

TO: James L. App, City Manager
FROM: Dennis J. Cassidy, Chief of Police
SUBJECT: Ordinance Pertaining to Residency Restrictions for Certain Sex Offenders
DATE: January 3, 2006

NEEDS For the City Council to consider an ordinance augmenting residency restrictions for certain convicted sex offenders.

FACTS:

1. City Staff was asked to explore and present a sexual predator residency ordinance that would further protect children from known sexual predators by establishing residency restrictions in locations where children congregate.
2. Current state law establishes residency restriction for certain sex offenders that are on parole from residing within one quarter mile of any public or private school attended by children in Kindergarten through Grade 8 during their period of parole.
3. Section 290 of the Penal Code requires persons convicted of certain offenses to register with the Police Department in the city where he/she reside. The City of Paso Robles currently has fifty nine (59) convicted sex offenders registered in the City limits. Forty (40) of them or 68% involved victims under the age of 18 years.
4. Based on the evidence available, sex offenders have recidivism rates as high as 45%. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to re-offend, and tend to prey on the most innocent members of society. More than two-thirds of the victims of rape and sexual assault are under 18 years of age. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.
5. It is in the City's interest to promote, protect, and improve the health, safety, and welfare of the citizens of the City by establishing areas around locations where children regularly congregate wherein certain sexual offenders shall be prohibited from establishing temporary or permanent residence.
6. Information and concerns were received from the local Board of Realtors and dialogue between their Legal Council and the City Attorney resulted in several positive changes to the original document/ordinance. We have not received final review comments regarding the proposed changes due to time limitations. The School District also supplied information relevant to the proposed ordinance that resulted in some positive change to the document/ordinance pertaining to bus stops. Staff continues to refine and confirm definitions of "areas where children congregate" and prepare adequate mapping for disclosure/notification and future enforcement purposes.

**ANALYSIS &
CONCLUSION:**

Several States, Cities and Counties have enacted ordinances and laws further restricting the residency of convicted sex offenders in proximity to locations where children gather. Current law restricts only those currently on parole who are convicted of certain crimes from living within a quarter of a mile from certain locations where children congregate. It would benefit the citizens of Paso Robles to enhance the protection of our children by establishing areas around locations where children regularly congregate that prohibit certain sexual offenders from establishing temporary or permanent residency. This ordinance would also require property managers, landlords, and realtors to disclose the existence of the ordinance prior to the commencement of any sale, rental, or leasing transaction. This ordinance will not affect those registrants currently living in restricted areas prior to the adoption of the ordinance.

**POLICY
REFERENCE:**

Sections 290 and 3003 (g) of the California Penal Code.

**FISCAL
IMPACT:**

Undetermined. Monitoring and enforcement could require a significant law enforcement staff time commitment and personnel resources.

OPTIONS:

1. Continue the introduction for first reading of Ordinance No. XXX N.S. adding a new Chapter 9.46 to Title 9 of the Municipal Code of the City of El Paso de Robles pertaining to residency restrictions for certain sex offenders to February 7, 2006.
2. Amend, modify, or reject the above option.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES ADDING A NEW CHAPTER 9.46 TO TITLE 9 OF THE MUNICIPAL CODE OF THE CITY OF EL PASO DE ROBLES PERTAINING TO RESIDENCY RESTRICTIONS FOR CERTAIN SEX OFFENDERS

WHEREAS, the City of El Paso de Robles (the "City") places a high priority on maintaining public safety; and

WHEREAS, the City is concerned about recent occurrences in California and elsewhere, whereby convicted sex offenders who have been released from custody repeat the unlawful acts for which they had originally been convicted; and

WHEREAS, sex offenders have recidivism rates as high as 45%. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend, and tend to prey upon the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under 18 years of age. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon; and

WHEREAS, the City is becoming an increasingly attractive place of residence for families with small children; and

WHEREAS, the City is adjacent to the City of Atascadero, in which the Atascadero State Hospital is located, and at which many sex offenders are housed. City believes that upon their release, many sex offenders decide to remain in the area; and

WHEREAS, California courts have consistently upheld ordinances of various California municipalities which reasonably restrict the establishment or operation of adult businesses within certain distances from sensitive locations, such as schools, within their jurisdictions; and

WHEREAS, it is as important to protect children from sexual offenders as it is to protect children from adult businesses; and

WHEREAS, Section 3003(g) of the California Penal Code prohibits a person who has been convicted of certain sex offenses from being placed or residing within certain specified distances from any public or private school attended by children within specified grade levels during the period of parole; and

WHEREAS, section 290 of the California Penal Code requires that any person determined to have committed certain offenses must register with the city chief of police or county sheriff of the community in which he or she resides; and

WHEREAS, in an effort to provide greater protection for persons in the City, especially the City's younger and more vulnerable residents, the City desires to increase (a) the range of sexual offenders subject to residency restrictions; (b) the protected locations within the community; (c) the minimum distance of residency restrictions imposed on qualifying sex offenders; and (d) the duration of the residency restrictions; and

WHEREAS, it is the intent of the City in enacting this Ordinance to help City residents protect themselves, their children, and the community; it is not the intent of the City to embarrass or harass persons convicted of sex offenses; and

WHEREAS, Article XI, Section 7 of the California Constitution and California Government Code Section 37100 provide the City with authority to enact local ordinances to protect the health, safety, and welfare of its residents so long as the state legislature has not preempted the field; and


WHEREAS, the City has the authority to protect its young citizens from the dangers presented by the presence of sexual offenders by enacting stricter residency restrictions for sexual offenders for the purpose of providing protection and not for the purpose of additional punishment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Chapter 9.46 is hereby added to Title 9 of the Municipal Code of the City of El Paso de Robles to read as follows:

**Chapter 9.46
Residency Restrictions for Registered Sex Offenders**

Section 9.46.010. Findings and Intent.

