

ORDINANCE NO. 2013-104

AN ORDINANCE OF THE CITY OF MILANO, TEXAS, MAKING IT UNLAWFUL FOR CERTAIN PREDATOR SEX OFFENDERS TO RESIDE WITHIN 1,000 FEET OF PREMISES WHERE CHILDREN GATHER; MAKING IT UNLAWFUL TO PROVIDE A RESIDENCE TO CERTAIN PREDATOR SEX OFFENDERS IN PROHIBITED AREAS; PROVIDING AFFIRMATIVE DEFENSES, PROVIDING FOR A VARIANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF \$500.00; PROVIDING FOR AMENDMENT OF CONFLICTING PROVISIONS; PROVIDING PUBLICATION, AN EFFECTIVE DATE, AND OPEN MEETING CLAUSES.

WHEREAS, the City Council of the City of Milano, Texas (the "City") finds and declares that certain predator sex offenders are a serious threat to public safety;

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

WHEREAS, the City Council finds that restricting the property available for residence of certain predator sex offenders will provide safeguards for children gathering in the City;

WHEREAS, the City Council finds that a 1,000 foot safety zone for children should be established applicable to individuals convicted of certain sexual offenses requiring them to be registered on the Texas Department of Public Safety's Public Sex Offenders Data Base;

WHEREAS, Article 42.12(13B) of the Texas Code of Criminal Procedure, provides a 1000 foot safety zone for children, as a condition of probation for those convicted of certain sexual offenses; and

WHEREAS the City Council finds that prohibiting persons that have been convicted of certain sexual offenses from residing within 1000 feet of places in the City where children gather is necessary for the public safety and will limit contact of such persons with children;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MILANO, TEXAS THAT:

Section 1. Adoption of Findings of Fact. The findings and recitations set out in this ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact. The City Council further finds that certain predator sex offenders are likely to repeat offenses, to have many more victims than are ever reported, and to be prosecuted for only a fraction of their actual sexual offenses. The City Council further finds that many children lack the ability to protect themselves from predator sex offenders. The Council further finds that the safety of children is paramount and the restrictions provided in this ordinance will serve the public safety of the children and the public welfare by providing some peace of mind to parents.

Section 3. Offenses.

(a) It shall be unlawful for a Registrant to establish a permanent residence or temporary residence within 1,000 feet of any premises where children commonly gather.

(b) It is unlawful for any person to lease, rent, or otherwise provide any residence, dwelling, place, structure, or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by a Registrant.

Section 4. Evidentiary Matters; Measurements.

(a) It shall be prima facie evidence that this ordinance applies to a person if that person's record appears on the Database and the Database indicates that the victim was less than seventeen (17) years of age.

(b) For the purposes of determining the minimum distance separation, the distance 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; provided that:

- (1) In the case of multiple residences on one property, measurement is from the nearest property line of the residence premises following a straight line to the nearest property line of the premises where children commonly gather; and
- (2) In the case of a bus stop, measurement is from the center point of the stop following a straight line to the property line of the permanent or temporary residence.

(c) A map depicting the prohibited areas shall be maintained by the City of Milano. The City shall review the map every three (3) months for changes. The map will be available to the public at the Milano Police Department.

Section 5. Affirmative Defenses and Exceptions. It is an affirmative defense to prosecution that any of the following conditions apply, provided that there is no court order in effect applicable to the Registrant that provides otherwise:

(a) The Registrant 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 Registrant was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.

(c) The Registrant is a minor.

(d) The premises where children commonly gather as specified herein within 1000 feet of the permanent or temporary residence of the person required to register on the Database

was opened after the Registrant established the permanent or temporary residence and the Registrant has complied with all sex offender registration laws of the State of Texas.

(e) The information on the Database is incorrect and if corrected this ordinance would not apply to the person who was erroneously listed on the Database.

Section 6. Request for Variance.

(a) A person may request a variance from the terms of this ordinance based upon the grounds set forth in Section 6.

(b) A request for a variance from the terms of this ordinance shall be submitted in writing to the City Secretary and shall include the following information:

- (1) The person's name and address;
- (2) The offense(s) requiring registration on the Database for which the person was convicted;
- (3) Dates of conviction(s);
- (4) The specific grounds supporting the person's request for a variance; and
- (5) Any other information requested by the City.

(c) The Chief of Police may grant a variance request based upon the grounds set forth in Section 6. The Chief of Police shall issue a written ruling on a variance request within ten business days of receiving a completed application. The Chief of Police's ruling may be appealed to the City Council by submitting a written request for appeal to the City Secretary within ten days from the date of the Chief of Police's ruling or the deadline for issuance of a ruling, in the event the Chief of Police does not make a ruling within the required time period. Upon receipt of a written appeal, the City Secretary shall schedule the appeal for the next regularly scheduled City Council meeting for which notice can be lawfully posted.

(d) In addition to the grounds set forth in Section 6, the City Council may grant a variance if it finds that the facts and circumstances demonstrate that the Registrant's temporary or permanent residence within the child safety zone will not be a danger to children. A variance requested under this subsection (d) may be granted by the City Council only. A person who seeks a variance under this section shall apply for a variance as provided in Section 6(b). Upon receipt of a completed application, the City Secretary shall schedule the variance request for the next regularly scheduled City Council meeting for which notice can be lawfully posted. The person requesting the variance shall be notified of the City Council's decision in writing.

(e) A variance granted under this section may include waiving the application of Section 3 to the Registrant, or reducing the size of the safety zone as it applies to the Registrant.

Section 7. Penalty. Any person firm or corporation violating a provision of this Section shall be guilty of Class C misdemeanor and upon conviction of such violation shall be punished by a penalty of \$500.00 for each offense. Each day the violation continues shall constitute a separate offense.

Section 8. Amendment of Conflicting Ordinances. All ordinances or parts of ordinances in conflict with this ordinance are hereby amended to the extent of a conflict herewith. In the event of a conflict between another ordinance of the City and this ordinance, this ordinance shall control.

Section 9. Severability. If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 10. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Loc. Gov't Code.

Section 11. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

PASSED AND APPROVED on first reading this the 29th day of July, 2013.

Attest:

The City of Milano, Texas


Carolyn Vinton, City Secretary


Billy Barnett, Mayor