

ORDINANCE NO. 1199-04-2008

AMENDING CITY OF GAINESVILLE CODE OF ORDINANCE, CHAPTER 14, PARKS AND RECREATION, ARTICLE I, BY ADDING SECTION 14-11, PROHIBITING CHILD SEX OFFENDERS FROM ENTERING ANY CITY PARK AND FROM LOITERING ON A PUBLIC WAY WITHIN 300 FEET OF A CITY PARK; DEFINING CHILD SAFETY ZONE, CITY PARK, CHILD SEX OFFENDER, LOITER AND PUBLIC WAY; PROVIDING FOR ENFORCEMENT PROCEDURES; PROVIDING FOR PENALTY OF VIOLATION NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00); PROVIDING A SAVINGS AND REPEALER CLAUSE; PROVIDING SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Gainesville, Texas is a home rule municipal corporation organized under the Constitution and the laws of the State of Texas; and

WHEREAS, the City Council of Gainesville, Texas has the authority to enact ordinances that it determines are necessary to protect the public health, safety and welfare; and

WHEREAS, the City Council finds, determines and declares that sex offenders are a serious threat to public safety; and

WHEREAS, the City Council determines that the recidivism rate for released sex offenders is alarmingly high, especially for those who commit crimes against children; and,

WHEREAS, the City Council wishes to ensure the safety of children at city parks and within 300 feet of a city park and determines that establishing regulations will provide better protection for children gathering in the City; and

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE:

SECTION 1. AMENDMENT TO CODE OF ORDINANCES

Section 14-11 entitled "Prohibition Regarding Child Sex Offender in Child Safety Zone", is hereby added under Chapter 14 of the Code of Ordinances of the City of Gainesville, Texas, as follows:

14.11 Prohibition Regarding Child Sex Offender in Child Safety Zone.

(a) Definitions: For the purpose of the Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

1. "City park" means:

- (a) 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;
- (b) city recreational areas, including but not limited to, a forest preserve, conservation area, jogging trail, hiking trail, water park, swimming pool,

soccer field or baseball field under the jurisdiction of a unit of local government.

2. *"Child sex offender"* means:
 - (a) a person who pursuant Article 42.12, Section 9A(a)(2) of the Texas Code of Criminal Procedure, 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) Section 21.11 (Indecency with a Child):
 - (B) Section 43.25 (Sexual Performance by a Child):
 - (C) Section 43.26 (Possession or Promotion of Child Pornography): and/or
 - (b) a person who has been convicted or has entered a plea of guilty or nolo contendere for an offense under Sections 43.251 (Employment Harmful to Children) and/or 43.05(2) (Compelling Prostitution) of the Texas Penal Code; and/or
 - (c) 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
 - (d) 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 Chapter 62 of the Texas Code of Criminal Procedure, is required to register as a child sex offender.
3. *"Loiter"* means: Standing, sitting idly, whether or not the person is in a vehicle or remaining in or around city park property or public way.
4. *"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.
5. *"Child safety zone"* means: all city parks and public way within 300 feet of a city park.
 - (b) **Loitering Offense**
It shall be unlawful for a child sex offender to knowingly loiter on a public way within 300 feet of a city park.
 - (c) **Enforcement Procedures**
If a police officer reasonably believes that a child sex offender is in a city park 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.
 - (d) **Penalty for violation.**

Any person violating any provision of this article shall, upon conviction, be punishable by a fine not to exceed five hundred dollars (\$500.00).

SECTION 2. SAVINGS AND REPEALER

That this Ordinance shall be cumulative of all other ordinances of the City affecting the residency of registered sex offenders and shall not repeal any of the provisions of such ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance; whether such ordinances are codified or uncodified, and all other provisions of the Ordinances of the City of Gainesville, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect. Notwithstanding the foregoing, any complaint, action, cause of action or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such repealed Ordinance(s) shall continue to be governed by the provisions of that Ordinance and for that purpose the Ordinance shall be deemed to remain and continue in full force and effect.

SECTION 3. SEVERABILITY

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City of Gainesville City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 4. PUBLICATION

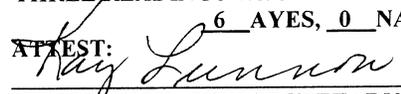
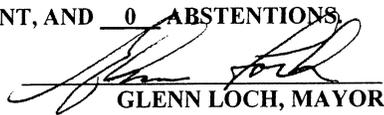
Publication shall be made in the official publication of the City of Gainesville, Texas, after final passage, which publication shall contain the caption stating in substance the purpose of this Ordinance.

SECTION 5. EFFECTIVE DATE

This ordinance shall be in full force and effect after its passage and publication as required by law.

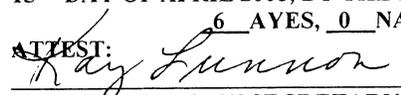
INTRODUCTION, FIRST READING AND CHARTER SUSPENSION

INTRODUCED AND READ FOR THE FIRST TIME BEFORE THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 15TH DAY OF APRIL 2008, AT WHICH TIME THE CHARTER REQUIREMENT OF THREE READINGS WAS SUSPENDED BY THE FOLLOWING VOTE:

ATTEST: 6 AYES, 0 NAYS, 1 ABSENT, AND 0 ABSTENTIONS.

KAY LUNNON, CITY SECRETARY

GLENN LOCH, MAYOR

ADOPTION

ADOPTED IN REGULAR SESSION BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS ON THE 15TH DAY OF APRIL 2008, BY THE FOLLOWING VOTE:

ATTEST: 6 AYES, 0 NAYS, 1 ABSENT, AND 0 ABSTENTIONS.

KAY LUNNON, CITY SECRETARY

GLENN LOCH, MAYOR