



Date: January 14, 2020  
To: Jeff Barnett, Chief of Police  
From: Dago Pates, Officer

Re: Regulation of Sex Offender Residency Establishing Child Safety Zones Ordinance and Background Information

Drafting this ordinance for the city of Kyle began with researching ordinances in place with other cities within central Texas. After eight similar ordinances were reviewed, a draft was created mirroring Cedar Park's ordinance and the portions in red were added from Pflugerville's Ordinance (Section 1).

Section 2 shows current statistics of local cities, showing population, registered sex offenders, if they have a related ordinance and if so, how many feet. The distance of Child Safety Zones ranged from 1,000-2,000 ft. The median of 1,500 ft was selected for the Kyle ordinance draft.

Section 3 is a variety of information that was gathered or located while researching Child Safety Zones.

## Section 1:

### ARTICLE CHILD SAFETY ZONES

**Finding and Intent** *\*(This portion is for the online format of the ordinance, that does not have the "where as" portion listed)\**

(1) The city council finds that repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the health, safety and welfare of children. Sexual offenders are extremely likely to use physical violence and to repeat their offense and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(2) It is the intent of this section to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residences.

## Definitions

**Child sex offender.** A person who is required to register on the Texas Department of Public Safety's Sex Offender Database (the "database") because of a conviction(s) involving a minor.

**Day-care center.** A facility providing care, training, education, custody, treatment, or supervision for 13 or more children for less than 24 hours a day.

**Minor.** A person under the age of 17.

**Park.** 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.** A place where a person abides, lodges, or resides for 14 or more consecutive days.

**Premises where children commonly gather.** 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, pool, playground, skate park, or youth athletic field owned by a residential property owners association, or for which an entrance, admission, or rental fee is charged.

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

**Temporary residence.** 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.

## Residency requirements

(a) It shall be unlawful for a child sex offender to establish a permanent residence, establish a temporary residence **or to be a recurring visitor at a residence, located** within 1,500 feet of any premises where children commonly gather.

(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 article, if such place, structure or part thereof, manufactured home, trailer, or other conveyance, is located within 1,500 feet of any premises where children commonly gather.

## Halloween

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

## Solicitation Permit

A child sex offender shall not solicit or be permitted to receive a permit for soliciting in the City of Kyle

## Evidentiary matters; measurement

(a) For the purpose of determining the minimum distance of separation under this article, 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 the premises where children commonly gather, as described hereinabove, or, in the case of multiple residences on one property, measuring from the nearest property line of the premises to the nearest property line of the premises where children commonly gather, as described 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 at the Kyle Police Department.

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

## Affirmative defenses

The following shall be affirmative defenses to prosecution under this article that any of the following conditions apply:

(1) It shall be an affirmative defense under [section 8.09.002](#) if the person required to register on the database established the permanent or temporary residence and has complied with all of the child 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 article.

(2) It shall be an affirmative defense under [section 8.09.002](#) if the premises where children commonly gather was designated, declared and/or determined after the child sex offender established the permanent or temporary residence and complied with all child 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 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 article.

(3) It shall be an affirmative defense under [sections 8.09.002](#) and [8.09.003](#) 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.

**Penalty provision**

Any person who violates the provisions of this article shall be charged with a class C misdemeanor; and upon conviction shall be fined as provided for in [section 1.01.009](#) of this Code for each day that a violation exists, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

**\*\*code sections would have to be updated to reflect where it falls in city code.**

**Section 2:**

**Comparisons:**

Town	Ordinance	*Population	Reg. Sex Off.	Res. To S.O.	Distance
Leander	Yes	65,000	33	1,970:1	1,000 ft
Seguin	None	30,000	53*	566:1	N/A
New Braunfels	None	88,000	106	830:1	N/A
<b>Kyle</b>	<b>None</b>	<b>56,500</b>	<b>68</b>	<b>830:1</b>	<b>N/A</b>
San Marcos	None	64,000	57	1,122:1	N/A
Pflugerville	Yes	64,000	20	3,200:1	2,000 ft
West Lake Hills	Yes	4,000	1	4,000:1	1,000 ft
Cedar Park	Yes	77,000	23	3,347:1	1,500 ft
Cibolo	Yes	31,066	10	3,106:1	2,000 ft
League City	Yes	106,244	41	2,591:1	2,000 ft
Giddings	Yes	5,200	6	866:1	1,000 ft
Fate	Yes	18,500	1	18,500:1	2,000 ft

\*approximate current numbers

**Section 3:**

Ofc. Pates asked a handful of recent sex offenders how they ended up in Kyle, one was from here, one said housing is cheaper here then up north, others said their family lives here and some said because we don't have a city ordinance.

