

**ORDINANCE NO. 1196-03-2008**

**AN ORDINANCE OF CITY OF GAINESVILLE, TEXAS, AMENDING THE CITY OF GAINESVILLE CODE OF ORDINANCES BY ADDING ARTICLE V, ENTITLED "REGISTERED SEX OFFENDERS", TO CHAPTER 13, TO PROHIBIT CERTAIN DESIGNATED PERSONS FROM RESIDING WITHIN 2,000 FEET OF PREMISES WHERE CHILDREN GATHER; PROVIDING DEFINITIONS; PROVIDING OFFENSES; PROVIDING EVIDENTIARY MATTERS AND MEASUREMENTS AND ADOPTING A MAP OF LOCATIONS; PROVIDING THAT A CULPABLE MENTAL STATE IS NOT REQUIRED FOR COMMITTING AN OFFENSE; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING A PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS; PROVIDING A SAVINGS AND REPEALER CLAUSE; PROVIDING SEVERABILITY; PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; 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 determines that establishing regulations on property available for use as a residence by sex offenders will provide better protection for children gathering in the City; and

**WHEREAS**, Article 42.12, Section 13B(a), of the Texas Code of Criminal Procedure provides a 1,000 foot safety zone for children as a condition of community supervision and probation for those convicted of certain sex-related offenses, and the City Council finds and determines that this legislative and judicial directive is fair and appropriate; and

**WHEREAS**, in order to clearly identify those areas within the City which are not available for residence by registered sex offenders, the City Council has determined it appropriate and prudent to approve and annually review a map that clearly depicting the areas where such residency is not allowed, and such map is approved with the adoption

of this Ordinance.

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

**SECTION 1.  
INCORPORATION OF PREMISES**

That the above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

**SECTION 2.  
AMENDMENT TO CODE OF ORDINANCES**

Article V. entitled "Registered Sex Offenders", is hereby added under Chapter 13 of the Code of Ordinances of the City of Gainesville, Texas, as follows is hereby adopted:

***"ARTICLE V. REGISTERED SEX OFFENDERS***

*Section. 1 Definitions.*

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

*Day Care Facility or Day Care Center:* an establishment where more than 3 unrelated children under the age of fourteen (14) are left for care, training, education, custody, or supervision during the day or any portion thereof. The term does not include overnight lodging, medical treatment, counseling or rehabilitative services and does not apply to any school, public or private, as herein defined.

*Database:* the Texas Department of Public Safety's Sex Offender Database.

*Minor:* a person younger than seventeen (17) years of age.

*Public Park:* any premises designated by the Town as parkland that is not on the premises of a school, that is intended for recreation, and that is open to the public.

*Permanent Residence:* a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

*Playground:* any outdoor facility that is not on the premises of a school and that is intended for recreation, is open to the public, and contains three or more separate apparatus 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.

*School:* a private or public elementary or secondary school.

*Swimming Pool:* any structure intended or used by the public for swimming or recreational bathing, regardless of size, and including in-ground, aboveground and on-ground swimming pools. The term shall not include swimming or bathing facilities located on private residential property which is not open for use by the public or swimming or bathing facilities located within an apartment or other multi-family housing complex.

*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 residence, or a place where a person routinely abides, resides, or lodges for a period of 4 or more consecutive days or nonconsecutive days in any month and which is not the person's permanent residence.

*Video Arcade Facility:* any facility that is open to the public, including persons who are 17 years of age or younger, is intended primarily for the use of pinball, video, or computer games and contains at least three pinball or video machines or computers for gaming uses.

*Public or Private Youth Center:* any recreational facility or gymnasium that is intended primarily for use by persons who are 17 years of age or younger and regularly provides athletic, civic, or cultural activities, whether publicly or privately owned or operated.

## *Section. 2 Offenses.*

For each person required to register on the Texas Department of Public Safety's Sex Offender Database (the "Database") because of a violation involving a victim who was a minor, it is unlawful for that person to establish a permanent residence or temporary residence in the City within 2,000 feet of any premises where children commonly gather, including a public or private school, day-care facility, public park, playground, public or private youth center, public swimming pool, or video arcade facility. For the purposes of this article, planted street medians shall not be considered public parks.

## *Section . 3 Evidentiary matters; measurements.*

(a) It shall be prima facie evidence that this article applies to a person if that person's record, or records pertaining to that person, appears on the Database and the Database indicates that the victim was a minor.

(b) For the purposes of determining the minimum distance separation, the 2,000-foot requirement 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, or, in the case of multiple residences on one property, measuring from the nearest property line of the property where the multiple residences are situated to the nearest property line of the premises where children commonly gather.

(c) A map depicting the prohibited areas identified pursuant to the terms of this Article and as approved by the City Council shall be maintained by the City of Gainesville. The City shall review the map at least annually for changes. The map will be available to the public at the City of Gainesville Police Department. A copy of the approved map is hereby incorporated into this Ordinance by reference as Exhibit "A" and such map may be amended from time to time through Council approval.

*Section . 4 Culpable mental state not required.*

Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by this article, and any offense shall be considered a strict liability offense.

*Section. 5 Affirmative defenses.*

It is an affirmative defense to the prosecution of an offense under this article that any of the following conditions apply:

- (1) The person required to register on the Database established his/her permanent or temporary residence in the City prior to the effective date of this article, and has complied with all sex offender registration laws of the State of Texas.
- (2) The person required to register on the Database is a minor, or was a minor when he/she committed the offense requiring such registration and was not convicted as an adult.
- (3) The premises where children commonly gather was opened or began to be used as such after the person established the permanent or temporary residence, and the person has complied with all sex offender registration laws of the State of Texas.
- (4) The information in the Database pertaining to that person is incorrect and, if corrected, this article would not apply to that person.

*Section. 6 Penalty.*

Any person violating the provisions of this article shall, upon conviction, be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense."

**SECTION 3.  
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 4.  
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 5.  
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 6.  
ENGROSSMENT AND ENROLLMENT**

The City Secretary of the City of Gainesville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and Effective Date clause in the minutes of the City Council of the City of Gainesville and by filing this Ordinance in the Ordinance records of the City and by amending the Code of Ordinances to reflect the changes adopted herein by Council.

**SECTION 7.  
EFFECTIVE DATE**

This Ordinance shall take effect from and after its date of passage in accordance with law, and it is so ordained.

**INTRODUCTION, FIRST READING**

INTRODUCED AND READ FOR THE FIRST TIME BEFORE THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 5<sup>TH</sup> DAY OF FEBRUARY 2008. DISTANCE BOUNDARY WAS SET AT 2,000 FEET.

7 AYES, 0 NAYS, 0 ABSENT, AND 0 ABSTENTIONS.

ATTEST:

  
KAY LUNNON, CITY SECRETARY

  
GLENN LOCH, MAYOR

**SECOND READING**

READ FOR THE SECOND TIME BEFORE THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 19<sup>TH</sup> DAY OF FEBRUARY 2008. DISTANCE BOUNDARY APPROVED AT 2,000 FEET.

6 AYES 0 NAYS 1 ABSENT, AND 0 ABSTENTIONS

ATTEST:

  
KAY LUNNON, CITY SECRETARY

  
GLENN LOCH, MAYOR

**THIRD READING AND ADOPTION**

READ FOR THE THIRD TIME BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE AND ADOPTED ON THE 4<sup>TH</sup> DAY OF MARCH 2008.

6 AYES, 0 NAYS, 1 ABSENT, AND 0 ABSTENTIONS

ATTEST:

  
KAY LUNNON, CITY SECRETARY

  
GLENN LOCH, MAYOR

# **EXHIBIT A MAP**