

ORDINANCE NO. 2019-19

AN ORDINANCE OF THE CITY OF IOWA COLONY, TEXAS, CONTAINING A PREAMBLE; CONTAINING A SHORT TITLE; MAKING FINDINGS AND EXPRESSING INTENT; DECLARING CERTAIN NUISANCES; CONTAINING DEFINITIONS; PROVIDING FOR PROOF OF CERTAIN FACTS; PROHIBITING CERTAIN SEX OFFENDERS FROM RESIDING WITHIN ONE THOUSAND (1,000) FEET OF PREMISES WHERE CHILDREN COMMONLY GATHER; PROVIDING EXEMPTIONS AND AFFIRMATIVE DEFENSES; PROVIDING METHODS OF MEASURING DISTANCES; REGULATING MULTIPLE RESIDENCES; REQUIRING LANDLORDS TO SEARCH THE TEXAS DEPARTMENT OF PUBLIC SAFETY SEXUAL OFFENDER DATABASE FOR A PROSPECTIVE TENANT'S NAME OR TO HAVE THE POLICE DEPARTMENT DO SO; PROHIBITING PROPERTY OWNERS FROM KNOWINGLY RENTING TEMPORARY OR PERMANENT RESIDENCES TO CERTAIN SEXUAL OFFENDERS; REQUIRING EACH SEXUAL OFFENDER TO DISPLAY SIGNS AT HIS OR HER RESIDENCE ON AND AROUND HALLOWEEN AND TO HAVE NO OUTDOOR LIGHTS OR DECORATIONS ON OR AROUND HALLOWEEN; REQUIRING THE POLICE DEPARTMENT TO GIVE NOTICE OF CERTAIN SEXUAL OFFENDERS' RESIDENCES TO ALL OCCUPIED PREMISES WITHIN TWO HUNDRED FEET THEREOF; PROVIDING THAT ANY PERSON VIOLATING THIS ORDINANCE SHALL BE GUILTY OF A MISDEMEANOR AND ASSESSED A FINE OF NOT MORE THAN FIVE HUNDRED (\$500.00) DOLLARS; PROVIDING THAT EACH DAY ANY SUCH VIOLATION CONTINUES OR OCCURS SHALL CONSTITUTE A SEPARATE OFFENSE; PROVIDING FOR CIVIL ENFORCEMENT BY A LAWSUIT FOR INJUNCTIVE, DECLARATORY, AND/OR OTHER RELIEF; PROVIDING THAT REMEDIES ARE CUMULATIVE; AND CONTAINING SAVINGS CLAUSES, A SEVERANCE CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, this ordinance is authorized by Section 341.906 of the Texas Local Government Code and is also independently authorized by other law; and

WHEREAS, the City of Iowa Colony, Texas, ("the City") is a Type A General-Law Municipality; and

WHEREAS, Section 51.012 of said Code authorizes the governing body of a Type A General-Law Municipality to adopt any ordinance, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic; and

WHEREAS, Section 54.001(a) of said Code authorizes the governing body of a Type A General-Law Municipality to enforce each ordinance of the municipality and to punish a violation thereof; and

WHEREAS, Section 217.002 of said Code authorizes the governing body of a Type A General-Law Municipality to adopt this ordinance; and

WHEREAS, the City Council of the City is deeply concerned about the numerous 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 City Council finds from the evidence that the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes against children; and

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

WHEREAS, the City Council desires to establish a policy which provides maximum protection of the lives and safety of children residing in the City; and

WHEREAS, Article 42.12(13B) of the Code of Criminal Procedure provides a 1,000 foot child safety zone as a condition of probation for those convicted of certain sexual offenses, and Section 341.906 of the Texas Local Government Code authorizes such a 1000 foot child safety zone; and

WHEREAS, the City Council has determined and hereby declares that the adoption of this ordinance is necessary to the health, safety and general welfare of the inhabitants of the City;

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

SECTION ONE. SHORT TITLE

This ordinance shall be known and may be cited as the “Sexual Offender Ordinance of the City of Iowa Colony, Texas.”

SECTION TWO. FINDINGS AND INTENT

The City Council of the City makes the following findings and expresses the following intent:

A. 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 offenses, and most commit many offenses.

B. The cost of sexual offender victimization to society at large, while incalculable, is clearly exorbitant.

C. 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 premises where children commonly gather, wherein certain sexual offenders are prohibited from establishing temporary or permanent residences.

