

ORDINANCE NO. 2017-71

AN ORDINANCE OF THE CITY OF BOERNE, TEXAS, AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES, ARTICLE VI. SEXUAL OFFENDERS, SEC. 15-121. DEFINITIONS; SEC. 15-122. SEXUAL OFFENDERS RESIDENCE PROHIBITION; SEC. 15-123. PROPERTY OWNERS PROHIBITED FROM RENTING TO SEXUAL OFFENDERS; SEC. 15-124. SEXUAL OFFENDERS PROHIBITED FROM ENTERING CHILD AREAS; AND PROVIDING FOR A PENALTY NOT TO EXCEED \$2000.00 FOR EACH VIOLATION OF THIS ORDINANCE

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 has a compelling interest in protecting the health, safety and welfare of children by reducing opportunities for sexual predators to come in contact with children; and

WHEREAS, victims of childhood sexual abuse are known to suffer long-lasting emotional, behavioral, psychological and other physical and mental health-related trauma; and

WHEREAS, based on criminological studies readily available in the public domain, the City reasonably believes that individuals commonly commit crimes in close proximity to where they reside; and

WHEREAS, based on criminological studies readily available in the public domain, and cited by courts upholding the validity of similar residency restrictions, to wit, *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2004), certiorari denied by *Doe v. Miller*, 546 U.S. 1034 (2005), "when convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault;" and

WHEREAS, the City reasonably believes that establishing a 1500 foot buffer zone between premises where children commonly gather, which includes schools, licensed day-care facilities, public or private playgrounds, public or private youth centers, public swimming pools, and video arcade facilities, and temporary or permanent residences of individuals required to register on the Texas Department of Public Safety's Sex Offender Database will reduce opportunities for sexual predators to come into contact with children; and

WHEREAS, the City reasonably believes that prohibiting individuals required to register on the Texas Department of Public Safety's Sex Offender Database from entering areas where children regularly congregate will reduce opportunities for sexual predators to come into contact with children; and

WHEREAS, the City Council wishes to adopt Article VI, Chapter 15, Code of Ordinances, to create residency restrictions regarding certain sexual offenders;

NOW THEREFORE; BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:

Section 1. That Chapter 15 of the Code of Ordinances is amended as follows:

ARTICLE VI

SEXUAL OFFENDERS

Sec. 15-121. Definitions. In this article:

Child Area means any lot or tract of land that is used as a:

- (a) school, licensed day-care facility, private or public playground, public or private youth center, public swimming pool, video arcade facility, public park or public library.

In this section, "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

Day-Care Facility means a facility licensed by the State of Texas, which provides care, training, education, custody, treatment, or supervision for children for less than twenty-four (24) hours a day.

Division means the Texas Board of Pardons and Paroles.

Public Park, means any land designated for public recreation or any athletic field that is owned, leased, or maintained by the City, including public swimming pools and the Boerne City Lake.

Releasee means a person who has a "reportable conviction or adjudication" for a "sexually violent offense," as those terms are defined by Section 62.001 (5) and (6) of the Texas Code of Criminal Procedure, involving a victim 17 years of age or younger at the time the offense and who is currently released on parole or to mandatory supervision for such sexually violent offense.

Residence, Permanent means the place within the City that a person registers or verifies under Article 62.152, Texas Code of Criminal Procedure, as the person's residence.

Residence, Temporary means a place where a person abides, lodges, or resides for a period of fourteen (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.

Sec. 15-122. Sexual Offenders Residence Prohibition

(a) It is unlawful for a person **Releasee** to establish a **Residence**, Permanent or Temporary, residence within 1500 feet of any Child Area ~~if the person has a "reportable conviction or adjudication" for a "sexually violent offense," as those terms are defined by Section 62.001 (5) and (6) of the Texas Code of Criminal Procedure, involving a victim 17 years of age or younger at the time the offense.~~

(b) For the purposes of subsection (a), measurement is made in a straight line, without regard to intervening structures or objects, from the nearest portion of the Residence, **Permanent or Temporary**, to the nearest property line of the Child Area. The police department will maintain a map showing the Child Areas on file at the Police Department.

