

**TO:** James L. App, City Manager  
**FROM:** Robert Burton, Chief of Police  
**SUBJECT:** Sex Offender Residency Restrictions  
**DATE:** September 15, 2015

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**NEEDS:** For the City Council to consider an ordinance amending the City's sex offender residency restrictions.

**FACTS:**

1. In 2006, the City Council adopted Ordinance 912 adding Chapter 9.46 to the City's Municipal Code establishing residency restrictions within the City. Ordinance 912 has not been amended since its adoption.
2. In the last two years, courts have issued a number of decisions regarding the regulation of sex offenders by local agencies and municipalities. In January 2014, in *People v. Nguyen*, a California Court of Appeal held that the California Legislature had established a comprehensive scheme for regulating the daily lives of sex offenders thereby limiting local legislation restricting sex offenders except where such legislation is expressly permitted. In March 2015, the California Supreme Court, in *In re Taylor*, held that a blanket 2,000 foot residency restriction imposed on sex offenders in San Diego County was unconstitutional, as applied in San Diego County because the restrictions essentially meant they could not live anywhere in the County.
3. Residency restrictions remain statutorily authorized and constitutionally defensible. However, they must be crafted carefully to fit within the parameters of *In re Taylor*.
4. At least one city in San Luis Obispo County has been sued in recent months in connection with its residency restrictions. Many more cities throughout California have received letters threatening suit from sex offender advocacy groups.

**ANALYSIS &  
CONCLUSION:**

City staff, in conjunction with the City Attorney's office, has carefully reviewed Ordinance 912 and the maps showing the protected locations with the City. In light of the recent changes in the law, the following changes to Chapter 9.46 of the City's Municipal Code are necessary to ensure that it is in compliance with the law:

- Reduce the distance from protected locations at which sex offenders who have committed offenses against children may reside from 1/4 mile to 1/8 mile.

- Remove churches, parks and playgrounds, youth-oriented facilities, and public libraries from the list of protected locations.
- Establish an exception for any sex offender residing at a licensed patient care facility, licensed alcohol and drug treatment facility, licensed mental health facility, or other fully licensed and state-sanctioned rehabilitation facility.

**POLICY**

**REFERENCE:** None. This is a response to a recent California Supreme Court case.

**FISCAL IMPACT:** None.

**OPTIONS:** After consideration of all public testimony, that the City Council:

1. Introduce, read by title only, and waive further reading of Ordinance No. XXX regarding residency restrictions for registered sex offenders.
2. Amend, modify, or reject the above option.

Attachments:

- 1) Ordinance No. XXX
- 2) Redline Showing Proposed Changes to Chapter 9.46

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

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES AMENDING CHAPTER 9.46  
OF THE MUNICIPAL CODE REGARDING RESIDENCY RESTRICTIONS FOR  
REGISTERED SEX OFFENDERS

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WHEREAS, in 2006 the City Council adopted Ordinance No. 912 establishing residency restrictions for sex offenders within the City; and

WHEREAS, since 2006, there have been a number of changes in the law impacting how cities may regulate sex offenders; and

WHEREAS, in January 2014, in *People v. Nguyen*, a California Court of Appeal held that the California Legislature had established a comprehensive scheme for regulating the daily lives of sex offenders thereby prohibiting local legislation which restricts where a sex offender may go and what a sex offender may do, except where such legislation is expressly permitted; and

WHEREAS, in March 2015, the California Supreme Court, in *In re Taylor*, held that a blanket 2,000 foot residency restriction imposed on sex offenders in San Diego County was unconstitutional, as applied in San Diego County because the restrictions banished sex offenders from housing within the county; and

WHEREAS, local sex offender residency restrictions are statutorily authorized under Penal Code Section 3003.5(c) and remain constitutionally permissible so long as they are appropriately crafted; and

WHEREAS, in light of the recent case law, City staff has carefully studied the issue and performed a detailed review of the City's existing maps showing the protected locations; and

WHEREAS, City staff has proposed the foregoing amendments to Chapter 9.46 to refine the sex offender residency restrictions to better conform to the law; and

WHEREAS, based on the evidence available, as presented in the 2014 Year End Report of the California Sex Offender Management Board, the fifteen year re-arrest rate for sex offenders who had a prior conviction for sex offending was nearly twice that of first-time offenders; and

WHEREAS, according to the same report, although the likelihood of a sex offender reoffending varies significantly based on the person, sex offenders as a whole are significantly more likely to be re-arrested for sex crimes than non-sex offenders; and

WHEREAS, the foregoing sex offender residency restrictions are, therefore, necessary to protect the health, safety, and welfare of children within the City.

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

Section 1. The City Council hereby finds and declares that all of the Recitals above are true and correct.

Section 2. Chapter 9.46 of the City of El Paso de Robles Municipal Code is hereby amended to read as follows:

**Chapter 9.46 – RESIDENCY RESTRICTIONS FOR REGISTERED SEX OFFENDERS**

**9.46.010 - Findings and intent.**

- A. The findings made by the City Council during the adoption of Ordinance 912 and during its amendment are incorporated herein by this reference.
- B. 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.

**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:

“Day care center” means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities and school-age child care centers, as defined in Section 1596.76 of the California Health and Safety Code and licensed pursuant to the provisions of the California Child Day Care Facilities Act (Health & Safety Code Sections 1596.70 et seq.).

“Permanent residence” means a place where a person abides, lodges, or resides for fourteen or more consecutive days.

“Temporary residence” means a place where a person abides, lodges, or resides for a period of fourteen 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 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

**9.46.030 - Sexual offender residence prohibition—Penalties—Exceptions.**

- A. 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 years of age, to establish a permanent residence or temporary residence within six hundred and sixty feet (one eighth of a mile) of any: (i) public or private school serving pre-kindergarten through grade twelve; or (ii) day care center (collectively, the “protected locations”).

