

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 011-015

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING CHAPTER 54 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE II (OFFENSES INVOLVING PUBLIC SAFETY) THEREOF BY ADDING A NEW SECTION 54-33 (I) MAKING IT AN OFFENSE TO RESIDE WITHIN 1,500 FEET OF PREMISES WHERE CHILDREN COMMONLY GATHER BY (A) A PERSON WHOSE INFORMATION IS CONTAINED IN THE SEX OFFENDER DATABASE MAINTAINED BY THE TEXAS DEPARTMENT OF PUBLIC SAFETY PURSUANT TO STATE LAW BECAUSE OF A VIOLATION INVOLVING A CHILD YOUNGER THAN 17 YEARS OF AGE, AND (B) A PERSON WHO HAS BEEN CIVILLY COMMITTED AS A SEXUALLY VIOLENT PREDATOR UNDER STATE LAW AND IS SUBJECT TO COMPLIANCE WITH A CHILD SAFETY ZONE REQUIREMENT, AND (II) MAKING IT AN OFFENSE TO RENT, LEASE OR MAKE AVAILABLE A RESIDENCE TO A PERSON WITH THE KNOWLEDGE THAT IT WILL BE USED AS A PERMANENT OR TEMPORARY RESIDENCE BY A PERSON PROHIBITED FROM ESTABLISHING SUCH RESIDENCE UNDER THIS ORDINANCE IF SUCH RESIDENCE IS WITHIN 1,500 FEET OF PREMISES WHERE CHILDREN COMMONLY GATHER; PROVIDING DEFINITIONS; PROVIDING FOR CERTAIN EVIDENTIARY MATTERS (INCLUDING A PROVISION THAT A CULPABLE MENTAL STATE IS NOT REQUIRED FOR THE OFFENSE OF RESIDING WITHIN 1,500 FEET OF PREMISES WHEE CHILDEN COMMONLY GATHER) AND A MEASUREMENT OF DISTANCE PROVISION; PROVIDING FOR CERTAIN AFFIRMATIVE DEFFENSES; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) FOR EACH OFFENSE AND A SEPARATE VIOLATION SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Town of Addison, Texas is a home rule municipality operating pursuant to and under the authority of Article 11, Section 5 of the Texas Constitution and its Home Rule Charter; and

**WHEREAS**, certain State laws place restrictions on sex offenders, and in particular on sex offenders where the victim of a crime is a person younger than 17 years of age, including:

- Chapter 62, Texas Code of Criminal Procedure, that requires that a person with a conviction or adjudication of any of certain sexually-related crimes to register as a sex offender;
- Article 42.12, Section 13B, Texas Code of Criminal Procedure, that provides that a person charged with any of certain sexually related offenses may be placed on

community supervision, and if the judge determines that the victim of the offense was a younger than 17 years of age, the judge must establish a child safety zone and require that the person not go in, on, or within 1,000 feet of certain premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility;

- Section 508.107, Texas Government Code, that provides that a person convicted of any of various sexually related crimes that is released on parole must be restricted by the parole panel from going in, on, or within a distance specified by the parole panel of certain premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility;

and

**WHEREAS**, a 2003 report issued by the U.S. Department of Justice, Bureau of Justice Statistics, concluded that released sex offenders were four times more likely than non-sex offenders to be rearrested for a sexually related crime, and released child molesters were more likely than non-sex offenders to be rearrested for another sexually related crime against a child; and

**WHEREAS**, the State of Texas, other States, and a number of Texas cities have adopted regulations that restrict the location where persons who are required to register as a sex offender may reside, by establishing a prohibition on such persons from residing within a certain distance of locations where children commonly gather; and

**WHEREAS**, in upholding an Iowa law that restricted sex offenders from residing within a certain distance of a school or child care facility, in *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005) the federal Court of Appeals for the 8<sup>th</sup> Circuit cited an expert's opinion "that it is just 'common sense' that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense"; and

**WHEREAS**, establishing the restrictions set forth herein promotes the health, safety and welfare of the public and provides protection for children from sex offenders who are required by law to register as a sex offender, and from sexually violent predators who are subject to outpatient treatment and supervision requirements under Chapter 841, Texas Health and Safety Code, including a requirement that the person comply with a child safety zone.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

Section 1. Incorporation of Premises. The above and foregoing premises are recitals are true and correct and are incorporated herein and made a part of this Ordinance for all purposes.

