

ORDINANCE NO. 249

AN ORDINANCE BY MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 1,000 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, OR A SCHOOL BUS STOP AS DEFINED HEREIN; BY MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 150 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 Texas 85th legislature passed a bill expressly authorizing a general law city to adopt a Sex Offender Residency Restriction Ordinance: Tex. H.B. 1111, 85th Leg., R.S. (2017); and

WHEREAS, the City of Pelican Bay is a Type A, General Law 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 Pelican Bay 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, the City of Pelican Bay has the authority, pursuant to the passing of Texas House Bill 1111 of the Texas 85th Regular Legislative Session (2017), and 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 PELICAN BAY, TEXAS:

SECTION 1.

Definitions.

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

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

Minor. Any person younger than 17 years of age.

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

Premises Where Children Commonly Gather or "Child Safety Zone." Includes all improved and unimproved areas on the lot where a public park, public playground, private or public school, public or semi-public swimming pool, public or non-profit recreational facility, day care center, video arcade facility, or a school bus stop is located (*excluding a Church as defined in the Insurance Code*), as those terms are, or may be defined, in section 481.134 of the Texas Health and Safety Code, as amended.

School Bus Stop. A site at which school aged children gather for transportation to or from public or private school.

Temporary residences. 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, lodges or resides for [a] period of four or more consecutive days in a month and which is not the person's permanent residence.

SECTION 2.

Offenses.

It is unlawful for a person to establish a permanent or temporary residence within 1,000 feet of any premises where children commonly gather, or "Child Safety Zone," if the person is required to register on the state department of public safety's sex offender database (the "Database") because of a conviction(s) involving a minor.

Evidentiary Matters; Measurements.

(a) It shall be prima facie evidence that this ordinance applies to such a person if that person's record appears on the Database and the Database indicates that the victim was a minor (less 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, measuring from the nearest property line of the premises 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 maintained by the city police department. The city shall review the map at least annually for changes. Said map will be available to the public at the city police department.

Culpable Mental State Not Required.

Neither allegation nor evidence of a culpable mental state is required for the proof of a residency offense defined by this Ordinance.

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 was in, on, or within 1,000 feet of a premise where children commonly gather, or 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.

- (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 or ward under guardianship.
- (4) 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 of Texas.
- (5) The information on the Database is incorrect, and, if corrected, this Ordinance would not apply to the person who was erroneously listed on the Database.
- (6) The person was at the time of the violation subject to community services supervision pursuant to section 13B of article 42.12 of the Texas Code of Criminal Procedure, as amended, and the court reduced or waived the 1000 foot restriction for a child-free zone under section 13B(a)(1)(B) of article 42.12 of the Texas Code of Criminal Procedure, as amended, as it applies to the person's residence.

Non-Applicable

- (1) The person required to register on the Database is *exempt* of residency restrictions if the person 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 is *exempt* if the person entered into a residential lease or rental agreement prior to the date of the adoption of this ordinance.

Exemption Hearing

- (1) A person who is subject to the application of this ordinance may petition the city council, in writing, for an exemption from the requirements of this ordinance. The petition shall set forth the specific grounds for the exemption. The decision of the city council regarding the exemption shall be final and not subject to appeal.
- (2) The city council may authorize an exemption from this article when, in its opinion, undue hardship will result from compliance or an individualized recidivist assessment indicates an exemption should be granted. In granting an

exemption, the council shall take into account the probable effect the exemption will have upon the public health, safety, and welfare of the community.

(3) No exemption shall be granted without first having held a public hearing on the exemption petition and unless the city council makes written findings regarding the following:

- a. The person lives with his/her family in the only home available and affordable to the family;
- b. The number of victims;
- c. The diversity of victims;
- d. The person's relationship to the victims;
- e. A history of juvenile sexual offenses;
- f. A history of abuse and neglect;
- g. A history of long-term separations from parents;
- h. A negative relationship with his/her mother;
- i. Employment status;
- j. A history of substance abuse problems; and
- k. Evidence of a chaotic, antisocial lifestyle.

(4) Such findings of the city council, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the council meeting at which such exemption is granted. Exemptions may be granted only when in harmony with the general purpose and intent of this ordinance so that the public health, safety, and welfare may be secured and that substantial justice may be done.

Penalty

The city shall have the power to administer and enforce the provisions of this article as may be required by governing law. Any person violating any provisions of this ordinance shall be liable for prosecution for criminal violations.

Any person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed \$500 for each offense. Each day that a provision of this ordinance is violated shall constitute a separate offense.

SECTION 3.

