

ORDINANCE NO. 07-17

AN ORDINANCE RELATING TO DEFINITIONS, RESTRICTIONS ON SEX OFFENDERS' RESIDENCY, PROHIBITING SEX OFFENDERS FROM RESIDING WITHIN 1,000 FEET OF THE REAL PROPERTY COMPROMISING A SCHOOL, DAYCARE FACILITY OR PUBLIC PARK OR PLAYGROUND WITHIN THE CITY LIMITS; PROHIBITING SEX OFFENDERS FROM ENTERING OR REMAINING NEAR PUBLIC PARKS; PROVIDING EXCEPTIONS; PROVIDING PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

BE IT ORDAINED BY THE CITY COUNCIL OF COMMERCE, TEXAS:

WHEREAS, the Commerce Police Department currently has 10 registered sex offenders living within the city limits; and

WHEREAS, Article 42.12 (13B) of the Texas Code of Criminal Procedure provides a 1,000 foot safety zone for children, as a condition of probation for those convicted of certain sexual offenses; and

WHEREAS, data exists which indicates that sex offenders re-offend after being released; and

WHEREAS, restrictions on the proximity of child sex offenders to schools, colleges, daycare facilities and public parks and playgrounds are one way to minimize the risk of re-offending; and

WHEREAS, several states and cities have enacted laws and ordinances which restrict where child sex offenders may reside; and

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; and

WHEREAS, 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 of Commerce by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders are prohibited for establishing residences.

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

That the Code of Ordinances of the City of Commerce is hereby amended by adding:

CHAPTER 66.

ARTICLE IV. RESIDENCE AND MATRICULATION RESTRICTIONS ON REGISTERED SEX OFFENDERS, which shall read as follows:

Section 66-101 - Definitions

The following words, terms and phrases when used in this Ordinance, shall have the meaning defined as follows, except where the context clearly indicates a different meaning:

1. "Child" means an individual younger than seventeen (17) years of age.
2. "College" means any public or private college, university, junior college, or technical or vocational training center.
3. "Daycare facility" includes a "child-care institution," a "daycare center," and/or a "group daycare home," as those terms are defined by Section 42.002, Human Resources Code.
4. "Park" or "playground" means any land, including improvements to the land that is administered, operated or managed by the City of Commerce for the use of the general public as a recreational area, including, without limitation:
 - (i) Land owned or controlled by a unit of local government that is designated by the unit of local government for use solely or primarily for children's recreation;
 - (ii) City recreational areas, including, but not limited to, a forest preserve, conservation area, jogging trail, hiking trail, water park, lake, campground, swimming pool, soccer field or baseball field under the jurisdiction of a unit of local government. .
5. "Residence" means a place where a person abides, lodges or resides for a period of four (4) or more days in the aggregate, during any calendar year.
6. "Sex offender" means:
 - (i) a person who pursuant Vernon's Ann. C.C.P. art. 42.12, § 9A(a)(2), has been convicted or has entered a plea of guilty or nolo contendere for an offense under any one of the following provisions of the Texas Penal Code:
 - (A) V.T.C.A., Penal Code § 21.11 (indecentcy with a child);
 - (B) V.T.C.A., Penal Code § 43.25 (sexual performance by a child);
 - (C) V.T.C.A., Penal Code § 43.26 (possession or promotion of child pornography); and/or
 - (D) V.T.C.A., Penal Code § 22.021 (aggravated sexual assault);
 - (E) V.T.C.A., Penal Code § 22.04 (injury to a child, elderly individual, or disabled individual);
 - (F) V.T.C.A., Penal Code § 22.011 (sexual assault);and/or
 - (ii) A person who has been convicted or has entered a plea of guilty or nolo contendere for an offense described as a "Reportable conviction or adjudication" pursuant to Vernon's Ann. C.C.P. Art. 62.01(5); and/or

(iii) A person who has been convicted or has entered a plea of guilty or nolo contendere for an offense under V.T.C.A., Penal Code §§ 43.251 (Employment harmful to children) and/or 43.05(2) (Compelling prostitution); and/or

(iv) A person who has been convicted or has entered a plea of guilty or nolo contendere for an offense under any substantially similar federal law or law of another state, or law of a foreign country, or the Uniform Code of Military Justice, or the attempt to commit a sex offense; and/or

(v) A person who has registered as a child sex offender or was/is required to register as a child sex offender by any state law, federal law, law of a foreign country, the Uniform Code of Military Justice, or pursuant Vernon's Ann. C.C.P., chapter 62, is required to register as a child sex offender.

