



# OLD BUSINESS



## TOPIC

# #1

time is necessary.

An employee who requires bereavement time must notify his immediate supervisor within the first 24 hours by phone or in writing if possible. All requests for emergency leave with pay must be submitted in writing and approved by the Mayor or City Administrator. In the event the Mayor or City Administrator is not available, the Department Head may approve "emergency leave." The Department Head shall notify the Mayor or City Administrator, in writing as soon as possible explaining the reasons for such action. (3/16/04)

### **8.06 PERSONAL BUSINESS LEAVE**

Each full time employee will earn two (2) days of personal business leave annually at the beginning of each fiscal year. Such leave is limited to a total accumulation of two days and can be taken in conjunction with vacation leave.(9/24/14) Personal leave must be requested at least one (1) day in advance and is subject to supervisor approval. (06/17/03)

### **8.07 MAJOR MEDICAL LEAVE (7/02/97)**

To use Major Medical Leave, an employee must have been on vacation leave, sick leave, compensatory time, holiday leave, and/or leave with or without pay because of injury or illness for 40 consecutive hours which they would normally be scheduled to work. (7/02/97)

An employee who has met the requirements for using Major Medical Leave and returned to work but again has to be off because of the same injury or illness within thirty (30) calendar days, will need no additional qualifying time to continue using Major Medical Leave. (7/02/97)

Major Medical Leave may be used by the individual employee for personal long-term disability or illness only and is not transferable. It may not be used to cover a disability in the employee's immediate family. (7/02/97)

### **8.08 EXTENDED LEAVE FOR ILLNESS OR TEMPORARY DISABILITY**

This section applies to illness or temporary disabilities, which are not related to bona fide, on-the-job, work-related injuries. Please see the chapter of these policies on "Health and Safety" for information on absences resulting from those types of injuries.

**Paid Leave.** Upon written approval of the employee's supervisor, an employee may use accrued sick leave and vacation leave for the purpose of paid absence from duty during an extended illness or temporary disability.

**Unpaid Leave of Absence.** An employee may be granted an unpaid leave of absence for the purpose of recovery from an extended illness or temporary disability only with the written approval of the Mayor and/or City Administrator. During an unpaid leave of absence, an employee accrues no additional vacation leave, sick leave or longevity benefits. Other benefits are retained during unpaid leave of absence unless otherwise prohibited by the terms or provisions of the benefit program. Medical insurance can be continued if the employee pays the premiums in full (including the City's share) in a timely manner. (12-17-91)

**Pregnancy.** Pregnancy is treated in the same manner as any other extended illness or temporary disability.

**Spousal-Maternity Leave.** A full time employee may be granted maternity leave for a period of up to one workweek following the birth of his or her child. The leave must be taken within the first month following the birth of the child and the days off must be taken consecutively. The amount of time allowed for that employee will be dependent upon

the amount of time in a normal workweek for that employee at the time that the leave is taken. The employee will not be required to use sick, vacation or personal days for that leave. The leave will be paid as regular hours by the City.

The employee's supervisor may extend this period of time at the request of the employee. Any time taken beyond the period of time specified above will be charged to the employees sick or vacation leave or may be taken without pay.

**Conditions.** An employee requesting a paid or unpaid leave of absence for extended illness or temporary disability must submit to the Department Head a medical doctor's statement as to the date upon which the employee is no longer able to perform his or her duties and the expected length of the recuperation period, as well as a written statement from the employee concerning his or her intentions about returning to work at the City. An employee on extended leave for illness or temporary disability must contact the appropriate City supervisor at least once each workweek to report on his or her condition. Failure to provide required medical status reports or to contact the office on a schedule required by the Department Head is grounds for revoking the leave and for taking disciplinary action. The length of time approved will depend upon the nature of the illness or disability and expected recuperation period. The employee's length of service with the City and past attendance record, the Department's needs, and prospect for temporary replacement of the employee or reassignment of the employee's duties.

#### 8.09 MILITARY LEAVE

Regular full-time employees who are members of the State Military Forces or members of any of the Reserve Components of the Armed Forces of the United States are entitled to leave of absence from their duties without loss of time or efficiency rating or vacation or salary, on all days during which they are engaged in authorized training or duty ordered by proper authority, for not more than 15 working days in any one calendar year. Requests for approval of military leave must have copies of the relevant military orders attached. Military leave in excess of 15 working days will be charged to vacation leave or leave without pay. (12-17-91)

Regular full-time employees who are ordered to extended active duty with the State or Federal Military Forces are entitled to all of the re-employment rights and benefits provided by law upon their release from active duty.

#### 8.10 CIVIL LEAVE

Employees are granted civil leave with pay for jury duty, for serving as a subpoenaed witness in an official proceeding, and for the purpose of voting.

When an employee has completed civil leave, he or she must report to the City for duty for the remainder of the workday.

#### 8.11 LEAVE OF ABSENCE WITHOUT PAY

Leave of absence without pay is an approved absence from duty in a non-pay status. Granting a leave of absence without pay is at the discretion and recommendation of the Department Head and Mayor and/or City Administrator, but such leave is not authorized unless there is a reasonable expectation that the employee will return to employment with the City at the end of the approved period. Employees on leave of absence without pay receive no compensation and accrue no benefits. However, previously accrued benefits are retained during leave of absence unless otherwise prohibited by the terms or provisions of the benefit programs. Medical insurance can be continued if the employee pays the premiums in full, including the City's share, in a timely manner. (12/17/91)

The City ensures an employee's return to the same or an equivalent position while he or she is on an authorized leave



