

Memorandum



CITY OF DALLAS

DATE August 1, 2014

TO The Honorable Mayor and Members of the City Council

SUBJECT Sex Offender Residency Restriction Ordinance – City Council Briefing

On Wednesday, August 6, 2014, the City Council will be briefed by the City Attorney's Office and the Dallas Police Department on a review of Sex Offender Residency Restriction laws and ordinances. The City Attorney's Office and the Dallas Police Department will present options for adoption of such an ordinance which would restrict the location of a residence of a registered sex offender whose victim was a minor.

The briefing is attached for your review. Please let me know if you have questions or need additional information.

A handwritten signature in blue ink, appearing to read 'Warren M. S. Ernst'.

Warren M. S. Ernst
City Attorney

Attachment



Sex Offender Residency Restriction Ordinance

City Council Briefing
August 6, 2014

Introduction

- o At the request of the Mayor's Office, the City Attorney's Office and the Dallas Police Department are presenting:
 - o A brief review of state law and city ordinances that apply to sex offenders.
 - o An analysis of ordinances in nearby cities that place residency restrictions on registered sex offenders.
 - o Options for adopting an ordinance imposing residency restrictions on registered sex offenders in Dallas.

Registration Requirements Under State Law

- Chapter 62 of the Texas Code of Criminal Procedure requires an individual to register as a sex offender if he or she has a reportable conviction or adjudication for certain offenses.

Registration Requirements Under State Law

- Sex offenders are required to register with local authorities within seven days of arrival.
- Sex offenders are required to report any change in address.
- Sex offenders are required to register with local authorities if, on at least three occasions, they spend at least 48 hours in a city or county.

Registration Requirements Under State Law

- Sex offenders generally have to register for 10 years.
- Sex offenders are required to register for life for certain offenses.

Registration Requirements Under State Law

- Registration information is removed from state database when a sex offender is no longer required to register.

Exemptions

- o Exemptions from the registration requirement are available in certain circumstances:
 - o Young adult sex offenders with only one conviction or adjudication where:
 - o the conviction or adjudication occurred before September 1, 2011.
 - o the conviction or adjudication was based solely on the age of the victim,
 - o the difference in age between the sex offender and the victim is four years or less, and
 - o the victim was at least 15 years old.

Exemptions

- o Juvenile offenders if a court determines:
 - o registration would not increase public protection, or
 - o any increase in public protection is clearly outweighed by the anticipated public harm to the juvenile and the juvenile's family from requiring registration.

Dallas Regulations

- o Dallas currently regulates sex offenders under Dallas City Code §§ 31-17 and 31-17.1.

§ 31-17

- o Dallas City Code § 31-17 prohibits a specified sex offender from:
 - o Remaining on the premises of a school or child-care facility, or any street, sidewalk, or other public way adjacent to a school or child-care facility if asked to leave by a person in authority.
 - o Returning to the school or child-care facility within seven days of being asked to leave.
 - o Establishing a continual pattern of unauthorized entry onto the premises of a school or child-care facility.

§ 31-17

- o Section 31-17 defines a “specified sex offender” as a person required to register as a sex offender for the following offenses:
 - o Continuous sexual abuse of a young child.
 - o Indecency with a child.
 - o Sexual assault of a child or aggravated sexual assault of a child.
 - o Online solicitation of a minor.
 - o Sexual performance by a child.
 - o Possession or promotion of child pornography.
 - o Other violations listed in Article 62.001(5) of the Texas Code of Criminal Procedure involving a minor.
 - o Similar violations of federal law or the laws of another state or nation.

§ 31-17

- o Its is a defense to prosecution under § 31-17 that the person:
 - o Was the parent or guardian of a child attending the school or child-care facility, unless prohibited by court order.
 - o Was a student at the school.
 - o Had prior written permission to be present from the chief administrative officer of the school or child-care facility.
 - o Was in transit between two points on a public street.

§ 31-17.1

- o Dallas City Code § 31-17.1 prohibits:
 - o A registered sex offender from living in the same dwelling unit with another registered sex offender.
 - o A landlord from allowing a registered sex offender to live in the same dwelling unit with another registered sex offender.