(c) It is a defense to prosecution under this section that a person **Releasee** who has a Residence, **Permanent or Temporary**, within 1500 feet of a Child Area:

(1) Is under 18 years of age and:

(A) resides with the person's **Releasee's** parent or legal guardian; or

(B) has not been convicted of an offense after the effective date of this ordinance that:

(i) requires the person **Releasee** to register under Article 62.001(5), Texas Code of Criminal Procedure; and

(ii) Involves a victim or intended victim who was 17 years of age or younger;

(2) Established the Residence, **Permanent or Temporary**, and complied with all the sexual offender registration laws of the State of Texas prior to the effective date of this ordinance, and has not been convicted of an offense after the effective date of this ordinance that:

(A) requires the person to register under Article 62.001(5), Texas Code of Criminal Procedure; and

(B) involves a victim or intended victim who was 17 years of age or younger; or

(3) Established the Residence and complied with all sexual offender registration laws of the State of Texas prior to the date a new Child Area is established, and has not been convicted of an offense after the effective date of this ordinance, or the date the new child area is established, that:

(A) requires the person **Releasee** to register under Article 62.001(5), Texas Code of Criminal Procedure; and

(B) involves a victim or intended victim who was 17 years of age or younger.

(d) For purposes of Subsection (c), a person **Releasee** is considered to have established a residence at the correctional facility, as that term is defined under Section 1.07(14), Texas Penal Code, in which the person is confined for a conviction of any criminal offense and for more than seven consecutive days after the effective date of this ordinance.

(e) It is not a defense to prosecution under this section that a person **Releasee**, who is required to register as a sex offender under the Texas Code of Criminal Procedure, was allowed by mistake or error of the City to reside in a Residence that is within 1500 feet of any Child Area.

Sec. 15-123. Property Owners Prohibited from Renting to Sexual Offenders.

(a) It is unlawful for a property owner to rent a residential property located within 1500 feet of a Child Area to a person **Releasee** prohibited under this Article from residing within 1500 feet of any Child Area.

(b) It is a defense to prosecution under this section that a person **Releasee** prohibited under this Article from residing within 1500 feet of a Child Area is under 18 years of age and resides with the person's **Releasee's** parent or legal guardian.

(c) It is an affirmative defense to prosecution under this section that the property owner conducted a criminal history check with the Texas Department of Public Safety and reviewed the publicly available sex offender registration database that is maintained by the Texas Department of Public Safety and that at the time the property owner conducted the criminal history check and reviewed the sex offender database, the **Releasee's** criminal history did not include a record of a sexual offense or the **Releasee's** name did not appear in the database.

(c) For the purposes of subsection (a), measurement is made in a straight line, without regard to intervening structures or objects, from the nearest portion of the Residence to the nearest property line of the Child Area. The police department will maintain a map showing the Child Areas on file at the Police Department.

Sec. 15-124. Sexual Offenders Prohibited from Entering Child Areas.

(a) It is unlawful for any person **Releasee** to knowingly or intentionally enter into a Child Area if the person **Releasee** has a "reportable conviction or adjudication" for a "sexually violent offense," as those terms are defined by Section 62.001 (5) and (6) of the Texas Code of Criminal Procedure, involving a victim 17 years of age or younger at the time the offense.

(b) It is a defense to prosecution under this section that at the time a person **Releasee** **otherwise** prohibited from entering a Child Area pursuant to sub-section (a) entered the Child Area pursuant to Division authorization and:

(1) the person was the parent or legal guardian of a child 18 years of age or younger who resides with the person **and the child was on the premises of the Child Area;**

(2) **the child was on the premises of the Child Area to go to the Releasee's parole office;**

(3) **premises at which the Releasee is participating in a program or activity required as a condition of release;**

(4) **a residential facility in which the Releasee is required to reside as a condition of release;**

(5) **a private residence in which the Releasee is required to reside as a condition of release; or**

(6) **any other premises, facility, or location that is:**

(A) **designed to rehabilitate or reform the Releasee; or**

(B) authorized by the Division as a premises, facility, or location where it is reasonable and necessary for the Releasee to be present and at which the Releasee has legitimate business, including a church, synagogue, or other established place of religious worship, a workplace, a health care facility, or a location of a funeral.

Section 2. That the provisions of this ordinance are severable and the invalidity of any part of this ordinance will not affect the validity of the remainder of the ordinance.

Section 3. That any person found guilty of violating this ordinance will be fined not more than \$2,000.00 for each offense. For purposes of Section 15-122 each day of said violation shall constitutes a separate offense. Notice of the enactment of this ordinance will be given by publishing the ordinance or its descriptive caption and penalty in the City's official newspaper one time within 30 days of passage.

PASSED and APPROVED on first reading this the 8th day of August, 2017.

PASSED, APPROVED and ADOPTED on second reading this the ____ day of August, 2017.

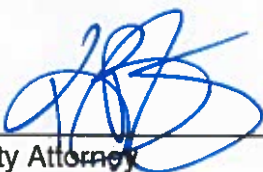
APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:



City Attorney