**NEW BUSINESS**

# **TOPIC #1**

**TO BE SENT TO COUNCIL SEPERATELY FROM PACKET**



**NEW BUSINESS**

**TOPIC #2**

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

**AN ORDINANCE OF THE TOWN OF HOLLYWOOD PARK, TEXAS, AMENDING CHAPTER 54, SOLID WASTE, SECTION 54-2, BY PROHIBITING THE COLLECTION OF SOLID WASTE FROM COMMERCIAL BUSINESSES BETWEEN 10:00 PM AND THE FOLLOWING 7:00 AM**

**WHEREAS**, the City Council of the Town of Hollywood Park has determined that it would be in the public interest and would enhance the welfare of the citizens of the Town of Hollywood Park to amend Chapter 54, Solid Waste, Section 54-2 by prohibiting the collection of solid waste from commercial businesses between 10:00 pm and the following 7:00 am.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF HOLLYWOOD PARK, TEXAS** that Chapter 54 of the Code of Ordinances of the Town of Hollywood Park is hereby amended by adding the following sentence to the end of Section 54-2:

“Solid waste collection providers are prohibited from collecting solid waste from commercial businesses in the Town of Hollywood Park between 10:00 pm and the following 7:00 am.”

**PASSED, APPROVED and ADOPTED** by the City Council of Hollywood Park, Texas, on this 15<sup>th</sup> day of December, 2015.

\_\_\_\_\_  
Chris Fails, Mayor

**ATTEST:**

\_\_\_\_\_  
Janice Alamia, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael S. Brenan, City Attorney



**NEW BUSINESS**

# **TOPIC #3**

**NO PAPERWORK- COUNCIL DISCUSSION**



**NEW BUSINESS**

**TOPIC #4**



FROM THE DESK OF JANICE ALAMIA / CITY SECRETARY

THIS IS TO RECTIFY A PAYROLL SITUATION THAT HAS COME TO OUR ATTENTION THIS MONTH.

FOR THE PAST 2 YEARS THE POLICE DEPARTMENT HAS BEEN PAYING THEIR POLICE OFFICERS AT TIME AND A HALF FOR EACH HOLIDAY WORKED. THIS IS CORRECT PER THE POLICY MANUAL.

IN THE CURRENT POLICY MANUAL SECTION 6.09 IT STATES IF AN EMPLOYEE IS REQUIRED TO WORK ON A SCHEDULED HOLIDAY HE/SHE WILL BE GIVEN AN ALTERNATE DAY OFF. THIS WAS NOT HAPPENING.

INSTEAD OF GETTING THE EXTRA DAY OFF; THEY WERE BEING PAID FOR THE EXTRA DAY AND NOT GIVEN THE DAY OFF. ESSENTIALLY THE POLICE EMPLOYEE WAS PAID DOUBLE TIME AND A HALF FOR WORKING A HOLIDAY WHICH IS NOT APPROVED IN THE POLICY MANUAL.

TO CORRECT THIS SITUATION AND AVOID FUTURE ISSUES, WE WILL BE PAYING THE FIRE DEPARTMENT THE BACK PAY TO ENSURE ALL EMPLOYEES ARE BEING PAID EQUALLY.

THE FOLLOWING PAGES SHOW THE AMOUNT NEEDED TO PAY THE FIRE DEPARTMENT AND HOW THIS WILL BE PAID THROUGH THE CURRENT BUDGET.

Total amount of Back Pay to be paid to Firefighters

\$ 46,930.84

Unbudgeted Expense to be absorbed as follows:

PD	\$ (20,000.00)	Reduction of Budgeted Holiday Pay (no longer paying officers not working)
	\$ (11,000.00)	Purchase Budgeted Tasers with Forfeiture Funds
FD	\$ (12,000.00)	Reduction of Budgeted Holiday Pay (no longer paying officers not working)
	\$ (1,500.00)	Set aside Purchase of Resue Randy
	\$ (3,000.00)	Sale of extra Vehicle
AD	\$ (1,500.00)	Sale of Admin Car
	<u>\$ 46,930.83</u>	<u>\$ (49,000.00)</u>

**6.00 WORK SCHEDULE AND TIME REPORTING**

**6.01 ADMINISTRATIVE WORK WEEK OR WORK PERIOD MOST DEPARTMENTS**

Normal working hours are Monday through Friday, 8:00 a.m. to 5:00 p.m. with one hour for lunch, for a total of 40 hours per work week. A morning and afternoon break of 15 minutes each is available to each employee, but this time does not accumulate if not taken. Breaks are not guaranteed and may be denied by a Department Head due to shortage of staff or increased work load. (06/17/03)

All City employees are expected to report punctually for duty at the beginning of their assigned workday and to work the full workday established.

**6.02 WORK PERIOD AND SCHEDULES - POLICE**

**Police Officer Work Periods and Work Schedules** - The Police Chief sets the work schedule every four weeks for Police Personnel and notifies them in writing of their work schedule.

Pay for all Police Officers is based on having worked 80 **86** hours each 14-day work period. (10/17/95)  
Overtime pay of 1 ½ times the regular hourly rate will be paid to any full time Police Officer working over 86 hours in a 14 day period effective 10/01/05. (8/16/05)

Comp time will no longer be granted for Police Officers. (8/16/05)

Part-time Police Officers will be paid according to the number of actual hours worked. If the part-time Police Officer is working a shift that consists of 9 hours then they will be paid for 9 hours. (7/02/97)

**6.03 WORK PERIOD AND SCHEDULES - FIRE**

**Fire Personnel Work Periods** - The Fire Chief sets the work schedule for Fire Personnel. (9/29/99)

Firefighters shall work a 24-hour shift with the next 48 hours off. (9/29/99) Shifts will start at 7:00 a.m. each day. (4/21/15)

Overtime pay of 1 ½ times the regular hourly rate will be paid to any full-time firefighter working over 106 hours in a 14 day pay period. (06/17/03)

Comp-time will no longer be granted for the Firefighters.

