

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA AMENDING THE EL MONTE MUNICIPAL CODE BY ADDING CHAPTER 9.56 TO TITLE 9, RELATING TO RESIDENCY RESTRICTIONS FOR SEX OFFENDERS

THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA, DOES ORDAIN AS FOLLOW:

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 3003.6 authorizes municipal jurisdiction to enact local ordinances that further restrict the residency of any registered Sex Offender, whether or not on parole or probation; and

WHEREAS, local ordinance authorized by subsection (c) of Penal Code Section 3003.6 is 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, El Monte Municipal Code Chapter 9.56 is intended to eliminate any potential conflict of land uses in residential neighborhoods and 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 Dwelling,” as opposed to “Multi-Family Dwelling”, Chapter 9.56 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 as necessarily included 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 of health hazard, or that promote social economic or aesthetic consideration; 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 9.56 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 at a time 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 crime than any other type of violent felon, and, 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

pray 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; and

NOW THEREFORE, the City Council of the City of El Monte ordains as follow:

SECTION 1. A new Chapter 9.56 entitled “Sex Offender Residency Restrictions” is hereby added to Title IX of the El Monte Municipal Code to read as follows:

CHAPTER 9.56

SEX OFFENDER RESIDENCY RESTRICTIONS

9.56.010 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. “City” shall refer to the incorporated governmental body of the City of El Monte, California.
- D. “Duplex” shall mean a residential land use for a building containing two dwelling units.
- E. “ Hotel” or “Motel” shall mean those facilities as defined as Chapter 17.04 of the El Monte Municipal Code.
- 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 or motels.
- G. “Legally related by blood” for the purposes of this chapter shall be defined as a parent, child or sibling of the Sex Offender.
- H. “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 the property.
- I. “Park” shall include those areas as defined in El Monte Municipal Code section 12.48.020.
- J. “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 or Motel for more than thirty (30) consecutive days.
- K. “Property Owner” as applied to building and land shall mean the owner of record of any parcel of real property as designated on the county assessors 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.

- L. "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, any public or private school, including but not limited to, any or all of, grades K through 12, and/or parks, in which a Sex Offender is prohibited from temporarily or permanently residing.
- M. "Responsible Party" shall mean the Property Owner and/or Owner Authorized Agent.
- N. "Sex Offender" means one (1) 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.
- O. "Single Family Dwelling" means one (1) permanent residential dwelling located on a single lot with yard areas that separate that dwelling from other dwellings.
- P. "Subject Property" shall mean the property upon which a Sex Offender desires to reside either temporarily or permanently.
- Q. "Temporary Resident" means any person who, for a period of thirty (30) days or less, obtains the right to occupy a dwelling including but not limited to a Hotel or Motel..

9.56.020 VIOLATION OF RESIDENTIAL EXCLUSION ZONE

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

9.56.030 SEX OFFENDERS 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.

9.56.040 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.

9.56.050 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.

9.56.060 SEX OFFENDERS VIOLATION – HOTEL/ MOTEL

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

9.56.070 SEX OFFENDER VIOLATION – PERMANENT/TEMPORARY RESIDENT HOTEL/ MOTEL

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

9.56.080 RESPONSIBLE PARTY VIOLATION – SINGLE FAMILY DWELLINGS

No Responsible Party shall 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.

9.56.090 RESPONSIBLE PARTY VIOLATION – MULTI-FAMILY DWELLINGS

No Responsible Party shall 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.

**9.56.100 RESPONSIBLE PARTY VIOLATION – MULTI-FAMILY DWELLINGS
MULTIPLE UNITS**

No Responsible Party shall rent more than one 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.

9.56.110 RESPONSIBLE PARTY VIOLATION – DUPLEX DWELLINGS

No Responsible Party shall rent a unit in 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.

**9.56.120 RESPONSIBLE PARTY VIOLATION – DUPLEX DWELLING
MULTIPLE UNITS**

No Responsible Party shall rent more than one (1) 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.

9.56.130 RESPONSIBLE PARTY VIOLATION – HOTEL/ MOTEL

No Responsible Party shall rent a guest room in a Hotel or Motel 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.

**9.56.140 RESPONSIBLE PARTY VIOLATION – PERMANENT/TEMPORARY
RESIDENT HOTEL/ MOTEL**

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

9.56.150 OFFENSES CONSTITUTING NUISANCES

Any Duplex, Hotel, Motel, 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.

9.56.160 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 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 proceeding against the parcel of land upon which the nuisance existed, which proceedings must be conducted in a manner substantively similar to proceeding prescribed in Section 8.44.040 *et seq.* of this code relating to assessment for abatement of property nuisances.

9.56.170 PENALTIES

Every person who violates any provision Chapter shall be guilty of a misdemeanor and shall be subject to the penalties as set forth in section 1.24.010. Each day that such violation exist shall be deemed a new and separate offense.

9.56.180 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 9.56 shall satisfy nor diminish the authority of the City to institute administrative or civil actions seeking enforcement of any or all the provisions of this chapter.

9.56.190 TIMING OF APPLICATION OF THIS CHAPTER

Notwithstanding anything to the contrary contained herein, this chapter shall apply to all Sex Offenders who locate within El Monte 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 2. Inconsistent Provisions. Any provision of the El Monte Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

SECTION 3. Constitutionality. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a 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 passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. Effective Date. The Mayor shall sign and the City Clerk attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This ordinance shall become effective immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2008.

Ernest G. Gutierrez
Mayor of the City of El Monte

ATTEST:

Lorene Gutierrez
City Clerk of the City of El Monte

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF EL MONTE)

I, Lorene Gutierrez, City Clerk of the City of El Monte, hereby certify that the foregoing Ordinance No. _____ was passed and adopted by the City Council of the City of El Monte, signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on the ____ day of _____, 2008 and that said ordinance was adopted by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Lorene Gutierrez
City Clerk of the City of El Monte