

**CITY OF HIGHLAND VILLAGE, TEXAS**

**ORDINANCE NO. 08-1047**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, AMENDING THE HIGHLAND VILLAGE CITY CODE BY ADDING A NEW SECTION ENTITLED "REGULATION OF CHILD PREDATOR OFFENDER RESIDENCY"; PROHIBITING CERTAIN REGISTERED SEX OFFENDERS FROM RESIDING WITHIN A CERTAIN DISTANCE WHERE CHILDREN COMMONLY GATHER; PROVIDING FOR THE MEASURING OF DISTANCE REQUIREMENTS; DISPENSING WITH A CULPABLE MENTAL STATE; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING A PENALTY CLAUSE; PROVIDING A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City Council of the City of Highland Village, Texas, finds, determines and declares that child predator offenders are a serious threat to public safety; and,

**WHEREAS**, the City Council finds and determines that the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes against children; and,

**WHEREAS**, the City Council finds and determines that establishing a policy to restrict the property available for residence of certain sex offenders will provide better protection for children gathering in the City; and,

**WHEREAS**, the City Council finds that persons convicted of offenses that involve either physical contact with minors or preparatory steps towards physical contact with minors are a greater risk to the safety of children who gather near areas where such offenders reside; and,

**WHEREAS**, the City Council determines that establishing regulations that restrict certain offenders from residing in areas that are at and near where there is a high concentration of children will provide better protection for children in the City by minimizing immediate access and proximity to children who are at and going to and from schools, parks, and day care centers, and that this residency restriction will foster the public safety of its citizens; and,

**WHEREAS**, as a Home Rule municipality, the City of Highland Village has the full power of local self-government, pursuant to Section 51.072(a) of the Texas Local Government Code, as amended, and may enact ordinances relative to its citizens' health, safety and welfare, not specifically prohibited by Texas state law; and,

**WHEREAS**, nothing in Texas state law prohibits the City of Highland Village from enacting an ordinance with distance requirements greater than those specified in Section 13B(a)(1)(B) of Article 42.12 of the Texas Code of Criminal Procedure, as amended; and,

**WHEREAS**, it is the determination by the City Council that every effort should be made to protect its citizens from harm at the hands of certain sex offenders, and that the City's children are worthy of protection to the greatest extent afforded under the law;

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS,  
THAT:**

**SECTION 1.** The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**SECTION 2.** The Highland Village City Code is hereby amended by adding a new section, which shall read as follows:

**“ARTICLE I. REGULATION OF SEX OFFENDER RESIDENCY**

**Sec. 1. Definitions.** For the purpose of this article, the following terms, words and the derivations thereof shall have the meanings given below:

*Day Care Center.* A facility providing care, training, education, custody, treatment, or supervision for thirteen (13) or more children for less than twentyfour (24) hours a day.

*Minor.* Any person younger than seventeen (17) years of age.

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

*Premises where children commonly gather.* Includes all improved and unimproved areas on the lot where a public park, public playground, private or public school, public or semi-public swimming pool, public or non-profit recreational facility, day care center or video arcade facility is located, as those terms are or may be defined in Section 481.134 of the Texas Health and Safety Code, as amended. For purposes of this article, landscaped street medians are not public parks.

*Temporary residences.* 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 a person routinely abides, lodges or resides for period of four (4) or more consecutive or nonconsecutive days in a month and which is not the person's permanent residence.

**Sec. 2. Offenses.** It is unlawful for a person to establish a permanent or temporary residence within 1500 feet of any premises where children commonly gather if the person is required to register on the Texas Department of Public Safety's Sex Offender Database (the "Database") because of a conviction(s) involving a minor.

**Sec. 3. Evidentiary Matters; Measurements.**

- (a) It shall be prima facie evidence that this article applies to a person if that person's record appears on the Database and the Database indicates that the victim was a minor as defined herein.

- (b) 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 permanent or temporary residence to the nearest property line of the premises where children commonly gather, as described herein above, or, in the case of multiple residences on one property, measuring from the nearest property line of the premises to the nearest property line of the premises where children commonly gather, as described herein.
- (c) A map depicting the prohibited areas shall be maintained by the City. Said map will be available to the public for inspection at the Highland Village Police Department.

**Sec. 4. Culpable mental state not required.** Neither allegation nor evidence of a culpable mental state is required for the proof of any offense defined by this article.

**Sec. 5. Affirmative defenses.** It is an affirmative defense to prosecution under this article that any of the following conditions apply:

- (a) The person required to register on the Database established the permanent or temporary residence and has complied with all of the sex offender registration laws of the State of Texas, prior to the date of the adoption of this ordinance.
- (b) The person required to register on the Database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
- (c) The person required to register on the Database is a minor.
- (d) The premises where children commonly gather, as specified herein, within 1500 feet of the permanent or temporary residence of the person required to register on the Database was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the State of Texas.
- (e) The information on the Database is incorrect, and, if corrected, this article would not apply to the person who was erroneously listed on the Database.
- (f) The person was at the time of the violation subject to community services supervision pursuant to Section 13B of Article 42.12 of the Texas Code of Criminal Procedure, as amended, and the court reduced or waived the one thousand foot (1,000') restriction for a child free zone under Section 13B(a)(1)(B) of Article 42.12 of the Texas Code of Criminal Procedure, as amended, as it applies to the person's residence.

**Sec. 6. Penalty.** A person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed \$500.00 for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense."

**SECTION 3. REPEALER.** Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

**SECTION 4. SEVERABILITY.** If any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, but they shall remain in effect.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall become effective immediately upon its passage and publication as required by law.

**SECTION 6. EMERGENCY.** It being for the public welfare that this ordinance be passed creates an emergency and public necessity, and the rule requiring this ordinance be read on three separate occasions be, and the same is hereby waived, and this ordinance shall be in full force and effect from and after its passage and approval and publication, as the law in such cases provides.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, ON FIRST READING ON THIS THE 26<sup>th</sup> DAY OF FEBRUARY 2008.**

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, ON SECOND READING ON THIS THE 11<sup>th</sup> DAY OF MARCH 2008.**

**APPROVED:**

  
**Dianne Costa, Mayor**

**ATTEST:**

  
**Alicia Richardson, City Secretary**



**APPROVED AS TO FORM AND LEGALITY:**

  
**Dorothy G. Pakimbo, City Attorney**