Part-time Firefighters will be paid according to the number of actual hours worked. If the part-time Firefighter is working a shift that consists of 9 hours then he/she will be paid for 9 hours. (9/29/99)

**6.04 SCHEDULE ADJUSTMENTS**

Adjustments to the normal hours of operation of various City facilities or departments may be made by the Mayor and/or City Administrator in order to serve the public better. Offices may be required to remain open during the noon hour, and lunch periods for some employees may be staggered according to the requirements of the City. Depending upon personnel available, the Police Chief and Fire Chief, in consultation with the Mayor and/or City Administrator, may establish different work schedules for their personnel for temporary periods of time until the personnel shortage has been eliminated.

## 6.05 NUMBER OF HOURS WORKED

The Department Head validates (7/02/97) the number of hours worked by City employees for the compensation to be received, subject to laws governing pay and working hours and to the provisions of the City budget.

## 6.06 OVERTIME WORKED

The policy of the City is to keep overtime to a minimum. However, employees may be required to provide services in addition to normal hours or on weekends or holidays. Overtime is defined as hours worked in excess of the allowable number of hours under the Fair Labor Standards Act (FLSA). (In the Town of Hollywood Park this is 40 hours per seven-day workweek for all non-Police and non-Firefighting personnel; 86 hours per 14-day work period for Police Officers and 106 hours per 14-day work period for Firefighting employees.) (10/17/95)

## 6.07 EXEMPTIONS FROM FLSA (OVERTIME COMPENSATION)

Executive, administrative, and professional regular employees are exempt from the overtime provisions of FLSA and are expected to render necessary and reasonable overtime services with no additional compensation. The salaries of these positions are established with this assumption in mind. Extra hours worked by executive, administrative, and professional employees may be used as a factor in granting or denying paid leave other than earned vacation and sick leave.

Each City job description designates whether persons hired in that classification are exempt from or covered by (non-exempt) the overtime provisions of FLSA.

## 6.08 OVERTIME COMPENSATION

For most Non-Fire Department, Non-Police Department (with the exception of non-exempt administrative Police Department employees), Administrative non-exempt employees who are covered by the overtime provisions of the Fair Labor Standards Act (FLSA), the policy of the City is to compensate the employee with payment at the rate of one and one-half times the employee's regular hourly rate.

- (1) Equal time off, if taken within the same workweek (or 14-day work period in the case of Police Officers); or
- (2) Payment at the rate of one and one-half times the employee's regular hourly rate; or
- (3) Compensatory time off, for employees other than Police Officers and Fire Fighters, at one and one-half times the number of hours worked up to a maximum number of hours which may be accrued.

~~The City discourages the accumulation of compensatory time off at one and one-half times the number of hours worked because of the contingent financial liability this creates for the City. As a general rule, no more than 45 hours of compensatory time (representing 30 overtime hours worked) will be allowed to accumulate for employees. Use of compensatory time will reduce accrued balances in the order that the leave time was accrued. (Leave accrued first is used first.)~~

~~The preferable method for overtime compensation is to schedule equal time off for the affected employee during the same work period (or work week) in which the overtime was worked.~~

For full-time employees who are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA), the

## Town of Hollywood Park

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Mayor and/or City Administrator is authorized, at his/her discretion, to grant leave to said employees. (7/02/97)

### 6.09 HOLIDAYS WORKED

The City's basic policy is that each regular full-time employee receives a specified number of paid holidays per year, as set forth in Section 9.01. ~~In most instances, if an employee is required to work on a scheduled holiday, he or she will be given an alternate day off.~~ Holidays are **not** considered in the same manner as "hours worked" under FLSA for the purpose of determining when the employee has worked more than the maximum allowable hours and is therefore **not** subject to overtime compensation. (12/17/91)

Should a ~~Police Officer or Fire Fighter~~ **an employee** work on a paid holiday, such ~~Police Officer and Fire Fighter employee~~, **in lieu of receiving an alternate day off**, shall receive holiday pay calculated at ~~one and one-half~~ **two** times the regular hourly rate of pay for that ~~Police Officer or Fire Fighter employee~~ **employee** on that holiday. Holiday pay should not be confused with overtime pay as it is not considered in the same manner as "overtime pay" under the FLSA.

For additional information on holidays worked, see the chapter of these policies on Holidays, especially the section on "Holidays Falling on Non-Workdays".

### 6.10 LEAVE OR HOLIDAYS TAKEN AND OVERTIME

If an employee is required to work extra hours during a work period (or workweek) in which he or she has used sick leave, vacation leave, or any other type of leave time (including holiday time off), the employee will be paid for the extra hours at the regular, straight-time rate of pay. However, if the extra hours worked are more than the number of leave time hours taken, the employee will be paid at one and one-half times the regular rate of pay for the number of extra hours worked which were not offset by the leave time hours taken.

### 6.11 TIME REPORTING

Each Department Head is responsible for ensuring that all hours worked and leave time taken are reported **correctly** on the time sheets sent to the Administration Office, as well as being recorded in the individual department's records. **In addition each Department Head is responsible for ensuring all time sheets are properly completed and turned in to the Administration Office by 8:30 am on Monday during the week of payroll.**

# Town of Hollywood Park

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## 9.00 HOLIDAYS

### 9.01 GENERAL POLICY

The following are observed as paid Holidays for regular employees of the Town of Hollywood Park:

- . New Year's Day
- . Memorial Day
- . Independence Day
- . Labor Day
- . President's Day
- . Battle of Flowers Parade
- . Veteran's Day
- . Thanksgiving Day
- . Friday after Thanksgiving Day (10/17/95)
- . Christmas Eve
- . Christmas Day

The Mayor may designate other holidays in accordance with directions from the City Council. A list of holidays approved for the current year, specifying days of the week and dates, will be distributed to all employees at least once each year.

