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Effective: 06-09-08

ORDINANCE NO. O2M8-4524

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALHAMBRA, CALIFORNIA AMENDING THE ALHAMBRA MUNICIPAL CODE BY ADDING CHAPTER 9.101 TO TITLE 9, RELATING TO RESIDENCY RESTRICTIONS FOR SEX OFFENDERS

THE CITY COUNCIL OF THE CITY OF ALHAMBRA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

WHEREAS, on November 7, 2006, the voters of the State of California overwhelmingly approved Proposition 83, the Sexual Predator Punishment and Control Act, commonly referred to as Jessica's Law, so as to better protect Californians, and, in particular, the children of this State from sex offenders; and

WHEREAS, Proposition 83 enacted subsection (b) of the Penal Code Section 3003.5 which prohibits any registered sex offender, on parole to the California Department of Corrections and Rehabilitation – Division of Adult Parole Operations, from residing within 2,000 feet of any public or private school, or any park where children regularly gather; and

WHEREAS, Proposition 83 as codified in subsection (c) of Penal Code Section 3003.5, authorizes municipal jurisdictions to enact local ordinances that further restrict the residency of any registered sex offender, whether or not on parole or probation; and

WHEREAS, local ordinances authorized by subsection (c) of Penal Code Section 3003.5 are permitted to regulate the number of registered sex offenders that reside in a residential facility, including those facilities which serve six or fewer persons commonly referred to as sober living facilities, and are considered a single-family dwelling pursuant to Health and Safety Code Section 1566.3; and

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

WHEREAS, the City is concerned with recent occurrences, within the City and elsewhere in California, where multiple registered sex offenders have been residing in clusters in violation of subsection (b) of Penal Code Section 3003.5; and

WHEREAS, because Alhambra Municipal Code Chapter 9.101 is intended to eliminate any potential conflict of land uses in residential neighborhoods and to reduce the potential dangers associated with multiple registered sex offenders living near families with children and places where children frequently gather, coupled with the fact that subsection (a) of Penal Code Section 3003.5 expressly refers to "single family dwellings," as opposed to multi-family dwellings, Chapter 9.101 shall also regulate the number of registered sex offenders permitted to

reside in multiple-family dwellings; and

WHEREAS, in addition to public and private schools and parks, the City further finds that California State licensed day care facilities are necessarily included as places where children frequently gather; and

WHEREAS, Article XI, Section 7 of the California Constitution authorizes the City to enact and enforce ordinances that regulate conditions which may be public nuisances or health hazards, or that promote social, economic or aesthetic considerations; and

WHEREAS, California Government Code section 38773.5 authorizes cities to pass ordinances that provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance; and

WHEREAS, in order to foster compliance with the intent of this ordinance, Chapter 9.101 shall establish residency regulations of registered sex offenders and the property owners who rent to them; and

WHEREAS, Sex Offenders who reside within a Residential Exclusion Zone and Responsible Parties who knowingly rent any Single Family Dwelling, Multi-family Dwelling, Duplex Dwelling, and/or commercial Hotel, Motel, or Inn rooms to more than one (1) Sex Offender create a public nuisance that is injurious to the public health, safety, and welfare; and

WHEREAS, Sex Offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon. 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 they prey on the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under the age of 18.

WHEREAS, this ordinance is required for the immediate preservation of the public health, safety, and welfare;

NOW THEREFORE, the City Council of the City of Alhambra ordains as follows:

SECTION ONE: A new Chapter 9.101 entitled "Sex Offender Residency Restrictions" is hereby added to Title IX of the Alhambra Municipal Code to read as follows:

CHAPTER 9.101

SEX OFFENDER RESIDENCY RESTRICTIONS

9.101.010 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. "Child" or "Children" shall mean any person(s) under the age of eighteen (18) years of age.
- B. "Child Care Center" shall mean any State of California, Department of Social Services licensed facility that provides non-medical care to children in need of personal services,

supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a twenty-four (24) hour basis, including but not limited to a family day care home, infant center, preschool, extended-day care facility, or school-age child care center.