1. Based on the evidence available, sex offenders have recidivism rate  high as 45%. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend, and tend to prey on the most innocent members of society. More than two-thirds of the victims of rape and sexual assault are under 18 years of age. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

2. It is the intent of this Chapter to serve the City's interest in promoting, protecting, and improving the health, safety, and welfare of the citizens of the City by establishing areas around locations where children regularly congregate wherein certain sexual offenders shall be prohibited from establishing temporary or permanent residence.

Section 9.46.020. Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

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

Temporary residence means 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, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Church or place of worship means, consistent with the definitions therefor of the Internal Revenue Service, a location with the following characteristics (all of which need not be present to result in a determination of existence), (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine or discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) an organization of ordained ministers; (8) ordained ministers selected after completing prescribed studies; (9) a body of literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) sessions for religious instruction of the young; or (14) schools for the preparation of its ministers.

Section 9.46.030. Sexual Offender Residence Prohibition; Penalties; Exceptions.

1. It is unlawful for any person who is subject to the registration requirements under Section 290 of the California Penal Code for a crime in which the victim was less than eighteen (18) years of age, to establish a permanent residence or temporary residence within 1,320 (1/4 mile) feet of any (i) public or private school serving pre-kindergarten through grade 12, (ii) California state licensed day care center, (iii) park or playground, (iv) youth-oriented facilities, (v) public library, (vi) church or place of worship, or (vii) other place where children under the age of 18 regularly congregate within the City of El Paso de Robles (collectively, the "protected locations").

Penal Code Section 290(a)(2)(D) requires certain persons convicted in other courts, including other state courts, and federal and military courts, to register in California. This Section 9.46.030 shall apply, without limitation, if (1) the person would be required to register as a sex offender, under the laws of, and while residing within, the state of conviction for a sex offense committed in that state; or (2) the offense, had it been committed in California, would have been punishable as one or more of the offenses described in section 290(a)(2)(A). Nothing in this paragraph shall alter or limit the registration requirements set forth in Penal Code Section 290 nor the applicability of this Municipal Code Section 9.46.030 to all persons subject to the registration requirements under Section 290 of the California Penal Code for a crime in which the victim was less than eighteen (18) years of age.

2. For purposes of this Section 9.46.030, the distance of 1,320 Feet (1/4 mile) feet shall be measured in a straight line from the closest property line of the residence of a person for whom registration is required pursuant to Section 290 of the California Penal Code to the closest property line of any protected location.

3. A person who violates this Section 9.46.030 shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment. A person who violates this section for a second or subsequent time shall be punished by a fine not to exceed \$1,000.00, or by imprisonment in the county prison for a term not exceeding twelve (12) months, or by both such fine and imprisonment for each such additional violation.

4. Notwithstanding the foregoing, a person residing within 1,320 feet (1/4 mile) of any protected location does not violate this Section if any of the following apply:

a. Such person established the temporary residence or permanent residence and was registered in accordance with California Penal Code Section 290 prior to the effective date of the Ordinance adding this Chapter 9.46.

b. Such person was a minor when he or she committed the offense and was not convicted as an adult.

c. Such person is a minor.

d. The protected location was established after such person established the temporary residence or permanent residence and registered in accordance with California Penal Code Section 290.

Section 9.46.040. Disclosure of Ordinance in Residential Transactions

1. All owners or their agents of residential property for sale, lease, or rental, shall be required to provide a copy of Chapter 9.46 of the Municipal Code of the City of El Paso de Robles, as well as a map prepared by the City showing the affected areas, to the parties in a sale, lease or rental transaction. For a sales transaction, the documents shall be provided before or during the disclosure period. For a lease or rental of residential property, the documents shall be provided prior to execution of the lease or rental agreement. All buyers, lessees or renters shall be required to sign and date a form acknowledging that the information described above has been provided to them. The City shall be responsible for preparing and periodically updating the map to be provided by owners and agents, as well as for making the map available on the City's website.

2. The City may pursue any enforcement action or legal remedy available under controlling State law for violation of this Section 9.46.040.

Section 9.46.050 No Supersedure of State Law

1. Nothing in this Chapter 9.46 is intended to supersede or replace any provision of state law regarding residency restrictions or registration requirements for registered sex offenders.

Section 2. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of El Paso de Robles hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases be declared invalid.

INTRODUCED on _____, 2006 and PASSED AND ADOPTED on _____, 2006 by the following vote:

AYES:

NOES:

ABSENT:

Frank Mecham, Mayor

ATTEST:

Cathy M. David, Deputy City Clerk