An employee who is absent without leave on the workday immediately preceding or following a holiday will not be paid for the holiday. Temporary and part-time employees are not paid for holidays except for holiday hours actually worked.

With the exception of administrative personnel working a 40 hour work week, any employee of the fire department or police department who is not scheduled to work on a holiday and has not been directed by his or her Department Head to report to work on that holiday will not be paid for that holiday.

### 9.02 HOLIDAYS FALLING ON NON-WORKDAYS

**For non-exempt employees working a 40 hour workweek:** Whenever a legal holiday in the current year's list of approved holidays falls on an employee's regular day off, the paid holiday will be observed on the nearest normal workday. If an approved holiday falls on a Saturday, the preceding Friday will be observed. If the holiday falls on Sunday, the following Monday will be observed. In the event the employee is required to work on the alternate scheduled "holiday", he or she ~~will either be given another alternate day off or~~ will be paid at double the regular, ~~straight time rate.~~ hourly rate of pay for that employee on that holiday or alternate scheduled "holiday".

**For non-exempt employees working shift work (Firefighters and Police Officers):** In the event the firefighter or police officer is required to work on a holiday, he or she will be paid double the regular hourly rate of pay for that employee on that holiday. A firefighter or police officer scheduled to work on any alternate scheduled "holiday" will be paid regular straight time for that day. Only those firefighters and police officers who actually work on the actual holiday will be paid double the regular hourly rate of pay for that employee on that holiday.

### 9.03 WORK DURING HOLIDAYS

It is not always feasible to grant holidays at the scheduled time, especially for employees assigned shifts of an "around-the-clock" operation.

Any Department Head who finds it necessary to do so may direct some or all employees of the Department to report for work on any holiday.

If a Department Head has directed an employee to report to work on a holiday, that employee will be paid double the regular hourly rate of pay for that employee on that holiday.

~~In any department requiring around-the-clock operation, the Department Head:~~

- ~~1. May designate an alternate day off for the employee if the holiday falls on the employee's regular day off or if the employee is required to work all or any part of a holiday; or~~
- ~~2. With the approval of the Department Head, may pay an employee an extra day's pay at the regular, straight-time hourly rate, for each holiday worked.~~

#### **9.04 HOLIDAY DURING VACATION**

If an official holiday falls within a regular employee's vacation, the employee will be granted the holiday and not charged for a day of vacation.



**NEW BUSINESS**

**TOPIC #5**

## EARNEST MONEY CONTRACT

THIS IS A CONTRACT whereby DEBORAH LOUISE MILLER, herein called Seller, agrees to sell to the TOWN OF HOLLYWOOD PARK, herein called Buyer, which agrees to purchase, upon the terms and provisions hereof, the following described real property (including any improvements), in its present condition, to wit:

The residence known as 612 El Portal, San Antonio, Texas 78232, legally described as Lot 4, Block 2, County Block 4944-A, COUNTRY CLUB ESTATES OF HOLLYWOOD PARK, in the City of Hollywood Park, Bexar County, Texas, according to plat thereof recorded in Volume 5300, Page 198, deed and Plat Records of Bexar County, Texas.

The total sales price will be the fair market value of the property as determined by an appraisal made by Blair Stouffer, MAI, of Stouffer & Associates, LLP, 525 Busby Dr., San Antonio, Texas 78209. Buyer shall deposit with Alamo Title Company \$1,000.00 as earnest money to bind this sale. At the closing, Buyer shall pay the purchase price (of which the \$1,000.00 earnest money shall form a part) in cash.

The sale shall be closed on or before December \_\_\_, 2015 at the offices of Alamo Title Company, 950 East Basse Road, San Antonio, Texas 78209 by Steve Aycok, Manager. At the closing, Seller shall furnish to Buyer a General Warranty Deed and an owner's title insurance policy from Alamo Title Company subject to the standard printed exceptions of Alamo Title Company, except that the boundary exception shall be deleted. At the closing taxes shall be prorated to the date of closing. Seller shall pay for a current survey of the property and any curative work needed to issue the title policy. Buyer shall pay for the cost of the appraisal. Other than the foregoing, each party shall pay the normal closing costs associated with a closing in Bexar County, Texas. Buyer shall receive possession of the property upon funding of the purchase price.

**The property is being purchased "AS IS" in its present condition, with no warranties of habitability or otherwise. If the survey does not reflect the property which Buyer believes it is**

**acquiring, Buyer shall have the option to cancel this sale and receive back its earnest money.**

There are no brokers' fees associated with this sale.

Buyer intends to demolish the structure on the property after the closing of the purchase. Buyer will authorize Habitat for Humanity to remove any materials from the structure prior to its demolition.

If Seller fails to timely comply with the terms of this agreement, Buyer may demand the refund of Buyer's earnest money or may pursue any legal remedy available to Buyer for Seller's breach of this contract. If Buyer fails to timely comply with the terms of this agreement, Seller may keep the earnest money and this contract will be terminated or Seller may seek specific performance or any other legal remedy available to Seller. In the event either party fails to timely comply with any obligation of this contract, the defaulting party shall pay the legal fees and costs of the non-defaulting party for enforcement of this contract.

Time is of the essence of this contract. Venue for all legal proceeding hereunder shall be in Bexar County, Texas.

EXECUTED this \_\_\_\_ day of December, 2015.