§ 31-17.1

- o It is a defense to prosecution under § 31-17.1 that:
 - o All of the registered sex offenders living in the same dwelling unit are related to each other by blood, marriage, adoption, or foster care placement authorized by the state;
 - o The victim was between the ages of 14 and 17, was a willing participant in the sexual activity, and not more than four years younger than the sex offender; or
 - o The dwelling unit is a lawful halfway house, overnight general purpose shelter, homeless assistance center, or institute for special education for the housing, rehabilitation, and training of criminal offenders.

Dallas Sex Offender Registration Stats

- o 3364 registered sex offenders
- o 1179 of offenders supervised (currently under probation/parole)
 - o 993 with Special Condition – Child Safety Zone
- o 2185 of offenders not supervised (released from probation/parole)
 - o 1763 were originally under Special Condition – Child Safety Zone

Special Condition (Child Safety Zone)

- o Special Condition Child Safety Zone – prohibits offenders from going in, on or within a specified distance of a premise where children commonly gather (i.e., schools, day care, playgrounds)
- o Child Safety Zones apply to paroled/probated offenders who are serving a sentence for a specified offense and whose victim was a child younger than seventeen years of age
- o The most common distance imposed on an offender is 1000 feet

Restrictions in Nearby Cities

- **Arlington** restricts residency of “habitual offenders” near public parks, schools, and day care centers.
- **Carrollton, Grand Prairie, and Plano** restrict residency near public parks, schools, and day care centers.
- **Frisco and Richardson** restrict residency near public parks, schools, day care centers, and recreational facilities.
- **Denton and Lewisville** restrict residency near public parks, schools, day care centers, recreational facilities, and video arcades.

Restrictions in Nearby Cities

- **McKinney** restricts residency near public parks, schools, day care centers, libraries, public swimming pools, and youth centers.
- **Mesquite** restricts residency near public parks, schools, day care centers, recreational facilities, facilities teaching children arts or sports classes, and churches.
- **Fort Worth, Garland, and Irving** do not impose residency restrictions.

Restrictions in Other Cities

- **San Antonio** restricts residency near public parks.
- **El Paso** restricts residency of “habitual offenders” near public parks, schools, and day care centers.
- **Austin** and **Houston** do not impose residency restrictions.

States With Restrictions

- o Alabama
 - o Cannot reside or work within 2,000 feet of a school or child-care facility.
- o Arkansas
 - o Most serious offenders cannot reside within 2,000 feet of a school or child-care facility.
- o California
 - o Sexually violent predator cannot reside within $\frac{1}{4}$ mile of a school.
 - o High risk offender cannot reside within $\frac{1}{2}$ mile of a school.

States With Restrictions

- o Florida

- o If victim was under 18, cannot reside within 1,000 feet of a school or where children congregate.

- o Georgia

- o Cannot reside, work, or loiter within 1,000 feet of a school, child-care facility, school bus stop, or where minors congregate.

- o Illinois

- o Cannot reside within 500 feet of a school, school property, play ground, or child-ground facility.

States With Restrictions

- o Iowa

- o Cannot reside within 2,000 feet of a school or child-care facility.

- o Kentucky

- o Cannot reside within 1,000 feet of a school, child-care facility, ball field, or playground.

- o Louisiana

- o Cannot reside within 1,000 feet of a school or related school activities.

States With Restrictions

- o Michigan
 - o Cannot reside within 1,000 feet of school safety zone.
- o Ohio
 - o Cannot reside within 1,000 feet of a school, child-care facility, or where children gather.
- o Oklahoma
 - o Cannot reside within 2,000 feet of a school.

States With Restrictions

- o South Dakota
 - o Cannot reside or loiter within 500 feet of community safety zones.
- o Tennessee
 - o Cannot reside within 1,000 feet of schools, child-care facilities, or the victim.
- o Washington
 - o High risk offender cannot reside within 880 feet of a school or child-care facility.

