



CITY OF SAN ANTONIO
OFFICE OF THE CITY COUNCIL
COUNCIL CONSIDERATION REQUEST

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13 OCT -2 PM 4:04

TO: Mayor & City Council
FROM: City Councilman Carlton Soules
COPIES TO: Sheryl Sculley, City Manager; Leticia Vacek, City Clerk; Edward Benavides, Chief of Staff; Chris Callanen, Assistant to the City Council; Michael Bernard, City Attorney; John Peterek, Senior Management Analyst
SUBJECT: Child Safety Zone
DATE: October 2, 2013

Issue Proposed for Consideration

I ask for your support for the inclusion of the following item on the agenda of the earliest available meeting of the **Public Safety Committee** :

I respectfully ask for your concurrence in calling for an ordinance to serve the city's compelling interest to promote, protect, and improve safety and welfare of the citizens of the city; by creating a Child Safety Zone around the city's park system where children regularly congregate in concentrated numbers.

Significant aspects of a Child Safety Zone include, but are not limited to:

- (1) It shall be unlawful for any person required to register on the Sex Offender Database (database) to knowingly be present in any city park. Furthermore, said individual is prohibited to loiter, and or to establish a permanent or temporary residence within one thousand (1,000) feet of a city park.
- (2) For the purpose of determining the minimum distance separation, the requirement shall be measured from property line to property line. A map depicting the prohibited areas shall be maintained by the San Antonio Police Department.
- (3) Any person required to register on the database would be exempt to the Child Safety Zone under the following conditions:
 - a. The person has established a temporary or permanent residence within the Child Safety Zone prior to the date of adoption. And, has complied with all of the sex offender registration laws of the State of Texas
 - b. The person is a minor. The person was a minor when he/she committed the offense and was not convicted as an adult.
 - c. The person is under an order of a court of pre-eminent jurisdiction in the State of Texas or of the Texas Department of Criminal Justice Parole Board permitting the person to be within the Child Safety Zone.
 - d. The Municipal Court of the City of San Antonio may authorize an exemption from this ordinance if in their opinion; undue hardship will result from compliance. In granting an exemption, the court shall take into account the probable effect the exemption will have upon the public health, safety and welfare of the community.

NOTE: For purposes of this ordinance City Park refers to all park classifications located within the park inventory of the San Antonio Parks and Recreation system.

Brief Background

Since the first sex-offender laws were passed in 1994, over twenty-two states have attempted to enhance these laws with some form of residency restriction legislation to prohibit sex-offenders from living within certain distances (anywhere from 500 – 3,000ft) from known places in which children

congregate. Residency restrictions on sex-offenders involves identifying areas where children congregate, e.g., schools, playgrounds, & parks and establishing a Child Safety Zone around these locations; to impose a distance requirement for individuals required to register on the Sex-Offender Database. Recently local municipalities have enacted Distance Marker laws prohibiting sex-offenders from permanently residing within these Child Safety Zones.

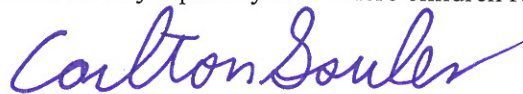
Generally depending on the severity of the offense, a person's duty to register on the Sex-offender Database lasts either for life; or 10 years following the date the person is released from prison or finishes a parole or probationary sentence. Within the State of Texas restrictions on sex-crime offenders differs between those placed on probation and those on parole. Restrictions placed on sex-offenders on probation fall under Code of Criminal Procedures, article 42.12, section 13 B, granting judges the authority to prohibit child-sex offenders on probation from going within 1,000 feet of a child safety zone. Restrictions on parolees fall under Texas Government Code Section 508.187 which grants parole boards the authority to prohibit sex-offenders on parole from going 500 feet of child safety zones. However, no state laws exist that grants either the courts or parole boards the ability to continue restrictions on sex-offenders once their parole or probationary period is over. Additionally, because the discretion of imposing these restrictions falls on parole boards and probationary sentencing, local police officers have limited enforcement capability.

In 2006, Texas Attorney General Greg Abbott was asked if municipalities have the authority to prohibit registered sex-offenders from living in certain locations within their cities. Attorney General Abbott found that "state law does not preempt a home-rule municipality's ordinance prohibiting registered sex offenders from living within a specified distance from locations where children typically congregate." Furthermore, Abbot found that these state statutes and municipal ordinances are "not repugnant; instead, they are complementary."

The three common legal challenges to local ordinance restrictions claim an imposition on criminal sanctions that penalize offenders whose convictions are final in violation of the *ex post facto* clause of the U.S. Constitution. Secondly, they violate the constitutionally-protected right to travel; and discriminate against offenders in violation of the Equal Protection Clause. In 2005, the Eighth U.S. Circuit Court in *Doe v. Miller*, found that residency restrictions are a form of civil regulation intended to protect children and thus prohibitions on *ex post facto* laws do not apply. Secondly, the federal constitution does not include a right to live where one chooses. As long as residency restriction laws do not discriminate between state residents and those from out-of-state, then there is no restriction on one's right to travel. And lastly, residency restrictions are rationally related to the states' legitimate interest in protecting children from harm as such these laws do not offend the equal protection clause.

As a home-rule municipality, the City of San Antonio has a constitutional right of self-government and a compelling interest to promote and protect the safety and welfare of its citizens. For that reason, the city should work to create a Child Safety Zone around the city's park system where children regularly congregate in concentrated numbers.

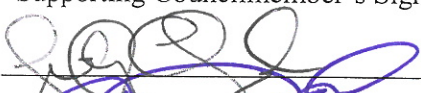



Submitted for Council consideration by:



Councilman Carlton Soules, District 10

Supporting Councilmember's Signatures (4 only)

District No.

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