**SELLER:**

\_\_\_\_\_  
DEBORAH LOUISE MILLER  
127 West Huisache  
San Antonio, Texas 78212  
Phone: (210) \_\_\_\_\_

**BUYER:**

TOWN OF HOLLYWOOD PARK

By: \_\_\_\_\_  
Chris Fails, Mayor  
2 Mecca Dr.  
Hollywood Park, Texas 78232  
Phone: (210) 494-2023



**NEW BUSINESS**

**TOPIC #6**

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

**AN ORDINANCE OF THE TOWN OF HOLLYWOOD PARK,  
TEXAS, AMENDING CHAPTER 38, OFFENSES, BY  
REPEALING ARTICLE V, RELATED TO SEX OFFENDERS**

**WHEREAS**, the Attorney General of Texas has opined that general law cities may not enact ordinances prohibiting registered sex offenders from living within a specified distance from locations where children typically congregate; and

**WHEREAS**, the Texas state laws relating to sex offenders now provide adequate protection to the public and children against misconduct by sex offenders.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF HOLLYWOOD PARK, TEXAS** that Chapter 38 of the Code of Ordinances of the Town of Hollywood Park is hereby amended by repealing Article V thereof relating to sex offenders.

**PASSED, APPROVED and ADOPTED** by the City Council of Hollywood Park, Texas, on this 15<sup>th</sup> day of December, 2015.

\_\_\_\_\_  
Chris Fails, Mayor

**ATTEST:**

\_\_\_\_\_  
Janice Alamia, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael S. Brenan, City Attorney

12-9-15

**LAW OFFICE OF RICHARD GLADDEN**

1200 WEST UNIVERSITY DRIVE, SUITE 100  
DENTON, TEXAS 76201  
940-323-9300 (Voice)  
940-539-0093 (Fax)

November 4, 2015

Janice Alamia  
Hollywood Park, City Secretary  
2 Mecca Drive  
Hollywood Park, Texas 78232

Sent by U.S. Certified Mail, No. 7013 1710 0002 1136 0627.

**Re: Notice of Claim against the City of Hollywood Park, by Texas Voices for Reason and Justice and its Membership; Concerning the City’s Illegal Regulation of Sex Offender Residences.**

Dear Ms. Alamia,

I have been retained by an organization called Texas Voices for Reason and Justice (“TVRJ”). This letter is to provide your City and its representative officials with notice, in accordance with Sections 101.101 and 311.034 of the Texas Civil Practice & Remedies Code, of a legal claim that I intend to file on behalf of TVRJ and its Members, collectively, against the City of Hollywood Park. As stated on its website, Texas Voices for Reason and Justice is a statewide, non-profit, volunteer organization devoted to promoting a more balanced, effective, and rational criminal justice system. TVRJ advocates for common sense, research based laws and policies through education, legislation, litigation, and support for persons required to register for sex related offenses as well as for members of their families. The facts made the basis of my clients’ intended lawsuit against your City are as follows:

It has come to my attention that the City has approved and enacted a “Sex Offender Residency Restriction” ordinance (hereinafter “SORRO”) that is presently codified and remains in effect under the City’s Ordinance Code. Although the Membership of TVRJ includes others, its membership substantially consists of persons who are presently required to register as “sex offenders” under Article 62 of the Texas Code of Criminal Procedure. Under the definition provided by the City’s SORRO, many of these individuals are prohibited, under the City’s SORRO, from “establishing a permanent or temporary residence” within a designated distance of any premises “where children commonly gather.”

My investigation reveals that the City has a population of less than 5,000 residents, and that as such, it constitutes a “general law” city under Article 11, Section 4 of the Texas Constitution. As a “general law” city created under Article 11, Section 4 of the Texas Constitution, the City may only enact city ordinances pursuant to a “power or privilege” that has been “expressly” delegated to it by the Texas Legislature. *See, Dept. of Transportation v. City of Sun Valley*, 146 S.W.3d 637, 645 (Tex. 2004). Because there has been no such “express” delegation of authority by the Texas Legislature to your City (or to any other “general law” cities), the City’s SORRO is legally invalid under Article 11, Section 4 of the Texas Constitution.

I would have the City further note that the Texas Attorney General’s office has issued a legal opinion, authored by then-Texas Attorney General Greg Abbott, which has specifically concluded that “general law” cities and towns in Texas, such as your City, do not have legal authority, under Article 11, Section 4 of the Texas Constitution, to enact “sex offender residency restriction” ordinances. Specifically, the Texas Attorney General has expressly stated that his own legal research “*found no law authorizing a general-law municipality to adopt this type of residence restriction [ordinance]. Thus, unless the Legislature expressly authorizes it, a general-law municipality may not adopt an ordinance restricting where a registered sex offender may live.*” Tex.Att’y Gen.Op. GA-0526 (March 6, 2007). I have enclosed a copy of the foregoing Attorney General Opinion for your convenience.

In conclusion, this letter is to notify you, and to demand, that unless the City notifies me in writing not later than 45 days from the date of this letter (**December 19, 2015**), by 5:00 p.m., that it has repealed its SORRO, I will be filing suit against the City, wherein I will seek immediate entry of a temporary restraining order; additional interim relief; declaratory and injunctive relief; and attorney’s fees; on behalf of TVRJ and its Membership, including one or more of its individual Members, and against the City.

Please feel free to contact me should you wish to discuss this matter.

Yours truly,



Enclosure



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 6, 2007

The Honorable Jane Nelson  
Chair, Committee on Health and Human Services  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

Opinion No. GA-0526

Re: Whether a municipality may prohibit registered sex offenders from living in certain locations within the municipality (RQ-0526-GA)

Dear Senator Nelson:

You state that municipalities “across the state either have passed or are considering passing municipal ordinances that prohibit registered sex offenders from living within a specified distance from locations where children typically congregate, including day-care facilities, schools, public swimming pools, and parks and playgrounds.”<sup>1</sup> You ask whether a municipality may adopt such ordinances. *See* Request Letter, *supra* note 1, at 1. You particularly ask us to address two issues:

(1) whether Chapter 508, Government Code, Article 42.12, Code of Criminal Procedure, or Chapter 62, Code of Criminal Procedure, preempts or otherwise limits a municipality’s authority in this regard and (2) whether Section 3 or 19, Article I, Texas Constitution, or any other provision of the Texas Constitution limits a municipality’s authority in this regard.

