

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS, AMENDING THE CITY OF KELLER CODE OF ORDINANCES CHAPTER 10, MISCELLANEOUS PROVISIONS BY ADDING ARTICLE IX – SEX OFFENDER RESIDENCY RESTRICTIONS; PROHIBITING CERTAIN REGISTERED SEX OFFENDERS FROM RESIDING WITHIN A CERTAIN DISTANCE WHERE CHILDREN COMMONLY GATHER; DISPENSING WITH A CULPABLE MENTAL STATE; PROVIDING A REPEALING CLAUSE; PROVIDING A MAXIMUM PENALTY OF FIVE HUNDRED DOLLARS (\$500.00); PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Keller, Texas (the “City”), is a home-rule municipality having full powers of self-government and may enact ordinances relative to its citizens’ health, safety, and welfare that are not inconsistent with the Constitution and laws of the State; and

WHEREAS, the City of Keller City Council (the City Council) finds and determines the City Council deems the passage of this ordinance as necessary to protect the public, health, safety, and welfare; and

WHEREAS, the City Council finds and determines that the regulations herein are necessary and proper for carrying out its power to protect the government interest, welfare, and good order of the City; and

WHEREAS, the City Council finds and determines that child sex offenders who are required to register within the Texas State Sex Offender Registry represent a serious threat to public safety; and

WHEREAS, the City Council has endeavored to protect the health, safety, and welfare of the public from the negative impacts associated with child sex offenders; and

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

WHEREAS, the City Council finds and determines that persons convicted of offenses that involve either physical contact with minors or preparatory steps towards physical contact with minors are a greater risk to the safety of children who gather near areas where such offenders reside; and

WHEREAS, the City Council finds and determines that the City has a legitimate interest in the protection of children and that the following restrictions are enacted to provide further protection for children in the City by minimizing sex offenders’ access and proximity to areas where children gather; and

WHEREAS, it is not the intent of the City Council to impose a criminal penalty, but rather to serve the City’s interest in protecting the health, safety, and welfare of the public by prohibiting convicted child sexual offenders from residing in specified areas near locations where children commonly gather; and

WHEREAS, the provisions of this ordinance do not prohibit registered sex offenders from residing in the City; and

WHEREAS, the City has a 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 or may congregate in concentrated numbers wherein certain registered sex offenders are prohibited from establishing temporary or permanent residency; and

WHEREAS, it is the determination by the City Council that every effort should be made to protect its citizens from harm at the hands of certain sex offenders, and that the City's children are worthy of protection to the greatest extent afforded under the law; and

WHEREAS, the City finds that the protection of children is paramount to creating a safe environment in which to live, work, and play in our community; and

WHEREAS, the City finds that the adoption and enforcement of this ordinance will help foster a partnership with the community by protecting the family and maintaining Keller as the place to live, visit, and conduct business; and

WHEREAS, in considering this Ordinance, the City Council relies on the entirety of its experiences and knowledge; and

WHEREAS, the City Council is authorized by law to adopt the provisions contained herein, and has complied with all the prerequisites necessary for the passage of this Ordinance, including but not limited to the Open Meetings Act.

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

Section 1: THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

Section 2: THAT, the City of Keller Code of Ordinances Chapter 10, Miscellaneous Provisions is amended by adding Article IX – Sex Offender Residency Restrictions, which shall read as follows:

#### ARTICLE IX. – SEX OFFENDER RESIDENCY RESTRICTIONS

##### Sec. 10-1400 – Definitions

For the purpose of this article the following terms have the definitions herein ascribed to them:

(1) *Child* means any person under the age of seventeen (17).

(2) *Child-care facility* means a facility licensed, certified, or registered by the Texas Department of Family and Protective 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.

(3) *Child safety zones* means premises where children commonly gather, regardless of whether they are inside or outside the City of Keller limits, and includes:

(a) any school whether public, private or religiously affiliated; and

(b) public libraries, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public or commercial and semi-private swimming pools, child-care facilities, public or private youth sports athletic fields, crisis centers or shelters, skate parks or rinks, public or private youth centers, movie theaters, bowling alleys, conservation areas, jogging trails, equestrian trails, hiking trails, bicycle trails, recreational centers, public playgrounds, and scouting facilities.

(4) *Database* means the Texas Department of Public Safety's Sex Offender Database pursuant to the Sex Offender Registration and Notification Act, Texas Code of Criminal Procedure, Chapter 62, or the sex offender registration files maintained by the sex offender registration officer of the police department.

(5) *Halloween* means a holiday, typically celebrated but not limited to October 31st, when children and their families go door-to-door to collect candy or treats.