D. The City Council hereby finds and declares that sexual offenders residing in places prohibited by this ordinance constitute a nuisance, and any conduct prohibited by this ordinance constitutes a nuisance, and any violation of this ordinance constitutes a nuisance.

E. The City Council hereby finds that all statements of fact in the preamble or any other portion of this ordinance are true.

SECTION THREE. DEFINITIONS AND PRIMA FACIE PROOF

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

ABANDON: A permanent or temporary residence shall be deemed abandoned for purposes of this ordinance, if the sexual offender does not reside overnight at such residence for any nights during any 180 day period. The abandonment of a residence shall not excuse any violations of this ordinance occurring before such abandonment.

CHILD SAFETY ZONE: any premises where children commonly gather. The term includes a school, day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children. The terms used in this paragraph shall have the definitions given in Section 481.134 of the Texas Health and Safety Code. The term "child safety zone" does not include a church, as defined by Section 544.251 of the Texas Insurance Code.

PERMANENT RESIDENCE: A place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.

PREMISES WHERE CHILDREN COMMONLY GATHER: has the same meaning as a child safety zone.

SEXUAL OFFENDER or SEX OFFENDER: an individual who is required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure for an offense **in which the victim was less than seventeen years of age.**

The fact that a person appears on the Texas Department of Public Safety Sex Offender Database shall be prima facie proof that the person is required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure, for any purposes concerning this ordinance.

A printout from the internet website of the Texas Department of Public Safety Sex Offender Database shall be prima facie proof that all contents of that printout are contents of that database and are true, for any purposes concerning this ordinance. This paragraph includes, but is not limited to, the age of the victim and the risk level of the registered sex offender under Chapter 62 of the Texas Code of Criminal Procedure.

TEMPORARY RESIDENCE: A place where the 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 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 persons' permanent residence.

SECTION FOUR. RESIDENCE PROHIBITED; MEASUREMENT

A. Residence Prohibited within 1000 Feet of where Children Commonly Gather. It shall be unlawful for any person who is a sexual offender to establish a permanent residence or a temporary residence within one thousand (1,000) feet of any premises where children commonly gather, as herein defined.

B. Method of Measurement. For purposes of this ordinance, the distance between the residence of a sexual offender and a place where children commonly gather shall be measured in a straight line between the nearest points on the property line of the

sexual offender's residence and the property line of the place where children commonly gather.

SECTION FIVE. PROCEDURES TO OBTAIN AN EXEMPTION FOR PREEXISTING RESIDENCY

A. Exemption Available for Certain Preexisting Residences. A registered sex offender may apply for an exemption from this ordinance as to a residence where the registered sex offender established residency before the adoption of this ordinance. This exemption is not automatic; rather, it applies only while a certificate of exemption from the Police Chief is in effect.

B. Application Required. Procedures. The application for an exemption must be in writing, signed by the registered sex offender, and filed with the Police Chief. The application must include any documents, information, and evidence on which the registered sex offender relies to establish this exemption. The registered sex offender must provide any additional documents, information, evidence, and witnesses that the Police Chief reasonably requests for purposes of determining whether the validity of the requested exemption.

C. Certificate of Exemption. If the Police Chief determines that the application and all matters considered by the Police Chief show to his or her reasonable satisfaction that the application is valid, then the Police Chief shall sign and issue to the registered sex offender a written certificate of exemption, which shall identify the residence to which it applies.

D. Duration of Exemption. Automatic Expiration. The exemption under this section shall apply only to the period the registered sex offender maintains residency in the residence in the certificate of exemption. This exemption shall automatically expire and shall no longer be valid upon the sooner of: (1) the registered sex offender abandons the residence, as defined herein; or (2) the registered ceases to maintain residency in that residence in any other manner.

E. Exemption for Certain Landlords. A landlord is automatically exempt from all requirements of this ordinance concerning renting to a registered sex offender a residence for which the registered sex offender has a valid certificate of exemption under this ordinance. This landlord's exemption also applies to the requirements for checking the Texas Department of Public Safety Sex Offender Database concerning a tenant who is exempt as to the residence in question. The landlord is not required to obtain a

certificate of exemption for such a lease, although the tenant/registered sex offender must obtain a valid certificate of exemption for that residency.

SECTION SIX. AFFIRMATIVE DEFENSES

A. Affirmative Defenses Separate from Exemptions. The exemption for a preexisting residency under Section Five is cumulative of the affirmative defenses in this ordinance, and each of those matters applies separately according to its own terms.

