

ORDINANCE NO. 20230620

AN ORDINANCE OF THE CITY OF KRESS, TEXAS REGULATING SEX OFFENDER RESIDENCY WITHIN THE CITY AND ESTABLISHING CHILD SAFETY ZONES, MAKING IT UNLAWFUL FOR REGISTERED SEX OFFENDERS TO RESIDE WITHIN 1,000 FEET OF CHILD SAFETY ZONES; PROVIDING EXCEPTIONS TO THE ORDINANCE; PROHIBITING PROPERTY OWNERS FROM RENTING REAL PROPERTY TO REGISTERED SEX OFFENDERS; PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERABILITY CLAUSE, FINDINGS OF FACT AND PROVIDING FOR OPEN MEETINGS.

WHEREAS, the City of Kress, Texas (herein the "City") is a general law city having authority to utilize police power regulation for the health, safety and general welfare of the citizens of the City; and

WHEREAS, the City Council of the City is deeply concerned about the numerous and recent occurrences in our State and nation whereby sex offenders convicted of sexual offenses involving children have been released from custody and repeat the unlawful acts for which they had been originally convicted; and

WHEREAS, the City Council finds from evidence and statistical reports reveal that the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes against children; and

WHEREAS, the City is becoming an increasingly attractive place for families with young children; and

WHEREAS, the 2017 Texas Legislation adopted House Bill 1111, effective September 1, 2017, which adds Section 341.906 to Chapter 341 of the Local Government Code, expressly authorizing the governing body of a general-law municipality to restrict registered sex offenders from being within a specific distance of a child safety zone in the municipality; and

WHEREAS, the City Council finds that regulating sex offender residency within the City and establishing child safety zones provide better protection for children gathering in the City and is necessary to protect the health, safety and general welfare of children; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KRESS, TEXAS, THAT:

SECTION 1. FINDINGS OF FACT. The recitals stated above are hereby found to be true and correct and are incorporated herein as findings of fact.

SECTION 2. "Child Safety Zones", "Distance Requirements", and other definitions relevant to the interpretation and enforcement of this ordinance are as follows:

Sec. 2-1. - Definitions. For the purpose of this ordinance, the following terms, words, and the derivations thereof shall have the meanings given herein.

"Registered Sex Offender" means an individual who is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure. The term *"Registered Sex Offender"* includes any person required to be registered on the Texas Department of Public Safety's Sex Offender Database (the "database").

"Child Safety Zone" means premises where children commonly gather. The term includes a school, day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children. The term does not include a church, as defined by Section 544.251, Texas Insurance Code.

"Day-care center" is a facility providing care, training, education, custody, treatment, or supervision for 5 or more children for less than 24 hours a day.

"Playground," "premises," "school," "video arcade facility," and *"youth center"* have the meanings assigned by Section 481.134, Texas Health and Safety Code.

"Minor" is a person under the age of 17.

"Park" is a parcel of land, community park, neighborhood park, playground, swimming pool, indoor facility, outdoor facility, recreation center, field, athletic field, hike and bike trails, greenbelt areas and any other area in the City owned, leased and/or used by the City, and devoted to active or passive recreation, including any related facilities, parking lots and/or amenities, save and except any of the foregoing that has a stadium, arena and/or permanent seating and primarily used for sporting events, special events and/or other entertainment any of which is not managed by the City.

"Permanent residence" is a place where a person abides, lodges, or resides for 14 or more consecutive days. *"Premises where children commonly gather"* means areas including all improved and unimproved lots where the following are located or planned to be located: a public park, private or public school (excluding in-home schools), day-care center, or private recreational facility, including a park, water park, pool, playground, skate park, arcade or youth athletic field owned by a residential property owners association, or for which an entrance, admission, or rental fee is charged.

"Recurring visitor" is a person who on at least three (3) occasions during any month spends more than 48 consecutive hours in the city.

"Temporary residence" is 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 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Sec. 2-2. - Residency requirements.

(a) It shall be unlawful for a registered sex offender to establish a permanent residence, establish a temporary residence or to be a recurring visitor at a residence, located within 1,000 feet of a child safety

zone.

(b) It shall be unlawful to let or rent any place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence, temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this Ordinance, if such place, structure or part thereof, manufactured home, trailer, or other conveyance, is located within 1,000 feet of a child safety zone.