7. "School" means a private or public elementary or secondary school.
8. "Loiter" means standing, sitting idly, whether or not the person is in a vehicle or remaining in or around a college, school, daycare facility, city park or playground or public way adjacent thereto.
9. "Public way" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, common areas of schools, shopping centers, parking lots, parks, playgrounds, transportation facilities, theaters, restaurants, shops, bowling alleys, taverns, cafes, arcades, and similar areas that are open to the use of the public.
10. "Child safety zone" means all city parks and public way within 300 feet of a city park.

Section 66-102 - Offenses

1. It shall be unlawful for a sex offender to intentionally, knowingly, recklessly or with criminal negligence, to establish a residence within one thousand (1,000) feet of the real property comprising a college, school, daycare facility, park or playground.
 - (i) The distance of one thousand (1,000) feet shall be measured on a straight line from the closest boundary line of the sex offender's residence to the closest boundary line of the college, school, daycare facility, park or playground.
2. It shall be unlawful for a child sex offender to knowingly be present in any college, school, daycare facility, City Park or playground, or any public festival or celebration.
3. It shall be unlawful for a child sex offender to knowingly loiter on a public way within three hundred (300) feet of a college, school, daycare facility, city park or playground.

Section 66-103 - Exceptions

A person does not commit an offense under Section 17-102(1) if the person:

1. Is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located within one thousand (1,000) feet of the real property comprising a school, daycare facility, park or playground;
2. Has established and continues to maintain the residence prior to the effective date of this Ordinance;
3. Has established and continues to maintain the residence prior to the effective date of this Ordinance and, subsequently a school, daycare facility, park or playground is constructed or located within one thousand (1,000) feet of the sexual offender's residence;
4. Is under eighteen (18) years of age or a ward under a guardianship, who resides with a parent or guardian;
5. Has been exempted by a court order from registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or
6. Has had the offense for which the sex offender registration was required, reversed on appeal or pardoned.
7. Is present at a college, school, daycare facility, city park or playground in connection with attendance of any class, seminar or educational program in which he is enrolled or otherwise required to attend.
8. Is present at a college, school, daycare facility, city park or playground in the presence of any child for which the child sex offender is the parent or legal guardian or to attend an official academic, extracurricular or athletic event in which any child or legal ward of the child sex offender is a participant.

Section 66-104 - Enforcement.

If a police officer reasonably believes that a child sex offender is in a city park or playground or has established a residence in violation of the ordinance, the officer shall require the child sex offender to provide his/her name, address, and telephone number. If it is established that the individual is a child sex offender, then the officer shall notify the child sex offender that he/she is in violation of the ordinance.

Section 66-105 - Penalties

Any person who violates this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed five hundred dollars (\$500.00), each day of such violations constituting a separate offense.

Section 66-106 - Repealing Clause

All ordinances or parts of ordinances inconsistent with the terms of this Ordinance are hereby repealed; provided however that such repeal shall be only to the extent of such inconsistency and in all other respects the Ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this Ordinance.

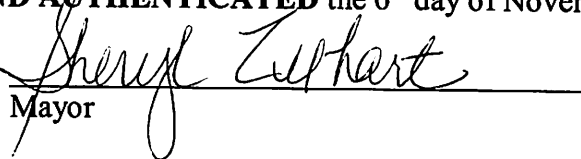
Section 66-107 - Severability Clause

If any section, subsection, sentence, clause or phrase of this ordinance, or the application of same to a particular set of persons or circumstances, should be for any reason be held to be invalid, such invalidity shall not affect the remaining portions of this Ordinance are declared to the severable.

Section 66-108 - Effective Date

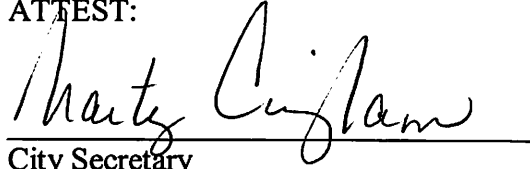
This Ordinance shall take effect from and after its passage by the Commerce City Council and publication. The City Secretary is hereby directed to give notice hereof by causing the caption of this ordinance to be published in a local newspaper of general circulation.

READ, PASSED, APPROVED AND AUTHENTICATED the 6th day of November, 2007.

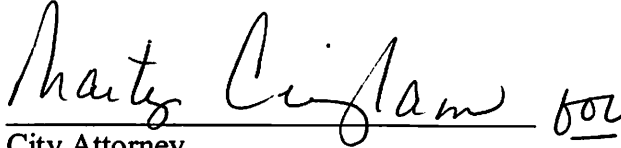


Mayor

ATTEST:



City Secretary



City Attorney