Section 2. Amendment. The Code of Ordinances ("Code") of the Town of Addison, Texas ("City") is hereby amended in the following particulars, and all other chapters, articles,

sections, subsections, paragraphs, phrases and words are not amended hereby but are ratified and confirmed

A. Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Offenses Involving Public Safety) of the Code is amended by adding a new Section 54-33, Regulation of Sex Offender Residency, to read as follows:

**Section 54-33. Regulation of Sex Offender Residency.**

(a) *Definitions.* For purposes of this Section, the following terms, words, and the derivations thereof shall have the meanings set forth below:

- (1) *City* means the Town of Addison, Texas.
- (2) *Minor* means a person younger than seventeen (17) years of age.
- (3) *Database* means the computerized central database maintained by the Texas Department of Public Safety that contains the information required for registration as a sex offender pursuant to Chapter 62, Texas Code of Criminal Procedure.
- (4) *Day-care center* means a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.
- (5) *Permanent residence* means a place where a person abides, lodges, or resides for 14 or more consecutive days.
- (6) *Playground* means any outdoor facility that is not on the premises of a school and that: (i) is intended for recreation, (ii) is open to the public, and (iii) contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards.
- (7) *Premises* means real property and all buildings and appurtenances pertaining to the real property.
- (8) *Premises where children commonly gather* means premises where children commonly gather, including, without limitation, a school, playground, school, day care facility, public or private youth center, public swimming pool, public athletic facilities, public recreation facilities, and public park (including, without limitation, recreation trails, but excluding planted street medians).
- (9) *School* means a private (except in-home) or public elementary or secondary school or a day-care center.
- (10) *Temporary residence* means 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 (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

(11) *Youth center* means any recreational facility or gymnasium that: (i) is intended primarily for use by persons who are 17 years of age or younger, and (ii) regularly provides athletic, civic, or cultural activities.

(b) *Offenses.*

(1) It is unlawful for a person to establish a permanent or temporary residence within 1,500 feet of any premises where children commonly gather if (i) because of a violation involving a minor, information about the person that is required for registration under Chapter 62, Texas Code of Criminal Procedure, is contained in the database, or (ii) the person has been civilly committed as a sexually violent predator under Chapter 841, Texas Health and Safety Code, and is subject to outpatient treatment and supervision requirements under that Chapter, including a requirement established by a judge that the person comply with a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article, 42.12, Texas Code of Criminal Procedure.

(2) It is unlawful for a person, corporation, partnership, limited liability company, or other business entity, to lease, rent, or otherwise provide any residence, dwelling, place, structure or part thereof, with the knowledge that it will be used as a permanent residence or temporary residence by a person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this Section, if such residence, dwelling, place, structure or part thereof is located within 1,500 feet of any premises where children commonly gather.

(c) *Evidentiary Matters; Measurement; Map.*

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

(2) For the purpose of determining the minimum distance separation, the distance shall be (a) measured by following a straight line from the property line of the permanent or temporary residence that is closest to the premises where children commonly gather, to the property line of the premises where children commonly gather that is closest to the property line of the permanent or temporary residence, (b) or, in the case of multiple residences located on the same tract of land, measured by following a straight line from the wall of the building or structure occupied as the permanent or temporary residence, or the parking area or driveway that is used for or accessible to such residence, that is closest to the premises where children commonly gather, to the property line of the premises

where children commonly gather that is closest to such wall, parking area or driveway.

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

(d) *Culpable mental state not required.* Neither allegation nor evidence of a culpable mental state is required for the proof of an offense described in subsection (b)(1) of this Section.

(e) *Affirmative defenses.* It is an affirmative defense to prosecution under this Section that any of the following conditions apply:

(1) The person whose information is contained in the database 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 Section.

(2) The person whose information is contained in the database was a minor when the person committed the offense requiring registration under Chapter 62, Texas Code of Criminal Procedure, and was not convicted as an adult.

(3) The person whose information is contained in the database is a minor.

(4) The premises where children commonly gather that is located within 1,500 feet of the permanent or temporary residence of the person whose information is contained in the database was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the State of Texas.

(5) The information contained in the database regarding the person is incorrect, and, if corrected, this Section would not apply to the person who was erroneously listed in the database.

(6) The person was at the time of the violation of this Section subject to community supervision pursuant to Section 13B of Article 42.12, Texas Code of Criminal Procedure, and the court reduced or waived the 1,000 foot restriction for a child safety zone under Section 13B(a)(1)(B) of Article 42.12, Texas Code of Criminal Procedure, as it applies to the person's residence.