This Ordinance shall be cumulative of all provisions of ordinances and City Codes 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 Pelican Bay 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 Pelican Bay in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Pelican Bay City Code.

SECTION 7.

The City Secretary of the City of Pelican Bay is hereby directed to publish at least twice in the official newspaper of the City of Pelican Bay, 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 25 DAY OF September, 2017.

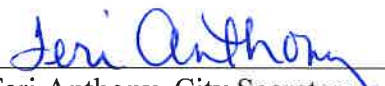
PASSED: 4-0

AYES: 4

NAYS: 0

By: 

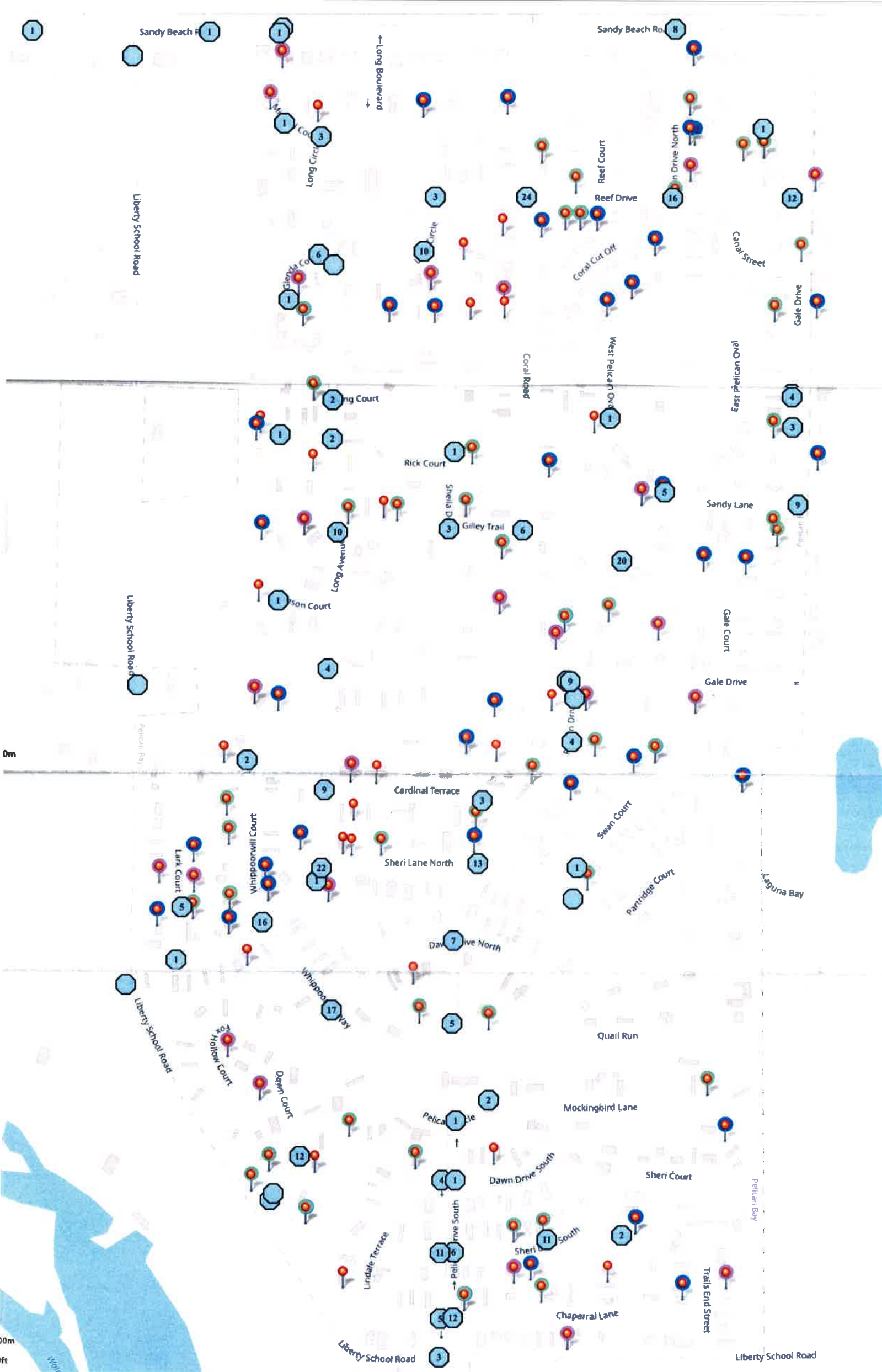
Bill Morley, Mayor

ATTEST:


Teri Anthony, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Warren Spencer, City Attorney



10/2020 Azle ISD Bus Routes + Bus Stops