*Id.* at 2.

We note preliminarily that no particular adopted or proposed ordinance is at issue. Thus, our answer is general and does not speak to the preemption or constitutionality of a specific ordinance.

In addition, we note that you do not specify whether your question concerns general-law or home-rule municipalities. *See id.* at 1–2. A general-law municipality is a political subdivision “created by the State and, as such, possess[es] those powers and privileges that the State expressly confers upon [it].” *Tex. Dep’t of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 645 (Tex. 2004). We have found no law authorizing a general-law municipality to adopt this type of residence

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<sup>1</sup>Letter from Honorable Jane Nelson, Chair, Committee on Health and Human Services, Texas State Senate, to Honorable Greg Abbott, Attorney General of Texas, at 1 (Aug. 29, 2006) (on file with the Opinion Committee, *also available at* <http://www.oag.state.tx.us>) [hereinafter Request Letter].

restriction. Thus, unless the Legislature expressly authorizes it, a general-law municipality may not adopt an ordinance restricting where a registered sex offender may live.

On the other hand, a home-rule municipality “do[es] not depend on the legislature for specific grants of authority but, instead, ha[s] a constitutional right of self-government and look[s] to the legislature only for specific limitations on [its] power.” *City of Laredo v. Webb County*, No. 03-05-00168-CV, 2005 WL 3234768, at \*3 (Tex. App.—Austin Dec. 1, 2005, no pet.); see TEX. CONST. art. XI, § 5; *Quick v. City of Austin*, 7 S.W.3d 109, 122 (Tex. 1998); *Dallas Merchant’s & Concessionaire’s Ass’n v. City of Dallas*, 852 S.W.2d 489, 490–91 (Tex. 1993). We thus consider whether the Legislature has specifically limited a home-rule municipality’s authority to adopt ordinances like those you generally describe.

**I. Whether Residence Restrictions Adopted by Home-Rule Municipalities are Preempted by Government Code Chapter 508, Code of Criminal Procedure Article 42.12, or Code of Criminal Procedure Chapter 62**

Despite its broad authority, a home-rule municipality may not adopt an ordinance that is “inconsistent with the Constitution of the State, or [with] the general laws enacted by the Legislature of this State.” *Dallas Merchant’s & Concessionaire’s Ass’n*, 852 S.W.2d at 490 (quoting TEX. CONST. art. XI, § 5); see *City of Corpus Christi v. Five Citizens of Corpus Christi*, 103 S.W.3d 660, 663 (Tex. App.—Corpus Christi 2003, pet. denied). Consequently, a municipal ordinance “that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute.” *Dallas Merchant’s & Concessionaire’s Ass’n*, 852 S.W.2d at 491. Nevertheless, “the mere fact that the legislature has enacted a law addressing a subject does not mean [that the] subject matter is completely preempted.” *Id.* (quoting *City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex. 1990)). A court will not hold a general law and a municipal ordinance “repugnant to each other if any other reasonable construction leaving both in effect can be reached.” *Id.* (quoting *City of Beaumont v. Fall*, 291 S.W. 202, 206 (Tex. 1927)). And if the Legislature chooses to preempt a subject matter usually encompassed within a home-rule municipality’s broad powers, “it must do so with unmistakable clarity.” *Id.*

You suggest that Government Code section 508.187, Code of Criminal Procedure article 42.12, or Code of Criminal Procedure chapter 62 may preempt the home-rule municipalities’ ordinances. See Request Letter, *supra* note 1, at 2. We will discuss chapter 62 of the Code of Criminal Procedure first.

Chapter 62 establishes a sex-offender-registration program under which persons with a “reportable conviction or adjudication” or who are “required to register as a condition of parole, release to mandatory supervision, or community supervision” must register “with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days.” TEX. CODE CRIM. PROC. ANN. art. 62.051(a) (Vernon Supp. 2006); see also *id.* art. 62.001(1) (defining “Department”); *id.* art. 62.004 (requiring the Department of Public Safety to determine “which local law enforcement authority serves as [a] person’s primary registration authority”). The phrase “reportable conviction or adjudication” is defined to include various sex offenses, such as indecency with a child, possessing or promoting child pornography, burglary with

intent to commit a sex offense, and aggravated kidnapping with intent to sexually abuse a person younger than 17 years old. *Id.* art. 62.001(5). Compare Act of May 26, 2005, 79th Leg., R.S., ch. 1008, § 1.01, 2005 Tex. Gen. Laws 3385, 3386–87 (defining “reportable conviction or adjudication”), with Act of May 25, 2005, 79th Leg., R.S., ch. 1273, § 2, 2005 Tex. Gen. Laws 4049, 4050–51 (same). Depending on the precise sex offense the person committed, a person’s duty to register as a sex offender expires when the person dies or on the tenth anniversary of the date on which (1) the person was released from a penal institution or discharged from community supervision, or (2) the court dismissed the criminal proceedings against the person. TEX. CODE CRIM. PROC. ANN. art. 62.101 (Vernon Supp. 2006). Failing to register as required is a criminal offense. *See id.* art. 62.102.

The statutory duty to register as a sex offender does not conflict with a municipal ordinance limiting the area in which a sex offender must live. Accordingly, chapter 62 does not preempt the municipal ordinances.

