

ORDINANCE NO. 2007-20

AN ORDINANCE AMENDING CHAPTER 54, OFFENSES AND MISCELLANEOUS PROVISIONS, OF THE SAGINAW CITY CODE, AS AMENDED, BY MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 2,000 FEET OF ANY DEFINED PREMISE WHERE CHILDREN COMMONLY GATHER, INCLUDING A PLAYGROUND, SCHOOL, DAY CARE FACILITY, VIDEO ARCADE FACILITY, PUBLIC OR PRIVATE YOUTH CENTER, PARK OR COMMUNITY SWIMMING POOL; BY MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 500 FEET OF ANOTHER SEX OFFENDER; PROVIDING THAT A CULPABLE MENTAL STATE IS NOT REQUIRED FOR COMMITTING AN OFFENSE UNDER THIS REGULATION; PROVIDING FOR AFFIRMATIVE DEFENSES; PROVIDING FOR A FINE OF UP TO \$500 FOR EACH OFFENSE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Saginaw is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council of the City of Saginaw finds and declares that sex offenders are a serious threat to public safety; and

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

WHEREAS, the City Council 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 City Council finds that establishing a policy to restrict the property available for residence of sex offenders will provide better protection for children gathering in the City; and

WHEREAS, Article 42.12 (13B) of the Texas Code of Criminal Procedure provides a 1,000 foot safety zone for children, as a condition of probation for those convicted of certain sexual offenses; and

WHEREAS, the United States 8th Circuit Court of Appeals recently issued an opinion in the case of *Doe v. Miller*, 405 F. 3d 700 (8th Cir. 2005), in which the Court upheld similar residency restrictions contained in the State of Iowa Statutes, and found the restrictions to be constitutional; and

WHEREAS, the City of Saginaw has the authority, pursuant to Section 54.004 of the Texas Local Government Code, and the Charter to adopt provisions governing the residency of certain sex offenders in order to protect the health, safety, and welfare of its residents.

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

SECTION 1.

That Chapter 54 of the Saginaw City Code is hereby amended by adding an Article IV. "Regulation of Sex Offender Residency", which said Article reads as follows:

ARTICLE IV. REGULATION OF SEX OFFENDER RESIDENCY

Sec. 54-91. Definitions.

For the purposes of this Section, the following terms, words, and the derivations thereof shall have the meanings given herein.

Child-care facility means a facility licensed, certified, or registered by the Texas Department of Human Services 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.

Community Swimming Pool means any man-made permanently installed or non-portable structure, basin, chamber, or tank containing an artificial body of water that is used for swimming, diving, aquatic sports, or other aquatic activity other than a residential pool and that is operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use. The pool may be either publicly or privately owned. The term does not include a spa or a decorative fountain that is not used as a pool.

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

Offender means a person required to register as a sex offender pursuant to Chapter 62, Code of Criminal Procedure, on the Texas Department of Public Safety's Sex Offender Database because of a reportable conviction or adjudication involving a minor.

Park means any public land designated by a political subdivision for, and used by the public as, a park, recreation area or wildlife refuge.

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

Residential Swimming Pool means a pool or spa that is located on private property under the control of the property owner or the owner's tenant and that is intended for use by not more than two resident families and their guests. It includes a pool or spa serving only a single-family home or a duplex.

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

Sec. 54-92. Offenses.

(a) For each person required to register as a sex offender pursuant to Chapter 62, Code of Criminal Procedure, on the Texas 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 2,000 feet of any defined premise where children commonly gather, including a playground, school, day care facility, video arcade facility, public or private youth center, park or community swimming pool, as those terms are defined in Article 481.134 of the Health and Safety Code of the State of Texas or as defined herein.

(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 article, if such place, structure or part thereof, is located within 2,000 feet of any premises where children commonly gather, including a playground, school, day care facility, video arcade facility, public or private youth center, park or community swimming pool, as those terms are defined in Section 481.134 of the Health and Safety Code of the State of Texas or as defined herein.

(c) It is unlawful for an offender to establish a permanent residence or temporary residence within 500' feet of an established permanent residence or temporary residence of another offender, regardless of whether the offenders are related by blood, marriage or adoption.

(d) 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.

Sec. 54-93. Evidentiary matters; measurements.

(a) It shall be prima facie evidence that this Section 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 premises where children commonly gather, as described herein above, 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 premises where children commonly gather, as described herein above.

(c) A map depicting the prohibited areas shall be created by the City and maintained by the Saginaw Police Department. The City shall review the map annually for changes. Said map will be available to the public at the Saginaw Police Department.

Sec. 54-94. 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 Section.

Sec. 54-95. Affirmative defenses.

It is an affirmative defense to prosecution that any of the following conditions apply:

- (1) 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 of Texas, prior to the date of the adoption of this ordinance.
- (2) 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.
- (3) The person required to register on the Database is a minor.
- (4) The premises where children commonly gather, as specified herein, within 2,000 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 of Texas.

- (5) The information on the Database is incorrect, and, if corrected, this Section would not apply to the person who was erroneously listed on the Database.

SECTION 2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred and No/100 Dollars (\$500) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 3.

This Ordinance shall be cumulative of all provisions of ordinances and of the Saginaw City Code, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, paragraph, sentence, clause, or phrase of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

SECTION 5.

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 City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Saginaw 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.

SECTION 6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Saginaw in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Saginaw City Code.

SECTION 7.

The City Secretary of the City of Saginaw is hereby directed to publish at least twice in the official newspaper of the City of Saginaw, the caption and the penalty clause of this ordinance in accordance with Section 52.013(b) of the Local Government Code.

SECTION 8.

This ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS ___ DAY OF _____, 2007.

MAYOR

ATTEST:

CITY SECRETARY

EFFECTIVE: _____
APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY