

ORDINANCE NO. 2019-05

AN ORDINANCE OF THE TOWN OF BROCK, TEXAS PROVIDING FOR RESIDENCY RESTRICTIONS FOR CERTAIN SEX OFFENDERS; PROVIDING AFFIRMATIVE DEFENSES AND EXEMPTIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL TOWN NEWSPAPER; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Town of Brock, Texas, is a Type "C" General Law municipality acting under the authority vested by state law; and

WHEREAS, the Town Commission of the Town of Brock finds and declares that sex offenders can be and often are a threat to public safety, and

WHEREAS, the Town Commission finds from the evidence that the recidivism rate for released sex offenders significant, especially for those who commit their crimes against children, and

WHEREAS, the Town Commission finds from the evidence that restrictions on the proximity of sex offenders to schools or other facilities that might create temptation to repeat offenses are one way to minimize the risk of recidivism, and

WHEREAS, the Town Commission finds that providing for the public safety, restrictions where a registered sex offender may go in, on, or within a specified distance of a child safety zone in the municipality are necessary and establishing a policy to restrict the property available for residence of registered sex offenders will provide better protection for children of Brock, and

WHEREAS, the Town Commission desires to establish child safety zones and distance restrictions for registered sex offenders in order to protect the health, safety, and welfare of its residents.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF BROCK, TEXAS:

PART 1. That the foregoing recitals are true and correct and are incorporated into this Ordinance as findings of facts as if set forth herein.

PART 2. That a Child Safety Zone Provisions as relating to Sex Offenders, is hereby adopted as follows:

1. Definitions. For the purposes of this Ordinance, the following terms, words, and the derivations thereof shall have the meanings given herein:

Child safety zone. 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, Insurance Code, as a facility that is owned by a religious organization and is used primarily for religious services, but may include the portions of a church used for a day-care center, parents' day out facility or a private elementary or secondary school.

Minor. A person younger than seventeen (17) years of age.

Permanent residence. A place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

Playground, premise, school, video arcade facility, and youth center. Shall have the meanings assigned by section 481.134, Health and Safety Code.

Registered sex offender. An individual who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

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

2. Offenses

(a) For each person required to register as a sex offender pursuant to chapter 62, Code of Criminal Procedure, on the state department of public safety's sex offender database (the "database") because of a reportable conviction or adjudication involving a victim younger than 17 years of age, it is unlawful for that person to establish a permanent residence or temporary residence within 1,000 feet of any child safety zone.

(b) It is unlawful to let or rent any place, structure or part thereof, with the knowledge that it will be used as a permanent residence or temporary

residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this division, if such place, structure or part thereof is located within 1,000 feet of any child safety zone.

- (c) Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender, which requires the registration under Chapter 62 of the Code of Criminal Procedure.

3. Evidentiary matters; measurements

- (a) It shall be prima facie evidence that this division applies to such a person if that person's record appears on the database and the database indicates that the victim was younger than 17 years of age.
- (b) For the purposes of determining the minimum distance separation, the 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 child safety zone, or, in the case of multiple residences on one property, the distance requirement shall be measured from the nearest portion of the building or structure used as a permanent or temporary residence by the sex offender or the parking lot or driveway providing access thereto, whichever is closest to the nearest property line of the child safety zone.
- (c) A map depicting the prohibited areas shall be created by the town and maintained by the town. The town shall review the map annually for changes. The map will be available to the public at the fire station and on-line.

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 division.

5. Exemptions; affirmative defenses.

- (a) A person who established residency in a temporary or permanent residence located within 1,000 feet of a child safety zone before October 21, 2019, is exempt from the application of this division, to the extent they apply to areas necessary for the registered sex offender to have access to and to live in the residence; and for the period the registered sex offender maintains residency in the residence.

- (b) A person subject to this division may seek an exemption from its application by submitting a request in writing to the City Commission specifying the background, reason, and scope of the requested exemption. The Town Commission may seek additional information from the requestor, and shall issue a written determination on the requested exemption within ten (10) business days from the date of the meeting where the exemption was considered.
- (c) It is an affirmative defense to prosecution that any of the following conditions apply:
 - (1) The person required to register on the database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
 - (2) The person required to register on the database is a minor.
 - (3) The premises where children commonly gather, as specified herein, within 1,000 feet of the permanent or temporary residence of the person required to register on the database, was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state.
 - (4) The information on the database is incorrect, and, if corrected, this division would not apply to the person who was erroneously listed on the database.
 - (5) the registered sex offender was in, on, or within the specified distance of the child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

PART 3. Penalty. That any person, firm, corporation agent or employee thereof who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 4. Governmental function; liability. All of the regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the Town Commission or any Town official or employee charged with the enforcement of this division, acting for the Town in the

discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

PART 5. Injunctive relief. Any violation of this division can be enjoined by a suit filed in the name of the Town in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this division or in the code of the Town.

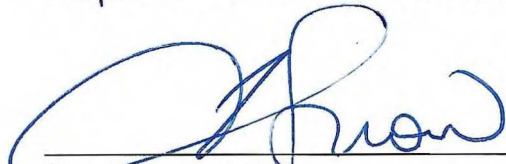
PART 6. This Ordinance shall be cumulative of all other ordinances of the Town except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance. In even of conflict, the conflicting provisions of such other ordnances are hereby repealed.

PART 7. It is hereby declared the intention of the Town Commission that the phrases, clauses, sentences paragraphs and sections of this Ordinance are severable, and if any section, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or otherwise illegal by the valid judgment or decree of any court of competent jurisdiction, such event shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this, since the same would have been enacted by the Town Commission without such unconstitutional or illegal phrase, clause, sentence, paragraph, or section.

PART 8. The Town Clerk of Brock is hereby directed to publish in the official newspaper of the Town of Brock, the caption, penalty clause and effective date.

Said ordinance, being a penal ordinance, becomes effective immediately from and after its passage and publication in accordance with the provisions of the laws of the State of Texas.

PASSED AND APPROVED ON THE 21st DAY OF OCTOBER, 2019.



Troy Snow, Mayor



Kerrie Prentice, Clerk