B. Minors. Preexisting Residencies. The following are affirmative defenses to a prosecution for a violation of Section Four of this ordinance:

1. The defendant is a minor.
2. The defendant was a minor at the time of the offense and was not convicted as an adult.
3. The permanent or temporary residence in question of the defendant was established before the effective date of this ordinance in compliance with all applicable sex offender registration laws of the State of Texas and has not been abandoned as the sexual offender's residence. [See also the exemption in Section Five.]
4. The premises where children commonly gather, as specified herein, within one thousand (1,000) feet of the permanent or temporary residence of the defendant was established after the defendant established that person's permanent or temporary residence in compliance with all applicable sexual offender registration laws of the State of Texas, and such residence has not been abandoned as the sexual offender's residence. [See also the exemption in Section Five.]

SECTION SEVEN. MULTIPLE RESIDENCES

The establishment of a permanent or temporary residence shall not prevent the simultaneous existence of any other residence. It is possible for a person to have multiple permanent residences, multiple temporary residences, or one or more permanent residences and one or more temporary residences. This subsection shall not be construed to authorize any residence prohibited by this ordinance.

**SECTION EIGHT. LANDLORD MUST CHECK DATABASE FOR
PERMANENT RESIDENT. PROHIBITION AGAINST RENTING.
AFFIRMATIVE DEFENSE**

A. Landlord Must Check Database Before Renting. Before renting property for use as a permanent residence as defined herein, the landlord shall either: (1) search the Texas Department of Public Safety Sexual Offender Database for the prospective Tenant's name; or (2) make a written request for the Police Department of the City to do so and receive written notice from the Police Department of the results of such search. The search required by this section shall not be required before renting property for use as a temporary residence, as defined herein. For purposes of this section, a landlord shall not be required to anticipate whether a person will renew a short term rental agreement enough times to establish a permanent residence. However, regardless of any other provision, after a tenant has leased a property for fourteen consecutive days, regardless whether the lease was renewed on one or more occasions in order to total at least fourteen consecutive days, the landlord shall search the database or have the police department do so as required by this section, before renewing the lease after the fourteenth day for any length of time. [See also the exemption in Section Five.]

B. Certain Renting by Landlord Prohibited. No person shall rent any real or personal property to a sexual offender for use as a temporary or permanent residence, if such landlord knows that such residency constitutes a violation of this ordinance by the sexual offender. The exemption in Section Five does not apply to this subsection.

C. Affirmative Defense for Certain Preexisting Leases. It shall be an affirmative defense to prosecution for a violation of subsection B of this section that the lease became binding before the effective date of this ordinance and the landlord has not voluntarily extended the lease after the effective date of this ordinance. [See also the exemption in Section Five.]

SECTION NINE. HALLOWEEN REQUIREMENTS

A. The Police Department shall provide to each sexual offender white signs stating 'SEXUAL OFFENDER RESIDENCE', in at least two inch high black block lettering with strokes at least one-quarter inch wide for posting as required by this section.

B. Required Posting of Signs. Every sexual offender shall display, the sexual offender signs provided by the Police Department at the following places: (1) on all exterior entrances to his or her residence; (2) on each sidewalk leading into the residence at the point on such sidewalk nearest to a property line of the residence; and (3)

for each entrance without a sidewalk, at the property line directly in front of such entrance. The sexual offender shall keep those signs posted from 4 p.m. each October 31st until 7 a.m. each November 1st.

C. Halloween Decorations and Porch Lights Prohibited. Every sexual offender shall ensure that no porch lights or other lights that can be seen outdoors are on, and that no Halloween decorations are displayed at his or her residence or the lot or tract on which that residence is located, from 4 p.m. each October 31st until 7 a.m. each November 1st.

SECTION TEN. NOTIFICATION FROM POLICE DEPARTMENT TO NEIGHBORS

A. Risk Level Three Sex Offenders Only. This ordinance authorizes notice from the Police Department of the City to the public concerning a sex offender only when the Police Department receives notice under Chapter 62 of the Texas Code of Criminal Procedure that a person subject to registration under that chapter is required to register or verify registration with a local law enforcement authority and has been assigned a numeric risk level of three (high) under that chapter.

B. Written Notice to Neighbors within 200 Feet. The Police Department of the City shall give written notice of a risk level three sexual offender's residence, of which the Police Department actually knows, to the premises of each occupied property within two hundred feet of the property where a sexual offender's residence is located. This section also includes sexual offenders' residences that do not violate this ordinance.

C. Measurement of Distance. The distance in this section shall be measured in a straight line between the nearest points of the property lines of the two properties.