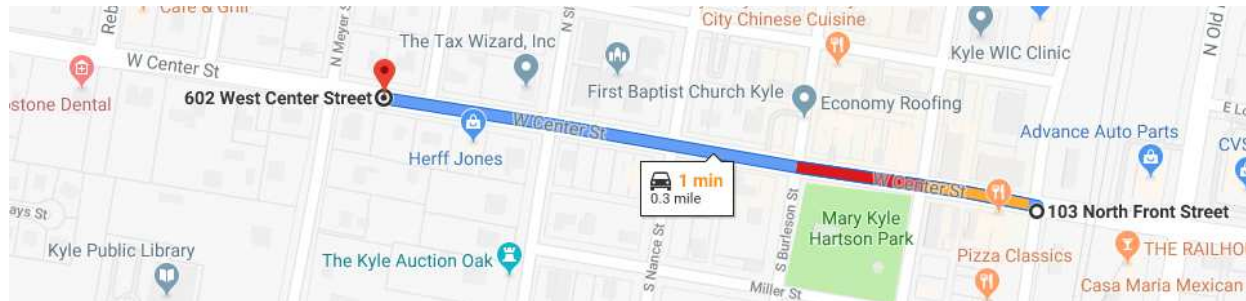
60 of Kyle's current 68 sex offenders would be "child offenders" as worded in the draft.

Of the 68 registered sex offenders in Kyle, the victims are grouped as follows: 57 - Female victims, 11 - Male victims, 11 - Adult victims, 4 - Possession of Child pornography (some offenders have multiple charges so this add up to more then 68).

**Distance:**

Comparisons range from 1000-2000 ft. Examples of this distance using Center Street:

- Front Street to just past Burleson Street is about 1000ft
- Front Street to just past Sledge St is about 1500 ft



**Online Research:**

From DPS website: [https://www.dps.texas.gov/administration/crime\\_records/pages/faq.htm#a1](https://www.dps.texas.gov/administration/crime_records/pages/faq.htm#a1)

**Question: Are registered sex offenders allowed to live or go near places frequented by children such as schools and playgrounds?**

**Answer:** The Texas Sex Offender Registration Program itself does not prohibit registered sex offenders from living or going near places frequented by children. However, Texas community supervision and parole laws, as well as city ordinances, may require the imposition of a "child safety zone." A "child safety zone" prohibits certain individuals from going in, on, or within a specified distance of a premise where children commonly gather (i.e. schools, day care facilities, or playgrounds). A violation of the "child safety zone" can result in the revocation of the offender's probation or parole, or a citation.

**Question: Are there any state laws that provide guidance or limitations on local city ordinances regarding registered sex offenders?**

**Answer:** Section 341.906, Subchapter Z, Chapter 341, Local Government Code, allows for the governing body of a general-law municipality by ordinance to restrict a registered sex offender from going in, on or within a specified distance of a child safety zone in the municipality. In addition it limits the distance requirement an ordinance may have and requires procedures for an exemption from the ordinance. Questions regarding any local city ordinance should be directed to the local law enforcement registrar's office at the Police Department or the city attorney's office in the jurisdiction of the ordinance.

\*\*\*\*\*

**Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)**  
[https://smart.gov/SOMAPI/sec1/ch5\\_recidivism.html](https://smart.gov/SOMAPI/sec1/ch5_recidivism.html)

☎ 512-268-3232    📠 512-268-2330

111 North Front Street, Kyle, TX 78640

[www.cityofkyle.com/police](http://www.cityofkyle.com/police)

*Recidivism Rates for Child Molesters:*

*Study showed sex offenders released from state prisons in 1994 that were studied in 2003 had a large sample of child molesters. The study shows 5.1% were rearrested within three years for a new sex crime. 14.1% were arrested for a violent crime and 39.4% were rearrested for a crime of any kind. Child Molesters with more than one prior arrest had an overall recidivism rate of 44.3% compared to 23.3% to that of a child molester with only 1 prior arrest. **Study shows specifically Child Molesters are more likely than any other type of offender to be arrested for a sex crime against a child following release from prison.** (from: <https://www.smart.gov/pdfs/RecidivismofAdultSexualOffenders.pdf>)*



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