Article 42.12, section 13B of the Code of Criminal Procedure and section 508.187 of the Government Code (the “child-safety-zone statutes”) both provide in similar terms for the establishment of a child-safety zone that certain sex offenders may not enter. Code of Criminal Procedure article 42.12, section 13B pertains to defendants placed on community supervision, while Government Code section 508.187 pertains to convicted defendants who have served a sentence for a sex offense and are placed on parole. *See id.* art. 42.12, § 13B(a); TEX. GOV’T CODE ANN. § 508.187(a)–(b) (Vernon 2004). Under both statutes, a defendant or convicted defendant who, as a condition of community supervision or parole, must adhere to child-safety-zone provisions may not:

(A) supervise or participate in any program that includes as participants or recipients persons who are 17 years of age or younger and that regularly provides athletic, civic, or cultural activities; or

(B) go in, on, or within [1,000 feet, under article 42.12, section 13B or a distance specified by the panel under Government Code section 508.187(b)(1)(B)] of premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility.

TEX. GOV’T CODE ANN. § 508.187(b)(1) (Vernon 2004); *cf.* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 13B(a)(1) (Vernon Supp. 2006). Subsection (B) of the child-safety-zone statutes is particularly relevant to our preemption inquiry.

The child-safety-zone statutes are not inconsistent with home-rule municipality residence restrictions as you have described them. *See Dallas Merchant’s & Concessionaire’s Ass’n*, 852 S.W.2d at 490 (quoting TEX. CONST. art. XI, § 5). A sex offender may comply with both the child-safety-zone statutes and a home-rule municipality’s residence restrictions by staying out of the areas described in both. In this way, the state statutes and the municipal ordinances are not repugnant; instead, they are complementary. *See id.* at 491 (quoting *City of Beaumont*, 291 S.W. at 206).

Moreover, nothing in either of the child-safety-zone statutes evidences an unmistakably clear legislative intent to preempt a home-rule municipality's authority to regulate where sex offenders may live. *See id.* at 491. Certainly, neither child-safety-zone statute expressly preempts municipal regulation. *Cf.* TEX. ALCO. BEV. CODE ANN. § 109.57(a)–(b) (Vernon Supp. 2006) (expressly restricting a home-rule municipality's authority to impose stricter standards on premises or businesses required to have a license or permit under the Alcoholic Beverage Code and setting out the Legislature's intent that the Alcoholic Beverage Code "shall exclusively govern the regulation of alcoholic beverages in this state"); *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491–92 (stating that the Alcoholic Beverage Code "clearly preempts an ordinance of a home-rule city that regulates where alcoholic beverages are sold"). In addition, nothing in the child-safety-zone statutes' legislative history suggests an intent to preempt municipal regulation. *See generally* SENATE COMM. ON CRIM. JUSTICE, BILL ANALYSIS 1, Tex. C.S.S.B. 111, 74th Leg., R.S. (1995); HOUSE COMM. ON CRIM. JURISPRUDENCE 1, Tex. C.S.S.B. 111, 74th Leg., R.S. (1995); *see* HOUSE RESEARCH ORG., BILL ANALYSIS 1, 3, Tex. C.S.S.B. 111, 74th Leg., R.S. (1995).

Because the child-safety-zone statutes and municipal residence restrictions are not inconsistent and because the child-safety-zone statutes do not "with unmistakable clarity" preempt a home-rule municipality's authority to legislate in this area, we conclude that state law does not preempt municipal residence restrictions generally.<sup>2</sup> *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491.

## II. Whether Residence Restrictions Adopted by Home-Rule Municipalities Contravene Various Provisions of the Texas Constitution

You also ask whether article I, section 3 or 19, "or any other provision of the Texas Constitution" limits a home-rule municipality's authority to adopt residence restrictions. Request Letter, *supra* note 1, at 2. Article I, section 3, like its federal counterpart found in the Fourteenth Amendment to the United States Constitution, guarantees "all persons similarly situated . . . equal protection under the laws of this [s]tate and of the United States." *Nonn v. State*, 117 S.W.3d 874, 881–82 (Tex. Crim. App. 2003); *see* TEX. CONST. art. I, § 3; *see also* U.S. CONST. amend. XIV, § 1. Texas cases apply federal standards "when determining whether a statute violates equal protection under either provision." *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 846 (Tex. 1990). Under those standards, when a law creates a classification that "does not infringe upon fundamental rights or does not burden an inherently suspect class, equal protection requires only that the statutory classification . . . rationally relate[] to a legitimate state interest." *Id.* "In determining whether or not a state law violates the Equal Protection Clause," a court must "consider the facts and circumstances behind the law, the interests [that] the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). Given that we have no particular municipal ordinance before us here, we cannot perform an equal-protection analysis. Courts that have considered specific state statutory residence restrictions in the

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<sup>2</sup>Several bills already have been filed for the Eightieth Legislative Session that prescribe state-wide residence restrictions for sex offenders. *See, e.g.*, Tex. S.B. 94, 80th Leg., R.S. (2007); Tex. S.B. 88, 80th Leg., R.S. (2007); Tex. H.B. 203, 80th Leg., R.S. (2007); Tex. H.B. 62, 80th Leg., R.S. (2007). We do not consider in this opinion whether any of these bills, if adopted, will preempt municipal residence restrictions.

context of an equal-protection analysis, however, have held that the residence restrictions do not impinge upon fundamental rights or burden an inherently suspect class and that the residence restrictions rationally relate to the state's legitimate interest in promoting children's safety. The residence restrictions that have been considered thus were found not to violate the Federal Equal Protection Clause.<sup>3</sup>

Article I, section 19 of the Texas Constitution, which prohibits the deprivation "of life, liberty, property, privileges, or immunities" without "due course of the law," is nearly identical to the Federal Due Process Clause, which is found in the Fourteenth Amendment to the United States Constitution. See *Univ. of Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 929 (Tex. 1995). Compare TEX. CONST. art. I, § 19, with U.S. CONST. amend. XIV, § 1. In matters of procedural due process, Texas courts traditionally follow "contemporary federal due process interpretations of procedural due process issues." *Than*, 901 S.W.2d at 929. A court's review of a due-process claim requires a two-part analysis: (1) whether the liberty or property interests allegedly involved are entitled to procedural due-process protection; and (2) if so, what process is due. *Id.* The Texas Supreme Court, quoting the United States Supreme Court, has indicated that the liberty interests protected by procedural due process mirror those protected by the constitutional equal-protection guarantees:

In defining the scope of protected liberty interests under the Fourteenth Amendment, the United States Supreme Court has stated that a liberty interest:

[D]enotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of one's own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.