D. Contents of Notice. The notice required by this section shall include the sexual offender's name, the sexual offender's residence address within two hundred feet of the recipient's address, a statement that a sexual offender resides permanently or temporarily at that address, and a copy of the information concerning the sexual offender on the Texas Department of Public Safety Sexual Offender Database.

E. Times for Notice. The notice required by this section shall be given at the following times:

1. within two weeks after this ordinance is passed;
2. for a sexual offender's residence established after the effective date of this ordinance, within fourteen days after the police department actually learns that the property is a sexual offender's residence; and

3. for a residence of a person who becomes a sexual offender after the effective date of this ordinance, within fourteen days after the police department actually learns that such property is a sexual offender's residence.

SECTION ELEVEN. PENALTY AND CONTINUING OFFENSES

Any person violating any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof shall be assessed a fine of not more than Five Hundred (\$500.00) Dollars; and each calendar day or portion of a calendar day such violation continues or recurs shall constitute a separate offense. No culpable mental state shall be required for a violation of this ordinance.

SECTION TWELVE. OTHER REMEDIES

Any and/or all of the following civil remedies may be imposed for violation of any provision of this Ordinance: injunctive relief, declaratory relief, monetary damages, attorney's fees and all other expenses incurred in enforcing the City's rights or the violator's obligations or liabilities, costs of court, interest as provided by law, and all other remedies at law or in equity.

SECTION THIRTEEN. CUMULATIVE OBLIGATIONS AND REMEDIES. NO ELECTION OF OBLIGATIONS OR REMEDIES

A. All obligations, prohibitions, and offenses under this ordinance or under any other applicable laws are cumulative. No such obligations, prohibitions, or offenses shall be construed to limit any other such obligations, prohibitions, or offenses.

B. All remedies and penalties in favor of the City or against any person other than the City under this ordinance, or under any other applicable laws are cumulative. The pursuant or receipt by the City of any one or more penalties or remedies shall not constitute an election of remedies, and shall not prevent the City from pursuing and receiving any and all other remedies and penalties of any nature whatsoever.

C. Without the limiting the generality of the foregoing, the City may pursue a criminal prosecution hereunder without pursuing civil remedies for a violation hereof; the City may pursue civil remedies without pursuing a criminal prosecution; or the City may do both.

SECTION FOURTEEN. CONFLICTS IN TERMS

In the event of any conflict in the terms of this ordinance, or between the terms of this ordinance and any other ordinance, the more restrictive provision shall govern and control.

SECTION FIFTEEN. NONWAIVER OF IMMUNITY

Nothing herein, in any document issued pursuant hereto, or in any action, omission, or condition pursuant hereto shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the City.

SECTION SIXTEEN. NONWAIVER BY NONENFORCEMENT

The failure or omission of the City, upon one or more occasions, to enforce any right, obligation, or remedy hereunder, under any permit issued hereunder, or under any other applicable laws shall never be construed as a waiver of the Village's right to strictly enforce such right, obligation, or remedy, and the City may resume such strict enforcement without advance notice.

SECTION SEVENTEEN. NON-LIABILITY OF CITY

Neither the City nor any of its agents, officers, attorneys, or employees shall have any liability of any nature to any person other than the City for any act, omission, or condition in any way directly or indirectly related to the subject matter of this ordinance.

SECTION EIGHTEEN. SAVINGS CLAUSE

A. Nothing contained in this ordinance shall cause any rights heretofore vested to be altered, affected or impaired in any way, and all such rights may be hereafter enforced as if this ordinance had not been adopted.

B. This ordinance is cumulative of and in addition to all other ordinances of the City on the same subject and all such ordinances are hereby expressly saved from repeal. However, where this ordinance and another ordinance conflict or overlap, whichever imposes the more stringent regulations or penalties shall prevail.

C. No offense committed and no fine, forfeiture or penalty incurred prior to the effective date of this ordinance shall be affected by the adoption of this ordinance but the punishment for any offense committed and the recovery of any fines or forfeitures incurred prior to such date shall take place as if this ordinance had not been adopted.

D. If any part of this ordinance, of whatever size, is ever declared invalid or unenforceable for any reason by a court of competent jurisdiction, the remainder of this order shall remain in full force and effect.

SECTION NINETEEN. EFFECTIVE DATE

This ordinance shall be in effect from and after its passage and adoption.

PASSED AND ADOPTED this 20th day of May, 2019.

CITY OF IOWA COLONY, TEXAS

By: 
Michael Byrum-Bratsen, Mayor

ATTEST:


Kayleen Rosser, City Secretary

