

# Sex Offender

**ORDINANCE 2019-008 SEX OFFENDER RESIDENCY**  
**City of Deport, Texas**

**Definitions:**

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

Child safety zone. Any premises where children commonly gather and includes public parks, private and public schools, public library, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public or commercial and semiprivate swimming pools, child-care facility, child-care institution, public or private youth soccer, football or baseball field, crisis center or shelter, skate park or rink, public or private youth center, scouting facilities, offices for child protective services, or any facility that regularly hosts events primarily for children. The term does not include a church, as defined in section 544.251 of the Texas Insurance Code.

Daycare facility. A “child-care institution,” a “daycare center,” and /or a “group daycare home” as those terms are defined in section 42.002, Human Resource Code.

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

Park. Any land, including improvements to the land, administered, operated or managed by the city for the use of the general public as a recreation area.

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

Playground. Any outdoor facility that is not on the premises of a school and that:

- (1) Is intended for recreation;
- (2) Is open to the public; and
- (3) Contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards. (See section 481.134, TX Health and Safety Code.)

Premises. Real property and all buildings and appurtenances pertaining to the real property.

Public way. Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, shopping centers, parking lots, transportation facilities, restaurants, shops and similar areas that are open to the use of the public.

Registered sex offender. An individual who has been convicted or placed on deferred adjudication for a sexual offense involving a child and is currently on parole or probation and is required to register as a sex offender under chapter 62, Texas Code of Criminal Procedure.

School. A private or public elementary or secondary school or a daycare center, as defined as section 42.002 Human Resources Code.

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

Video arcade facility. Any facility that is open to the public, including persons who are 17 years of age or younger; is intended primarily for the use of pinball or video games; and contains at least three pinball or video stations.

Youth center. Any recreational facility or gymnasium that is intended primarily for use by persons who are 17 years of age or younger; and regularly provides athletic, civic, or cultural activities.

Youth group activity. Any gathering of 2 (two) or more minors to participate in structured activities, primarily for youth, and including but not limited to Boy and Girl Scouts, 4-H, bands, and school UIL events.

  **Sec. 8.04.002 Offenses**

(a) General regulations. For each person required to register on the Texas Department of Public Safety's Sex Offender Database, or who otherwise is required by court order to register annually as a sex offender, because that individual committed a sexual violation involving a victim who was less than seventeen (17) years of age; it is unlawful for such person to establish a permanent residence or temporary residence within one thousand (1,000) feet of any premises where children commonly gather, which includes but is not limited to child safety zones, daycare facilities, parks, play grounds, schools, video arcade facilities, or youth centers, public swimming pools, homeowner associations swimming pools, apartment swimming pools where multiple families have access, commercial amusement center primarily designed or marketed for minors. If any term used herein is not defined in this article, the term(s) shall have the common ordinary meaning or the meaning appearing in section 481.134, Texas Health and Safety Code, as it exists or may be amended. For the purposes of this article, planted street medians are not public parks.

(b) Prohibited participation.

(1) A sexual offender as described in subsection (a) above, may not participate in youth group activities wearing a costume or mask that covers or distorts identifying facial characteristics. In addition, a sexual offender as described in subsection (a) above may not participate in "Halloween" on October 30th or 31st of each year between the hours of 4:00 p.m. and midnight by leaving on an exterior porch light or other lights at his or her residence or otherwise inviting/soliciting trick-or-treaters onto the offender's premises.

(2) A registered sex offender as defined herein may not enter a child safety zone.

(3) A registered sex offender may not participate in youth group activities unless the sex offender has disclosed in writing to the sponsor of the youth group, the nature, date and location of the sexual offense.

### **Sec. 8.04.003 Measurements**

(a) Distance determinations. A determination of the minimum distance (separation) for the distance barrier set out in this article shall be measured by a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where child either resides, attends school, engages in gaming activities or otherwise where children are commonly gathered. In the case multiple residences on one property, the measurement shall be from the nearest property line of the premises to the nearest property line of the protected location as set out herein.

(b) Affirmative defense. It is an affirmative defense to prosecution that the measured distances is less than the distance barriers set forth in this article.