The City Council shall, by resolution, adopt a list of the facilities described in this subsection as well as a map showing the protected locations and those properties within one-eighth mile of the protected locations. The list and map shall be updated on an annual basis, but may be updated more frequently should new protected locations be established or where uses in existing protected locations have changed.

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 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 subsection shall alter or limit the registration requirements set forth in Penal Code Section 290 nor the applicability of this section 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 years of age.

- B. For purposes of this section, the distance of six hundred and sixty feet (one-eighth of a mile) 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. Any parcels that are partially included within a protected area, as shown on the map, shall be considered to be wholly included within the protected area.
- C. A person who violates this section may be charged with a misdemeanor or infraction, pursuant to the provisions of Chapter 1.02 of this code.
- D. Notwithstanding the foregoing, a person residing within six hundred and sixty feet (one-eighth of a mile) of any protected location does not violate this section if:
  - 1. 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 Ordinance 912;
  - 2. Such person was a minor when he or she committed the offense and was not convicted as an adult;
  - 3. Such person is a minor;

4. 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; or

5. Such person is temporarily residing in a licensed patient care facility, licensed alcohol and drug treatment facility, licensed mental health facility, or other fully licensed and state-sanctioned rehabilitation facility.

**9.46.040 - Disclosure of ordinance in residential transactions.**

A. All owners, or their agents, of residential property for sale, lease, or rental, shall be required to provide a copy of this chapter, 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 in this subsection 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.

B. The City may pursue any enforcement action or legal remedy available under controlling state law for violation of this section.

**9.46.050 - No supersedure of state law.**

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

Section 3. CEQA. The City Council finds that this Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly.

Section 4. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

Section 6. Publication. The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause the same to be published once

within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Government Code Section 36933.

Introduced and passed and adopted at a regular meeting of the City Council of the City of El Paso de Robles held on \_\_\_\_\_, 2015 by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Steven W. Martin, Mayor

ATTEST:

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Kristen L. Buxkemper, Deputy City Clerk

9.46.010 - Findings and intent.

A. ~~Based on the evidence available, sex offenders have recidivism rates as high as forty-five percent. 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 eighteen years of age. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.~~ The findings made by the City Council during the adoption of Ordinance 912 and during its amendment are incorporated herein by this reference.

B. It is the intent of this chapter to serve the ~~city's~~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.

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:

~~“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.~~

“Day care center” means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities and school-age child care centers, as defined in Section 1596.76 of the California Health and Safety Code and licensed pursuant to the provisions of the California Child Day Care Facilities Act (Health & Safety Code Sections 1596.70 et seq.).

“Permanent residence” means a place where a person abides, lodges, or resides for fourteen or more consecutive days.

“Temporary residence” means a place where a person abides, lodges, or resides for a period of fourteen 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 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

~~“Youth-oriented facilities” means properties on which facilities that are primarily dedicated to providing programs for children under the age of eighteen are located. Such facilities may include, but are not limited to, the Paso Robles Children’s Museum, the Paso Robles Youth Arts Center, the Boys and Girls Club of San Luis Obispo County, the (Boy) Scout Hut, and the Camp Fire Cabin.~~

9.46.030 - Sexual offender residence prohibition—Penalties—Exceptions.

~~NOTE: CHECK OUT Resolutions 06-018 and 07-200~~

A. 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 years of age, to establish a permanent residence or temporary residence within ~~one thousand three~~six hundred ~~twenty and sixty~~ feet (~~one-quarter~~one eighth of a mile) of any: (i) public or private school serving pre-kindergarten through grade twelve; or (ii) day care center; ~~(iii) park or playground, (iv) youth-oriented facilities, (v) public library, or (vi) church or place of worship~~ (collectively, the “protected locations”).

The City Council shall, by resolution, adopt a list of the facilities described in this subsection as well as a map showing the protected locations and those properties within ~~one-quarter~~one-eighth mile of the protected locations. The list and map shall be updated on an annual basis, but may be updated more frequently should new protected locations be established or where uses in existing protected locations have changed. ~~Distance from protected locations shall be measured from the outer boundaries of the properties on which the facilities described in this subsection are situated. Any parcels that are partially included within a protected area, as shown on the map, shall be considered to be wholly included within the protected area.~~

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 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 subsection shall alter or limit the registration requirements set forth in Penal Code Section 290 nor the applicability of this section 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 years of age.

B. For purposes of this section, the distance of ~~one thousand three~~six hundred ~~twenty and sixty~~ feet (~~one-quarter~~one-eighth of a mile) 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. Any parcels that are partially included within a protected area, as shown on the map, shall be considered to be wholly included within the protected area.

C. A person who violates this section may be charged with a misdemeanor or infraction, pursuant to the provisions of Chapter 1.02 of this code.

D. Notwithstanding the foregoing, a person residing within ~~one thousand three~~six hundred ~~twenty and sixty feet (~~one quarter~~one-eighth of a mile) of any protected location does not violate this section if ~~any of the following apply~~:~~

1. 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~~ ~~codified in this chapter~~912;

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

3. Such person is a minor;

4. 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~~;~~ or

5. Such person is temporarily residing in a licensed patient care facility, licensed alcohol and drug treatment facility, licensed mental health facility, or other fully licensed and state-sanctioned rehabilitation facility.

9.46.040 - Disclosure of ordinance in residential transactions.

A. All owners, or their agents, of residential property for sale, lease, or rental, shall be required to provide a copy of this chapter, 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 in this subsection 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.

B. The City may pursue any enforcement action or legal remedy available under controlling state law for violation of this section.

9.46.050 - No supersedure of state law.

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