

CITY OF WEST LAKE HILLS

AMENDMENT No. 349

SEX OFFENDER RESTRICTIONS

AN ORDINANCE AMENDING CHAPTER 12, ARTICLES 12.04 OF THE WEST LAKE HILLS CODE OF ORDINANCES; AMENDING THE CURRENT ORDINANCE TO INCORPORATE STATE LAW DEFINITIONS OF APPLICABLE TERMS; REVISING PROVISIONS TO INCLUDE REFERENCES TO NEWLY INCORPORATED TERMS; INCREASING THE MAXIMUM FINE TO \$2,000; PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; AMENDMENT; REPEALER; SEVERABILITY; CODIFICATION; EFFECTIVE DATE; AND PROPER NOTICE & MEETING.

WHEREAS, the City Council of the City of West Lake Hills (“City Council”) seeks to provide clarity and consistency with newly enacted state law by incorporating into its sex offender residency ordinance new terms and definitions used in section 341.906 of the Texas Local Government Code; and

WHEREAS, pursuant to Texas Local Government Code Section 341.906 the City has the authority to adopt an ordinance restricting a registered sex offender from going in, on, or within a specified distance of a child safety zone; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City Council finds that the amendment proposed is reasonable, necessary, and proper for the good government of the City of West Lake Hills.

NOW, THEREFORE, BE IT ORDAINED by the City Council of West Lake Hills, Texas:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. AMENDMENT

Chapter 12, Articles 12.04 of Code of Ordinances, City of West Lake Hills, Texas, is hereby amended to read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code

and any struck-through text shall be deleted from the Code, as stated on *Attachment A*.

3. REPEALER

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

PASSED & APPROVED this, the 13th day of December 2017, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of West Lake Hills, Texas.

CITY OF WEST LAKE HILLS:

by: Linda Anthony
Linda Anthony, Mayor

ATTEST:

Lacie Hale
Lacie Hale, City Secretary



CODE OF ORDINANCES

CHAPTER 12.04

ARTICLE 12.04 SEX OFFENDER RESIDENCY RESTRICTIONS

Sec. 12.04.001 Definitions

For the purposes of this article, the following terms, words, and the derivations thereof shall have the meanings given herein.

Child safety zone. A 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 term does not include a church, as defined by Section 544.251, Insurance Code.

Minor. A person younger than 17 years of age.

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

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 the 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.

~~School bus stop. A site at which school aged children gather for transportation to or from public or private school.~~

Temporary residence. A place where a person abides, lodges, or resides for a period of 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, 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 use by persons who are 17 years of age or younger; and
- (B) regularly provides athletic, civic, or cultural activities.

Sec. 12.04.002 Residency ~~o~~Offense

(a) ~~Generally. For each~~Generally. For each ~~A person required to register on the state department of public safety's sex offender database (the "database") registered sex offender required to register because of a violation involving a victim who was less than 17 years of age a minor, it is unlawful for that person to shall not establish a permanent residence or temporary residence~~may not go in, on, or within 1,000 feet of a playground, school, video arcade facility, youth center, day care center, public swimming pool or a school bus stop as defined herein or as those terms are defined in section 481.134 of the Texas Health and Safety Code, as may be amended~~child safety zone in the City of West Lake Hills.~~

(b) Evidentiary matters; measurements.

(1) It shall be prima facie evidence that this article applies to a person if that person's ~~record information~~record 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. ~~and the database indicates that the victim was less than 17 years of age a minor.~~

(2) 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~~child safety zone. ~~to the nearest property line of the premises described herein above, or, in the case of multiple residences on one property,~~

measuring from the nearest wall of the building or structure occupied or the parking lot or driveway, whichever is closer to the nearest property line of the premises, as described herein.

(3) ~~A map depicting the prohibited areas shall be maintained by the city police department. The city shall review the map at least annually for changes. Said map will be available to the public at the city police department.~~

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

(d) Affirmative defenses. It is an affirmative defense to prosecution that any of the following conditions apply:

(1) ~~The person required to register on the database~~registered sex offender established the permanent or temporary residence and has complied with all of the sex offender registration laws of the state, prior to the date of the adoption of this article.

(12) The person required to register on the databaseregistered sex offender entered into a residential lease or rental agreement prior to the date of the adoption of this article.

(23) The person required to register on the databaseregistered sex offender was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.

(34) The person required to register on the databaseregistered sex offender is a minor or a ward under guardianship.

(45) The ~~prohibited premises~~ child safety zone, as specified herein, within 1,000 feet of the permanent or temporary residence of the registered sex offender ~~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.

(56) The person required to register on the databaseregistered sex offender maintains a permanent or temporary residence at a jail, prison, juvenile facility or other correctional institution or facility.

(67) 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.

(e) Exemption hearing.

(1) ~~A person who is required to register on the database~~registered sex offender who is required to register because of a violation involving a victim who was less than 17 years of age ~~a minor~~ 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 established 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 residency in the residence.

(32) 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.

(43) No exemption shall be granted under subsection 12.04.002(e)(3) 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. ~~the following:~~

(A) ~~The person lives with his/her family in the only home available and affordable to the family;~~

(B) ~~The number of victims;~~

(C) ~~The diversity of victims;~~

(D) ~~The person's relationship to the victims;~~

(E) ~~A history of juvenile sexual offenses;~~

(F) ~~A history of abuse and neglect;~~

(G) ~~A history of long term separations from parents;~~

(H) ~~A negative relationship with his/her mother;~~

(I) ~~Employment status;~~

~~(J) — A history of substance abuse problems; and~~

~~(K) — Evidence of a chaotic, antisocial lifestyle.~~

(54) Such findings of the city council, together with the specific 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.

Sec. 12.04.003 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 ~~person required to register on the database~~ registered sex offender required to register because of a violation involving a victim who was less than 17 years of age a minor, if such place, residence, structure, dwelling, manufactured dwelling, mobile home, camping trailer or other conveyance is located within 1,000 feet of any ~~playground, school, video arcade facility, youth center, day care center, public swimming pool, or school bus stop as defined herein or as those terms are defined in section 481.134 of the Texas Health and Safety Code, as may be amended~~ child safety zone.

(b) An owner, lessee 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 ~~required to register on the database~~ a registered sex offender required to register because of a violation involving a victim who was less than 17 years of age a minor if such person’s record appears on the central database maintained by the Department of Public Safety and the database indicates that the victim was less than 17 years of age 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.

Sec. 12.04.004 Penalties

(a) The city shall have the power to administer and enforce the provisions 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 otherwise be provided herein, any person violating any provision of this article shall, upon conviction, be fined a sum not exceeding ~~\$500.00~~ 2,000.00. Except as may 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.