Typical Municipal Ordinance

- o Imposes residency restrictions on individuals required to register on the Texas Department of Public Safety's database because of an offense involving a minor.
- o Prohibited from living within a specified distance of "areas where children commonly gather."
 - o Typically 500 to 2,000 foot radius.

Typical Municipal Ordinance

- Prima facie evidence that ordinance applies to a person if that person's information appears in database.
- No culpable mental state required.
- Distances measured in a straight line from property line to property line.

Typical Municipal Ordinance

- o Affirmative defenses:
 - o Person previously established residence and complied with all registration laws prior to adoption of ordinance.
 - o Person was a minor when the offense was committed and was not convicted as an adult.
 - o Person required to register is a minor.
 - o Premises where children commonly gather opened after person established residence and complied with all registration laws.
 - o Info in the database is incorrect, and would not apply to the person if corrected.

Most Restrictive Ordinance

- o Establishes a 2,000 foot radius around “areas where children commonly gather.”
 - o McKinney and Richardson
- o Prohibits landlords from knowingly renting a dwelling to a sex offender within a certain radius of “areas where children commonly gather.”
 - o Addison, Balch Springs, Grapevine, Mansfield, Richland Hills, and Seagoville

Potential Benefits of Residency Ordinance

- o Covers both supervised and unsupervised offenders
 - o Currently unsupervised offenders have no limitations on where they can reside
- o Improves sense of community safety
- o Demonstrates the city is proactive in attempting to safeguard our most vulnerable residents
- o Police Department believes an ordinance has value if it prevents even one child from being a victim

Recommendation

- o The police department supports the council's actions to draft a well crafted City of Dallas Ordinance addressing registered sex offender residency

Proposed Ordinance

- o Prohibit specified sex offenders from residing within a specified distance of premises where children commonly gather.
- o Premises where children commonly gather to include some or all of the following uses:
 - o Child-care facility
 - o Playground
 - o Public park
 - o Public or private school

Proposed Ordinance

- Specified sex offender is a person who is required to register as a sex offender and whose victim was a minor.

Proposed Ordinance

- o Adopt typical ordinance requirements for:
 - o Measuring distance
 - o Prima facie evidence
 - o Defenses to prosecution

Proposed Ordinance

- o Recommend additional gender-neutral young offender defense to prosecution paralleling defense in § 31-17.1(d)(2):
 - o The violation is the only sex crime on the sex offender's record.
 - o The victim was between the ages of 14 and 17.
 - o The victim was a willing participant in the sexual activity.
 - o The sex offender is not more than four years older than the victim.

Next Steps

- o Gather input from city council.
- o Draft ordinance.

Appendix

Distances in Other Cities

- o Arlington – 1,000 feet
- o Carrollton – 1,000 feet
- o Denton – 1,500 feet
- o El Paso – 1,000 feet
- o Frisco – 1,000 feet
- o Grand Prairie – 1,000 feet
- o Lewisville – 1,500 feet
- o McKinney – 2,000 feet
- o Mesquite – 1,000 feet
- o Plano – 1,000 feet
- o Richardson – 2,000 feet
- o San Antonio – 1,000 feet

Registration Requirement

- o A reportable conviction or adjudication of the following offenses requires registration under state law:
 - o Continuous sexual abuse of a young child
 - o Indecency with a child
 - o Sexual assault
 - o Aggravated assault
 - o Aggravated sexual assault
 - o Prohibited sexual conduct
 - o Compelling prostitution
 - o Sexual performance by a child
 - o Possession or promotion of child pornography
 - o Aggravated kidnapping (if done with the intent to abuse the victim sexually)
 - o Burglary (if done with the intent to commit a sexual offense or kidnapping)
 - o Unlawful restraint, kidnapping, or aggravated kidnapping (under certain circumstances)

Registration Requirements

- o Sex offenders are required to register for life for the following offenses:
 - o sexually violent offenses
 - o human trafficking
 - o prohibited sexual conduct
 - o compelling prostitution of a minor
 - o possession or promotion of child pornography
 - o indecency with a child (if combined with other reportable offences)
 - o unlawful restraint, kidnapping, or aggravated kidnapping of a minor (if combined with other reportable offences)
 - o obscenity involving a minor