### **Sec. 8.04.004 Culpable mental state not required**

A culpable mental state is not required to be alleged nor is evidence of a culpable mental state required for the proof of an offense as defined by this article.

### **Sec. 8.04.005 Exceptions**

A person does not commit an offense under section 8.04.002 if the person:

(1) Is in or is traveling immediately to or from a parole office, a probation office, or a premises at which the person is participating in a program or activity required as a condition of release; a residential facility in which the person is required to reside as a condition of release; a private residence in which the person is required to reside as a condition of release; or any other premises, facility or location that is designed to rehabilitate or reform the individual; or the individual is authorized by the parole division or the probation office to be on the premises or location at which the person has legitimate business including a church, synagogue, or other established place of religious worship, workplace, a healthcare facility, or a location of a funeral.

- (2) The person required to register as a sex offender, established a permanent or a temporary residence, and complied with all sex offender registration laws of the state prior to the date of the adoption of this article (or predecessor article); provided, however, such person shall be required to continuously comply with all sex offender registration laws of the state, as they exist or may be amended, after the adoption of this article. Failure to maintain compliance with registration laws, forfeits this exception.
- (3) The person required to register on the database or otherwise, was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
- (4) The person required to register on the database or otherwise is a minor.
- (5) The person required to register is less than eighteen (18) years of age or a ward under a guardianship, who resides with a parent or the guardian.
- (6) The person required to register has been exempted by a court order from registration as a sex offender under chapter 62, Texas Code of Criminal Procedure.
- (7) The person required to register has had the offense for which the sex offender registration was required, reversed on appeal or pardoned.
- (8) The premises where children commonly gather, as specified herein is within one thousand (1,000) feet of the permanent or temporary residence of the person required to register on the database; however the youth premises was established after the person established the permanent or temporary residence and complied with all sex offender registrations laws of the state, as they exist or may be amended. Such person shall be required to continuously maintain compliance with all of the sex offender registration laws of the state, as they exist or may be amended. Failure to maintain compliance with registration laws, forfeits this exception.
- (9) The information on the database is incorrect, and, if corrected, this article would not apply to the person.
- (10) Nothing in this article 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. 8.04.006 Affirmative defenses**

It is an additional affirmative defense to prosecution to an offense under this article that the registered sex offender was in, on, or within a specified distance of a child safety zone or other safety zone or other places where children generally gather, for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with; or transportation directly to and from the sex offender's work, and other work-related purposes.

 **Sec. 8.04.007 Variance**

Application for exemption:

(1) Required. A registered sex offender who is otherwise covered by this article may seek an exemption from this article, and any amendments thereto, by filing an application for exemption with the city.

(2) Procedure.

(A) The city shall prepare and maintain in the city secretary's office an official application form; however, a specific form is not required in order to apply for an exemption.

(B) A registered sex offender must formally submit an application for exemption, in writing, to the city secretary.

(C) The city secretary may review the application for completeness of information. If incomplete the application will be returned along with either:

(i) The official form; or

(ii) Indications addressing needed information to proceed.

(D) Once accepted by the city secretary, the application for exemption shall be forwarded to the mayor, who after review, will schedule an agenda item not less than 90 (ninety days) from the date of the submission of the application. The agenda item must include a public hearing and permit a vote on the application. The city will provide written notice of the application and the hearing date to organizations, sponsors, and/or residents of child safety zones which are addressed explicitly or by implication in the application. The applicant shall also receive notice of the hearing date.

(E) The city council will conduct a public hearing, during which time the city may review any and all pertinent or relevant information and may accept oral or written statements from any person.

(F) Following the public hearing, the city council will decide, by majority vote, whether to grant or deny any such application for exemption.

(G) The decision on whether or not to grant an exemption may be based on all state, federal, municipal, or any other governmental agency regulations, and in addition any laws, conditions, terms or factors, including but not limited to, whether the sex offender has shown remorse, has rehabilitated, recidivism, and other habits, and/or any other factors related to the city's interest in promoting, protecting and improving health, safety, and welfare for the community.