

CITY OF HACKBERRY, TEXAS

ORDINANCE NO. 270-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HACKBERRY, TEXAS, ESTABLISHING RESIDENCY RESTRICTIONS FOR SEX OFFENDERS THAT PROHIBIT RESIDENCY OF A REGISTERED SEX OFFENDER WITHIN ONE THOUSAND (1000) FEET OF A CHILD SAFETY ZONE; PROVIDING DEFINITIONS; PROVIDING RESIDENCE LOCATION RESTRICTIONS; ADOPTING PROCEDURES TO APPLY FOR EXEMPTIONS FROM THE ORDINANCE AND PROVIDING A SCOPE OF EXEMPTION; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF A FINE IN AN AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500) FOR EACH OFFENSE, AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED UPON EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING FOR PUBLICATION AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City Council of the City of Hackberry (the "City Council") seeks to provide for the public health, safety, and welfare of its citizens; and

**WHEREAS**, the City Council has determined and declares that sex offenders remain a serious threat to public safety; and

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

**WHEREAS**, the City Council has investigated and determined that it will be beneficial and advantageous to the citizens of the City of Hackberry, Texas ("Hackberry") to establish residency restrictions for sex offenders; and

**WHEREAS**, the City Council has investigated and determined that it would be in the best interest of the citizens of Hackberry to adopt this Ordinance to establish the regulations set forth below, and that such regulations are in the best interests of public health, safety and welfare.

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

**SECTION 1. INCORPORATION OF PREMISES.** The above and foregoing recitals are true and correct and are findings incorporated into this Ordinance and made a part hereof for all purposes.

**SECTION 2. ORDINANCE ADOPTED.** The following Ordinance establishing residency restrictions for sex offenders prohibiting residency of a Registered Sex Offender within one thousand (1000) feet of a child safety zone is hereby adopted and shall be and read as follows:

**Section 2.01. Definitions**

**(A)** "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 Texas Insurance Code, Section 544.251, as amended.

**(B)** "Child-care facility" means a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

**(C)** "City" means City of Hackberry.

**(D)** "City Administrator/City Secretary" means the City Administrator/City Secretary of the City of Hackberry or designee.

**(E)** "Day Care Center" means a child-care facility (defined herein) that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

**(F)** "Playground" means any outdoor facility that is not on the premises of a School and that (i) is intended for recreation; (ii) is open to the public; and (iii) contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards.

**(G)** "Premises" means real property and all buildings and appurtenances pertaining to the real property.

**(H)** "Registered Sex Offender" or "Sex Offender" means an individual who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, as amended.

(I) "School" means a private or public elementary or secondary school, or a day-care center, as defined by herein.

(J) "Video arcade facility" means any facility that (i) is open to the public, including persons who are 17 years of age or younger; (ii) is intended primarily for the use of pinball, computer or video machines; and (iii) contains at least three pinball, computer, or video machines.

(K) "Youth center" means any recreational facility or gymnasium that (i) is intended primarily for use by persons who are 17 years of age or younger; and (ii) regularly provides athletic, civic, or cultural activities.

**Section 2.02. Residence location restrictions.**

(A) The terms used in this section which have not been defined in Section 2.01, "Definitions", shall be defined as provided in the City of Hackberry Zoning Regulations or, for any term not defined in City zoning regulations, as provided in Texas Health and Safety Code §481.134, as amended; provided, however, that for purposes of this section, planted street medians shall not be public parks.

(B) It shall be unlawful for a person required to register on the Texas Sex Offender Database under Chapter 62 of the Texas Code of Criminal Procedure, as amended, to establish either a permanent residence or a temporary residence within one-thousand (1,000) feet of any premises where children commonly gather, including, but not limited to, a public or private park, public or private school, day-care center, public or private playground, public or private youth center, public or private recreation center, public swimming pool, video arcade facility or public stadium or playfield.

**Section 2.03 Applications For Exemption.**

A sex offender who has established residency in a residence located within 1,000 feet of a child safety zone prior to the date of the adoption of this ordinance may apply for an exemption from these requirements by submitting a written request to the City Administrator/City Secretary documenting the date residency was established, specifying the background, reason, and scope of the requested exemption. The City Administrator/City Secretary may seek additional information from the requestor and shall issue a written determination on the requested exemption within ten (10) business days from the filing of the request. The requestor may appeal to the City Council from the determination of the City Administrator/City Secretary by filing such appeal request in writing to the

City Administrator/City Secretary within ten (10) business days of the date of the written determination of the City Administrator/City Secretary.

**Section 2.04. Scope of Exemption.**

Any exemption granted shall: (1) only apply to the areas necessary for the registered sex offender to have access to and live in the residence; and (2) only be effective during the period the sex offender maintains residency in the residence.

**SECTION 3. CUMULATIVE REPEALER.** This Ordinance shall be cumulative of all other ordinances and shall not repeal any of the provisions of such ordinances except for those instances where there are direct conflicts with the provisions of this ordinance. Ordinances, or parts thereof, in force at the time this ordinance shall take effect and that are inconsistent with this ordinance are hereby repealed to the extent that they are inconsistent with this ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated or has arisen under or pursuant to such other ordinances on this date of adoption of this ordinance shall continue to be governed by the provisions of such ordinance and for that purpose the ordinance shall remain in full force and effect

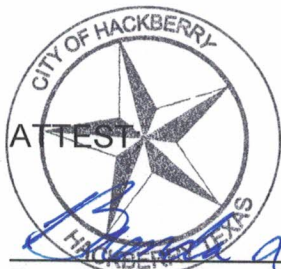
**SECTION 4. SAVINGS.** All rights and remedies of the City of Hackberry, Texas are expressly saved as to any and all violations of the provisions of any other ordinance affecting zoning which have secured at the time of the effective date of this ordinance; and, as to such accrued violations and all 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 court.


**SECTION 5. SEVERABILITY.** The provisions of the ordinance are severable. However, in the event this ordinance or any procedure provided in this ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and lawful provisions shall be of full force and effect and the City shall promptly promulgate new revised provisions in compliance with the authority's decisions or enactment.

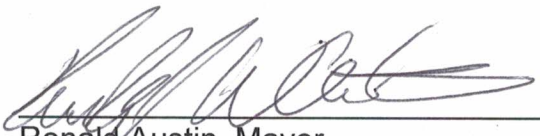
**SECTION 7. PENALTY.** Any person, firm, corporation or business entity intentionally, knowingly or recklessly violating this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00. Each continuing day's violation under this ordinance shall constitute a separate offense. The penal provisions imposed under this ordinance shall not preclude the city from filing suit to enjoin the violation or taking other legal action as allowed by law.

**SECTION 8. EFFECTIVE DATE.** This Ordinance shall take effect upon its passage and publication as required by law. The City Secretary is directed to publish the caption of this Ordinance as required law.

**DULY PASSED AND APPROVED** by the City Council of the City of Hackberry, Texas this 9th day of July 2019.



  
Brenda Lewallen, City Secretary

  
Ronald Austin, Mayor

APPROVED AS TO FORM:

  
Patricia A. Adams, City Attorney