

ORDINANCE NO. 10-12

AN ORDINANCE AMENDING SEC 66-101, 66-102 AND 66-103 OF THE CODE OF ORDINANCES OF THE CITY OF RELATING TO DEFINITIONS USED IN RESTRICTIONS ON SEX OFFENDERS' RESIDENCY AND PROHIBITIONS OF 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; PROVIDING EXCEPTIONS; AND ESTABLISHING AN EFFECTIVE DATE

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

WHEREAS, the City Council of the City of Commerce has heretofore adopted and enacted Chapter 66 of the Code of Ordinances of the City of Commerce, which it now seeks to amend to continue to provide protection to the citizens of the City of Commerce against the risk of sex offender recidivism within the population of previously convicted sex offenders; and

WHEREAS, the City of Commerce has determined to revise the original ordinance as set forth below; and

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:

1. That Sec. 66-101 the Code of Ordinances of the City of Commerce is hereby amended to provide as follows:

ARTICLE IV. RESIDENCE AND MATRICULATION RESTRICTIONS ON REGISTERED SEX OFFENDERS

Sec. 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 or children means an individual(s) younger than 17 years of age.

(2) Daycare facility includes a "child-care institution," a "daycare center," and/or a "group daycare home," which must be licenses or accredited under V.T.C.A., Human Resources Code § 42.041 or which falls within the licensing exception of V.T.C.A. Human Resources Code § 41.041(b)(1) and (9).

(3) Park or playground means any land, including improvements to the land, that is administered, operated or managed by the city for the primary use of children as a recreational area which land is at the present time defined by the following list: City Park; Ivory Moore Park including Stiggers Field; BiCentennial Park; Eddie Moore Sports Complex; North Neal Practice Field; Mullins Ballfield; and, Authors Park.

(4) Residence means a place where a person abides, lodges or resides for a period of four or more days in the aggregate, during any calendar year.

(5) Sex offender means:

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

(6) School means a private or public elementary or secondary school.

(7) Child Educational Facility means a physical facility operated by a City, school or institution of higher learning for the primary purpose of education and / or recreation of children including, without limitation, children's museums, planetariums, swimming pools, agricultural education facilities, and sporting events in which children are the primary participants.

(Ord. No. 07-17, 11-6-07)

2. That Sec. 66-102 the Code of Ordinances of the City of Commerce is hereby amended to provide as follows:

Sec. 66-102. Offenses.

(1) It shall be unlawful for a sex offender to intentionally, knowingly, recklessly or with criminal negligence, establish a residence within 1,000 feet of the real property comprising a school, daycare facility, park or playground.

The distance of 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 school, daycare facility, park or playground.

(2) It shall be unlawful for a child sex offender to knowingly be present in any school, daycare facility, city park or playground, or any Child Educational Facility.

(Ord. No. 07-17, 11-6-07)

3. That Sec. 66-103 the Code of Ordinances of the City of Commerce is hereby amended to provide as follows:

Sec. 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 1,000 feet of the real property comprising a school, daycare facility, park or playground;

(2) Has established and continues to maintain a residence prior to the effective date of this article or establishes a physical residence on property which was owned by the person on the effective date of this article and which was zoned for residential purposes or zoned in a classification which permits single family residential use if such ownership and zoning classification continued uninterrupted from the effective date of this article until the establishment of a physical residence;

(3) Has established and continues to maintain the residence prior to the effective date of this and, subsequently a school, daycare facility, park or playground is constructed or located within 1,000 feet of the sexual offender's residence;

(4) Is under 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 V.T.C.A., Code of Criminal Procedure chapter 62; or

(6) Has had the offense for which the sex offender registration was required, reversed on appeal or pardoned.

(7) Is present at a Child Educational Facility, school, daycare facility, city park or playground in connection with attendance of any class, seminar or educational program in which the person is enrolled or otherwise required to attend.

(8) Is present at a Child Educational Facility, school, daycare facility, city park or playground in the presence (meaning both the offender and the child/ward of the offender are both on the premises) 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 sex offender is a participant. (Ord. No. 07-17, 11-6-07)

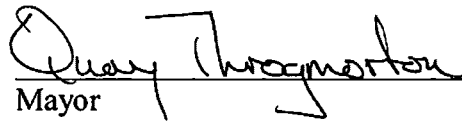
3. Effective Date

The amendments set forth in this Ordinance shall take effect from and after the passage of this Ordinance 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.

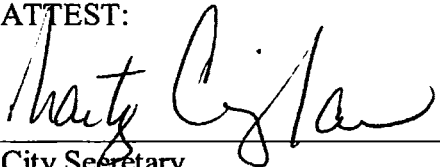
READ, PASSED, APPROVED AND AUTHENTICATED on this first reading the 4th day of May, 2010.

READ, PASSED, APPROVED AND AUTHENTICATED on this second reading the 18th day of May, 2010.

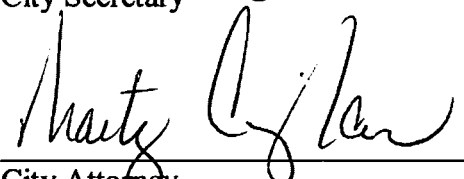


Mayor

ATTEST:



City Secretary



City Attorney FOR