- C. "Duplex" shall mean a residential land use for a building containing two dwelling units.
- D. "Hotel" or "Motel" shall mean a commercial land use for the rental of six (6) or more guest rooms or suites for primarily temporary residency for a period of not more than thirty (30) consecutive days.
- E. "Inn" shall mean a commercial land use for the rental of five (5) or fewer guest rooms or suits primarily for temporary residency for a period of not more than thirty (30) consecutive days.
- F. "Multi-family Dwelling" shall mean a building designed for permanent residency for three (3) or more families living independently of each other. This includes apartment houses and condominiums, but does not include hotels, motels, or inns.
- G. "Owner's Authorized Agent" shall mean any natural person, firm, association, joint venture, joint stock company, partnership, organization, club, company, corporation, business trust or the manager, lessee, agent, servant, office or employee authorized to act for the owner of a property.
- H. "Park" shall include those areas as defined in Alhambra Municipal Code section 14.04.010.
- I. "Permanent Resident" shall mean any person who, as of a given date, obtained the right to occupy a dwelling including but not limited to a Single Family Dwelling, Multi-family Dwelling, Duplex Dwelling, Hotel, Motel, or Inn for more than thirty (30) consecutive days.
- J. "Property Owner" as applied to buildings and land shall mean the owner of record of any parcel of real property as designated on the county assessor's tax roll, or a holder of a subsequently recorded deed to the property, and shall include any part owner, joint owner, tenant, tenant in common, or joint tenant, of the whole or part of such a building or land.
- K. "Residential Exclusion Zone" shall include those areas located within two thousand (2,000) feet of the closest property line of the subject property to the closest property line of a child care center, public or private school grades K through 12, or park in which a sex offender is prohibited from temporarily or permanently residing.
- L. "Responsible Party" shall mean the Property Owner and/or Owner's Authorized Agent.
- M. "Sex Offender" means any person for whom registration is required pursuant to Section 290 of the California Penal Code, regardless of whether that person is on parole or probation.
- N. "Single Family Dwelling" means one (1) permanent residential dwelling located on a single lot with yard areas that separate that dwelling from other dwellings.

- O. "Temporary Resident" means any person who, for a period of thirty (30) days or less, obtained the right to occupy a dwelling including but not limited to a Hotel, Motel or Inn.

9.101.020 VIOLATION OF RESIDENTIAL EXCLUSION ZONE.

No Sex Offender shall be a Permanent or Temporary Resident in a Residential Exclusion Zone.

9.101.030 SEX OFFENDER VIOLATION – SINGLE FAMILY DWELLINGS.

No Sex Offender shall be a Permanent or Temporary Resident in a Single Family Dwelling already occupied by a Sex Offender, unless those persons are legally related by blood, marriage or adoption.

9.101.040 SEX OFFENDER VIOLATION – MULTI-FAMILY DWELLINGS.

No Sex Offender shall be a Permanent or Temporary Resident in a Multi-Family Dwelling already occupied by a Sex Offender, unless those persons are legally related by blood, marriage or adoption.

9.101.050 SEX OFFENDER VIOLATION – DUPLEX DWELLINGS.

No Sex Offender shall be a Permanent or Temporary Resident in a Duplex Dwelling already occupied by a Sex Offender, unless those persons are legally related by blood, marriage or adoption.

9.101.060 SEX OFFENDER VIOLATION – HOTEL/ MOTEL/ INN ROOMS.

No Sex Offender shall be a Permanent or Temporary Resident in a guest room of a Hotel, Motel, or Inn already occupied by a Sex Offender, unless those persons are legally related by blood, marriage or adoption.

9.101.070 SEX OFFENDER VIOLATION – HOTEL/ MOTEL/ INN PERMANENT RESIDENT.

No Sex Offender shall be a Permanent Resident in any guest room of a Hotel, Motel, or Inn wherein a separate and distinct guest room is already occupied by a Sex Offender as a Permanent Resident.

9.101.080 RESPONSIBLE PARTY VIOLATION – SINGLE FAMILY DWELLINGS.

No Responsible Party shall knowingly rent a Single Family Dwelling to, or allow occupancy as a Permanent or Temporary Resident by, more than one (1) Sex Offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption.

9.101.090 RESPONSIBLE PARTY VIOLATION – MULTI-FAMILY DWELLINGS.

No Responsible Party shall knowingly rent a unit within a Multi-family Dwelling to, or allow occupancy as a Permanent or Temporary Resident by, more than one (1) Sex Offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption.

9.101.100 RESPONSIBLE PARTY VIOLATION – MULTI-FAMILY DWELLINGS MULTIPLE UNITS.

No Responsible Party shall knowingly rent more than one unit within a Multi-family Dwelling to, or allow occupancy as a Permanent or Temporary Resident by, more than one Sex Offender during any given period of tenancy.