(f) *Penalty.* A person who violates any of the provisions of this Section be guilty of a misdemeanor and, upon conviction, shall be fined a sum not to exceed \$500.00 for each offense and each and every violation or day such violation shall continue or exist shall be deemed a separate offense. The penal provisions imposed under this Section shall not preclude the city from filing suit to enjoin a violation of this Section. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 22 day of February, 2011.

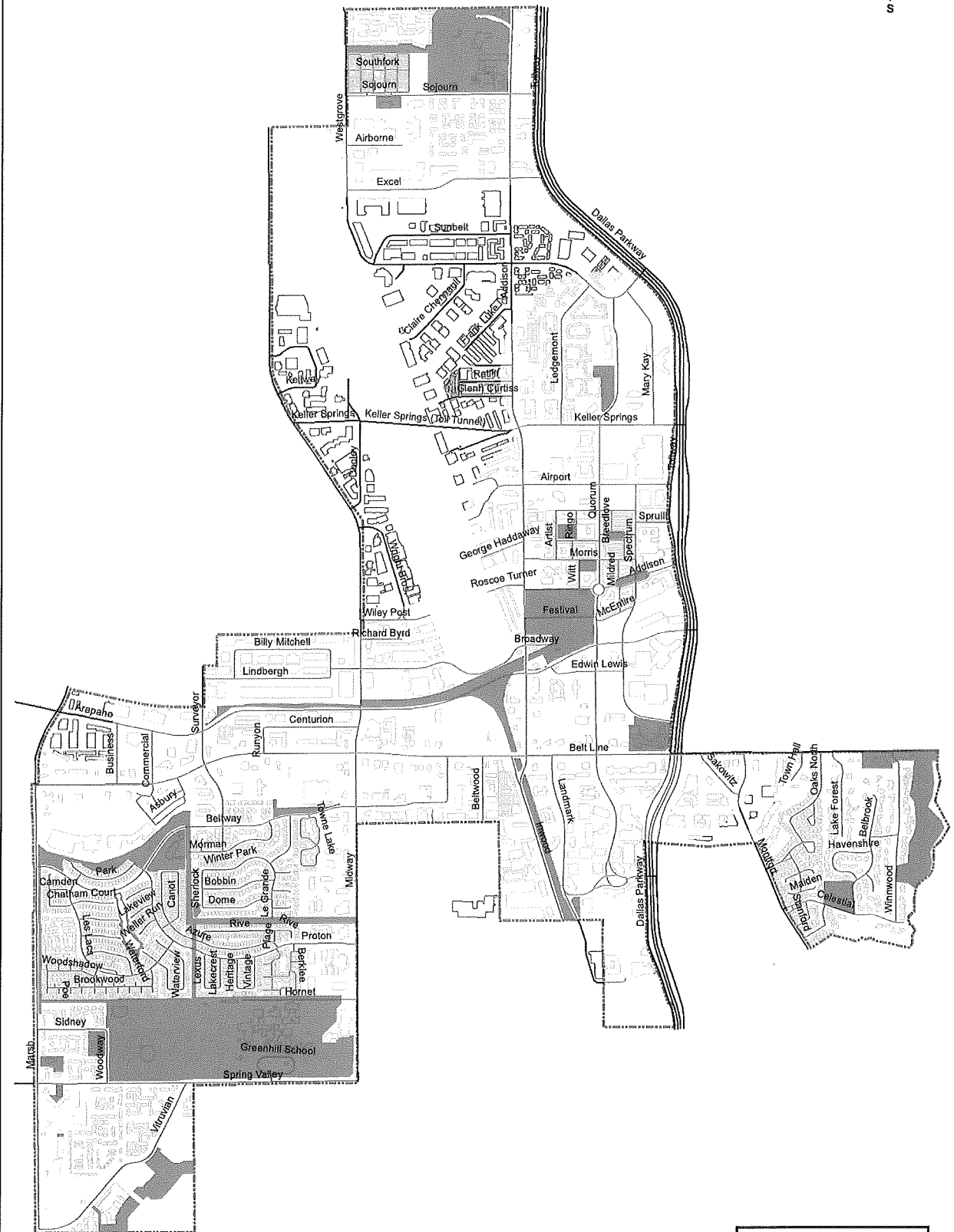
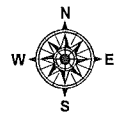
  
\_\_\_\_\_  
Joe Chow, Mayor

**ATTEST:**

By:   
\_\_\_\_\_  
Lea Dunn, City Secretary


**APPROVED AS TO FORM:**

By:   
\_\_\_\_\_  
John Hill, City Attorney



**Legend**

1500 Feet

 Protected Areas