(6) *Permanent residence* means a place where a person abides, lodges, or resides for twelve (12) or more consecutive days.

(7) *Sex Offender* means a person who is required to register as a sex offender under the Sex Offender Registration and Notification Act, Texas Code of Criminal Procedure, Chapter 62 because of an offense involving a child.

(8) *Temporary residence* means either a place where a person abides, lodges, or resides for a period of 12 or more days during any calendar year, and 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 or non-consecutive days in any month and which is not the person's permanent address.

#### Sec. 10-1410 – Prohibited Areas

(a) It is unlawful for a sex offender to establish a permanent or temporary residence within 1,000 feet of a child safety zone.

(b) This section applies to all sex offenders, as defined by this Article, regardless of the individual's reported risk level or whether the individual has been assigned a reported risk level.

#### Sec. 10-1420 – Offenses

(a) No person shall sublet or rent any place, structure or part thereof manufactured home, trailer, or any other conveyance, 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 according to the terms of this article, if such place, structure, or part thereof, manufactured home, trailer or other conveyance is located within 1,000 feet from a child safety zone.

(b) It shall be unlawful for a sex offender to have an outdoor street-facing light(s) aglow or hand out treats during Halloween.

#### Sec. 10-1430 – City Notification Required

At least seven days prior to establishing permanent or temporary residence in the City, a sex offender shall notify the Keller Police Department in writing and provide the following information:

- (1) the name of the registered sex offender; and
- (2) the address of the residence to which the person intends to move.

#### Sec. 10-1440 – Measurements

To determine the minimum distance separation, the requirement shall be measured by following a straight line from the nearest portion of the property line of the permanent or temporary residence to the nearest property line of the premises where children commonly gather.

#### Sec. 10-1450 – Prosecution of violations

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

(b) All of the following are affirmative defenses to a violation of this article:

- (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, before 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, as defined by Texas Penal Code;
- (4) the premises where children commonly gather, as specified herein, within 1,000 feet of the permanent or temporary residence was opened after the person established the permanent or temporary residence and the person has complied with all sex offender registration laws of the state; or
- (5) the information on the database is incorrect, and, if corrected, this section would not apply to the person who was incorrectly or improperly listed on the database.

#### Sec. 10-1460 – Appeals

(a) A sex offender may appeal the application of the requirements of this article by filing a letter of appeal with the City Secretary.

(b) An appeal may be granted only when special circumstances arise and the following procedures are followed:

- (1) the individual appealing the applicability of this ordinance provides a written and notarized letter of appeal, along with any supporting documentation, to the City Secretary;
- (2) the City Secretary forwards the submitted documentation to the Mayor or the mayor's designee, and upon receiving the letter of appeal, schedules a public hearing before the City Council;
- (2) the City Council conducts a public hearing, during which they may review any pertinent information and may accept oral and written statements from any person; and
- (3) following the public hearing, the City Council, by majority vote, grants an exemption, which may be unconditional or limited to a certain address and/or period of time.

(c) It is not required that the letter of appeal contain any information considered confidential by law.

(d) Examples of special circumstances in support of an appeal may include, but are not limited to, staying with family due to medical problems, natural disasters, or court-ordered housing assignment.

#### Sec. 10-1470 – Penalty

Any person, firm, or corporation who violates, disobeys or omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of this article is in violation of a Class C Misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) for each offense. Each day that a violation occurs or is permitted to occur shall constitute a separate offense.

Section 3: THAT this Ordinance shall be cumulative of all provisions of the City Code and other ordinances of the City of Keller, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of other ordinances, in such event the conflicting provisions of the other ordinances are hereby repealed.

Section 4: THAT any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall, upon final conviction thereof, be fined in an amount not to exceed five hundred dollars (\$500.00). Each and every day any such violation continues shall constitute a separate offense and shall be punishable as such hereunder.

Section 5: THAT if any section, paragraph, clause, phrase, or provision of this Ordinance, shall for any reason be held to be invalid or unenforceable, the validity or unenforceability of such section, paragraph, clause, phrase, or provision shall not effect any of the remaining provisions of this Ordinance.

Section 6: THAT, this Ordinance shall become effective upon its adoption and publication provided by law.

AND IT IS SO ORDAINED.

Passed and approved by a vote of \_ to \_ this the 7th day of September, 2021.

CITY OF KELLER, TEXAS

BY: \_\_\_\_\_  
Armin R. Mizani, Mayor

ATTEST:

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Kelly Ballard, City Secretary

Approved as to Form and Legality:

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L. Stanton Lowry, City Attorney