*Id.* at 929–30 (quoting *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972)). A property interest to which procedural due process applies is one that is either vested or springs from state law. See *Pickell v. Brooks*, 846 S.W.2d 421, 426 (Tex. App.—Austin 1992, writ denied).

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<sup>3</sup>See *Weems v. Little Rock Police Dep't*, 453 F.3d 1010, 1013, 1016 (8th Cir. 2006) (considering the constitutionality of an Arkansas law prohibiting certain high-risk sex offenders from residing within 2,000 feet of the property on which a public or private elementary or secondary school or daycare facility is located); *Doe v. Miller*, 405 F.3d 700, 704, 711–14 (8th Cir.) (considering the constitutionality of an Iowa statute that prohibits a person convicted of certain sex offenses from residing within 2,000 feet of a school or registered child-care facility), *cert. denied*, 126 S. Ct. 757 (2005); *Graham v. Henry*, No. 06 CV 381 TCK FHM, 2006 WL 2645130, at \*1, \*8 (N.D. Okla. 2006) (considering the constitutionality of an Oklahoma statute prohibiting certain sex offenders from residing within 2,000 feet of a public or private school, educational institution, playground, park, or licensed child-care facility); *People v. Leroy*, 828 N.E.2d 769, 775, 778 (Ill. App. Ct. 2005) (considering the constitutionality of an Illinois statute prohibiting certain sex offenders from knowingly residing within 500 feet of a playground or a facility providing programs or services exclusively directed toward persons under 18 years of age).

Whether, in a particular instance, a sex offender subject to a municipal residence restriction can succeed in a case alleging that the residence restriction violates his or her constitutional right to procedural due process is a question that a court must decide after determining the relevant facts. *See* Tex. Att’y Gen. Op. No. GA-0446 (2006) at 18 (“Questions of fact are not appropriate to the opinion process.”). To date no sex offender has successfully persuaded a court that a residence restriction violated the offender’s procedural due process rights. *See, e.g., Doe*, 405 F.3d at 709 (concluding that the absence of an individualized hearing to determine a sex offender’s dangerousness “does not offend principles of procedural due process”); *State v. Seering*, 701 N.W.2d 655, 666 (Iowa 2005) (finding that the plaintiff “has not even explained how the [Iowa] residency restriction statute” violates “a private interest in freedom of choice in residence”).

Finally, you ask if any other provision of the Texas Constitution limits a home-rule municipality’s authority to impose residence restrictions. *See* Request Letter, *supra* note 1, at 2. We know of no Texas case considering challenges to residence restrictions on state constitutional grounds. We note, however, that sex offenders in other states have raised numerous federal constitutional provisions, but none have successfully argued that a residence restriction was unconstitutional.<sup>4</sup> Given the fact-intensive nature of any constitutional analysis of a specific home-rule municipality’s ordinance, we will not consider the possible claims generally here.

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<sup>4</sup>*See, e.g., Weems*, 453 F.3d at 1015, 1017 (holding that Arkansas statutory residence restriction does not violate constitutional substantive due-process principles, does not violate a constitutional right to travel, and is not an unconstitutional ex post facto law); *Doe*, 405 F.3d at 708, 709–23 (holding that Iowa’s statutory residence restriction is not unconstitutionally vague, does not violate substantive due process, does not violate the right against self-incrimination, and is not an ex post facto law); *Graham*, 2006 WL 2645130, at \*4–\*10 (concluding, in the context of a motion for a preliminary injunction, that Oklahoma’s statutory residence restriction did not violate the constitutional prohibition against double jeopardy, substantive due-process principles, or the Privileges and Immunities Clause of the Fourteenth Amendment); *Coston v. Petro*, 398 F. Supp. 2d 878, 880, 887 (S.D. Ohio 2005) (noting sex offender’s arguments that an Ohio statutory residence restriction that prohibits a sex offender from residing within 1,000 feet of a school premises infringes on the fundamental right of privacy in family matters and the fundamental right of intrastate travel and violates the constitutional right against impairment of contracts, the right against self-incrimination, the Ex Post Facto Clause, and the Takings Clause of the Fifth Amendment); *Seering*, 701 N.W.2d at 665, 666–69, 670 (holding that Iowa’s statutory residence restriction does not violate substantive due process, the Ex Post Facto Clause, or the right against self-incrimination, and did not constitute unconstitutionally cruel and unusual punishment); *Leroy*, 828 N.E.2d at 776–77, 778–84 (holding that Illinois statutory residence restrictions do not violate substantive due-process principles, constitute an ex post facto law, violate the prohibition against self-incrimination, or constitute cruel and unusual punishment); *Denson v. Georgia*, 600 S.E.2d 645, 646–47 (Ga. Ct. App. 2004) (concluding that Georgia’s statutory residence restriction, which prohibits a sex offender from residing within 1,000 feet of a day-care facility, is not an ex post facto law because the sex offender can be punished only if he “prospectively chooses to violate the law by continuing to reside” within the prohibited zone).

S U M M A R Y

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. Whether a particular ordinance is permitted by the Texas Constitution is a question that must be determined by a court after considering all of the relevant facts applicable to a specific ordinance; to date, however, no court has found that a statutory residence restriction violates any federal constitutional provision.

Very truly yours,



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