Sec. 2-3. – Halloween. A child sex offender shall not on each October 31st leave decorations or an exterior porch light on or otherwise invite trick-or-treaters to the premises.

Sec. 2-4. - Evidentiary matters; measurement.

(a) For the purpose of determining the minimum distance of separation under this Ordinance, the distance 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 a child safety zone, as defined herein, or, in the case of multiple residences on one property, measuring from the nearest property line of the permanent or temporary residence to the nearest property line of a child safety zone, as defined herein.

(b) A map depicting the prohibited areas shall be maintained by the City, and it shall be reviewed and updated not less than annually for changes. Said map will be available to the public on the City's website.

(c) Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined in this ordinance.

Sec. 2-5. - Affirmative defenses. The following shall be affirmative defenses to prosecution under this ordinance that any of the following conditions apply:

(a) It shall be an affirmative defense under Sec. 2-2 (a) if the person required to register on the database established the permanent or temporary residence and has complied with all of the sex offender registration laws of the State, prior to the date of the adoption of this article, provided, however that if the person required to register on the database established the permanent or temporary residence through a lease or other rental arrangement in effect on the effective date of this article, this affirmative defense shall not apply upon termination of the lease/rental arrangement that is in effect on the effective date of this Ordinance.

(b) It shall be an affirmative defense under Sec. 2-2 (a) if the person required to register on the database lives in a medical facility for care where services are designed to meet a person's health or personal care needs during a short or long period of time. Medical facilities are defined as hospitals or inpatient facilities.

(c) It shall be an affirmative defense under Sec. 2.2 (a) if the child safety zone was designated, declared and/or determined after the registered sex offender established the permanent or temporary residence and complied with all sex offender registration laws of the State provided, however, that if the person required

to register on the database established the permanent or temporary residence through a lease or other rental arrangement in effect on the effective date, this affirmative defense shall not apply upon termination of the lease/rental arrangement that is in effect on the effective date of this Ordinance.

(d) It shall be an affirmative defense under Sec. 2.2 if the information on the database is incorrect, and, if corrected, this article would not apply to the person who was erroneously listed on the database.

(e) The person required to register as a sex offender was a minor when he/she committed the offense requiring such registration and was not convicted as an adult.

(f) The person was within a child safety zone performing community service ordered by a court.

(g) A registered sex offender may apply for an exemption from this ordinance by submitting an application in writing to the City Secretary stating fully and in detail the basis for the claimed exemption. The City Council shall conduct such inquiry as it deems necessary to consider the claimed exemption and make determination if the exemption should be granted consistent with this Ordinance and applicable law.

SECTION 3. PENALTY PROVISION. Any person who violates the provisions of this Ordinance shall be charged with a Class C misdemeanor; and upon conviction shall be fined an amount not to exceed Five Hundred and No/100 Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 4. SAVINGS CLAUSE. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting sex offender regulations and child safety zones that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 5. EXEMPTIONS. A registered sex offender who established residency in a residence located within 1,000 feet of a child safety zone before effective date of this Ordinance, is exempt from the application of this ordinance, provided that the exemption only applies:

- (a) To areas necessary for the registered sex offender to have access to and inhabit the residence: and
- (b) To the period the registered sex offender maintains residency in such residence.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrases be declared void.

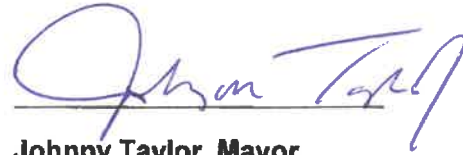
SECTION 7. The City Secretary is authorized and directed to cause publication of the descriptive caption and penalty clauses of this ordinance as provided by law.

SECTION 8. EFFECTIVE DATE. This Ordinance shall be in full force and effect after its passage and upon publication as required by law.

SECTION 9. OPEN MEETINGS. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act.

PASSED AND APPROVED on this the 20th day of June , 2023.

The City of Kress, Texas

A handwritten signature in blue ink, appearing to read "Johnny Taylor", written over a horizontal line.

Johnny Taylor, Mayor

Attest:

A handwritten signature in blue ink, appearing to read "Galan Owen", written over a horizontal line.

Galan Owen, Mayor Pro Temp