9.101.110 RESPONSIBLE PARTY VIOLATION – DUPLEX DWELLINGS.

No Responsible Party shall knowingly rent a unit within a Duplex Dwelling to, or allow occupancy as a Permanent or Temporary Resident by, more than one (1) Sex Offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption.

9.101.120 RESPONSIBLE PARTY VIOLATION – DUPLEX DWELLINGS MULTIPLE UNITS.

No Responsible Party shall knowingly rent more than one (1) unit within a Duplex Dwelling to or allow occupancy as a Permanent or Temporary Resident by more than one Sex Offender during any given period of tenancy.

9.101.130 RESPONSIBLE PARTY VIOLATION – HOTEL/ MOTEL/ INN.

No Responsible Party shall knowingly rent a guest room in a Hotel, Motel, or Inn, or allow occupancy as a Permanent or Temporary Resident by, more than one (1) Sex Offender, unless those persons are legally related by blood, marriage, or adoption.

9.101.140 RESPONSIBLE PARTY VIOLATION – HOTEL/ MOTEL/ INN PERMANENT RESIDENT.

No Responsible Party shall knowingly rent more than one (1) guest room in a Hotel, Motel, or Inn to, or allow occupancy as a Permanent or Temporary Resident by, more than one Sex Offender as a Permanent Resident.

9.101.150 OFFENSES CONSTITUTING NUISANCES.

Any Duplex, Hotel, Motel, Inn, Multi-family Dwelling, or Single Family Dwelling operated or maintained in a manner inconsistent with the occupancy requirements of this Chapter or the restrictions of Penal Code section 3003.5 is declared to be unlawful and is defined as and declared to be public nuisances per se that are injurious to the public health, safety, and welfare.

9.101.160 NUISANCES; RECOVERY OF ABATEMENT EXPENSES.

A. In any civil action or proceeding, administrative proceeding, or special proceeding, including, but not limited to those brought to abate a public nuisance, the prevailing party will be entitled to recovery of all costs, attorney's fees and expenses, provided that attorneys' fees will only be available in those actions or proceedings in which the City has provided notice at the commencement of such action or proceeding that it intends to seek and recover its own attorneys' fees. In no action or proceeding will an award of attorneys' fees

exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

B. Moneys due the City pursuant to this Chapter may be recovered in an appropriate civil action. Alternatively, such liability may be enforced by special assessment proceedings against the parcel of land upon which the nuisance existed, which proceedings must be conducted in a manner substantively similar to proceedings prescribed in Section 6.26.110 *et seq.* of this Code relating to assessment for abatement of property nuisances.

9.101.170 PENALTIES.

Every person who violates any provision of this Chapter shall be guilty of a misdemeanor and shall be subject to the penalties as set forth in Section 1.12.011. Each day that such violation exists shall be deemed a new and separate offense.

9.101.180 CRIMINAL PENALTIES DO NOT SATISFY ADMINISTRATIVE OR CIVIL ACTIONS.

Neither the arrest, prosecution, conviction, imprisonment, or payment of any fine for the violation of Chapter 9.101 shall satisfy or diminish the authority of the City to institute administrative or civil actions seeking enforcement of any or all of the provisions of this Chapter.

9.101.190 TIMING OF APPLICATION OF THIS CHAPTER.

Notwithstanding anything to the contrary contained herein, this chapter shall apply to all Sex Offenders who locate within Alhambra after the effective date of this chapter, and to all Responsible Parties who allow occupancy by a Sex Offender within the City of Alhambra to commence after the effective date of this chapter. Nothing in this Chapter is intended to limit the obligations of a Sex Offender to comply with the requirements of state law, including, but not limited to Penal Code section 3003.5.

SECTION TWO: If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion or the ordinance would be subsequently declared invalid or unconstitutional.

SECTION THREE: The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be posted for a period of ten days as required by Minute Order No. M91-61. This ordinance supersedes and replaces Urgency Ordinance No. O2M8-4523 adopted on April 14, 2008.

SIGNED AND APPROVED this 28th day of April, 2008.

/s/ Luis Ayala
LUIS AYALA, Mayor

ATTEST:

/s/ Frances A. Moore
FRANCES A. MOORE, City Clerk

I HEREBY CERTIFY that the above and foregoing ordinance was duly passed and adopted by the Alhambra City Council at its regular meeting held on the 28th day of April, 2008, by the following vote, to wit:

AYES: SHAM, MESSINA, PLACIDO, AYALA

NOES: NONE

ABSENT: YAMAUCHI

/s/ Frances A. Moore
FRANCES A. MOORE, City Clerk