer and enforce the provision of this article as may be required by governing law. Any person violating any provision of this article shall be liable for prosecution for criminal violations.
- (b) Criminal prosecution. Except as may be provided herein, any person violating any provision of this article shall, upon conviction, be fined a sum not

exceeding \$2,000.00. Except as may be otherwise be provided herein, each day that a provision of this article is violated shall constitute a separate offense. An offense under this article is a class c misdemeanor.

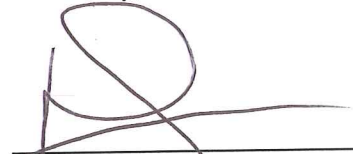
That if any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance; and,

That the City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof; and,

This Ordinance shall be effective upon its passage and approval.

PASSED AND APPROVED this the 12 day of February, 2018.




Kimberly Sanford, Mayor

ATTEST:


~~David K. Stall, CFM, TEM~~ Debbie Nesbitt
City Secretary

M/2		Yea	Nay	N/V	Absent
	K. Sanford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
M	R. Bowles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	R. Hoskins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	D. Jennings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	J. McKown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	F. Ramos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Passed / ~~Failed~~


~~David Stall, City Secretary~~ Date

Debbie Nesbitt 2-12-18