

ARTICLE VIII. LOCAL REGULATION OF SEX OFFENDERS**DIVISION 1. GENERALLY****Sec. 34-700. Definitions.**

For purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Child or children or youth shall mean a person or persons under the age of 18 years of age.

Duplex shall mean a residential land use for a building containing two dwelling units.

Hotel or motel shall mean a commercial land use for a rental of six or more guest rooms or suites for primarily temporary residency for a period of not more than 30 consecutive days.

Inn shall mean a commercial land use for the rental of five or fewer guest rooms or suits primarily for temporary residency for a period of not more than 30 consecutive days.

Multi-family dwelling shall mean a building designed for permanent residency for three or more families living independently of each other. This includes apartment houses and condominiums, but does not include hotels, motels, or inns.

Multi-unit residential shall mean a residential land use with a series of buildings designed for permanent residency for two or more families living independently of each other. This shall include "granny flats" and multiple separate structures on a single lot or legal parcel.

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 30 consecutive days.

Responsible party shall mean the property owner and/or owner's authorized agent.

Sensitive use site shall mean any the following:

- (1) *Bus stop*, as used herein shall mean a location designated for the regularly-scheduled boarding and departing of bus passengers for bus service offered to children attending school or to the general public.
- (2) *Rail station*, as used herein shall mean a location designated for the regularly-scheduled boarding and departing of rail passengers for rail-based transportation service offered to children attending school or to the general public.
- (3) *Arcade*, as used herein shall mean any of the following:
 - a. Establishments frequented by children that provide more than five video or electronic games, including computer games that require coins, tokens, or any other form of payment, to play;
 - b. Any establishment frequented by children providing amusement facilities which include, but are not limited to, pinball machines, shooting galleries, electronic or video type skill games;
 - c. Any business frequented by children at which amusement rides are offered which are subject to any tax imposed by any section of Chapter 50, Article IV of this Code (sections 50-131 to 50-168); and/or

d. Any business frequented by children providing a billiard room or coin-actuated machine, including, but not limited to, electronic game machines, machines vending any goods, wares or merchandise operated by coins by value greater than \$0.10, coin-operated photo machines and subject to a license tax as provided in section 50-412 of this Code.

(4) *Child care center*, as used herein shall mean any of the following:

- a. A day care center, as defined at Health and Safety Code § 1596.76;
- b. A child care and development facility, as defined at Education Code § 8208; and/or
- c. Facilities that provide non-medical care and supervision of children, including infants, toddlers, preschoolers, and school-age children for a period of less than 24 hours consecutively and are required to be licensed by the California State Department of Social Services.

(5) *Children's retail store*, as used herein shall mean establishments or places of business dedicating at least 80 percent of floor space to consumer items directed at children, such as children's toys, clothing, shoes, eyewear, hats, jewelry and fashion accessories, books, hobby or special interest items, games, musical instruments, sporting goods, bicycles, scooters, music recordings, dance supplies, art and art supplies, candy, and other similar items directed toward children.

(6) *Community center or cultural center*, as used herein shall mean multi-purpose meeting and recreational facilities typically consisting of one or more meeting or multi-purpose rooms, kitchen and/or outdoor barbecue facilities, that are available for use by various groups for such activities as meetings, parties, receptions, and dances, i.e. a rental banquet hall.

(7) *Cyber caf*, as used herein shall mean an establishment frequented by children that provides more than four computers and/or other electronic devices for access to the Internet, e-mail, video games, or computer software programs which are networked (via LAN or WAN) which function as a client/server program, and which seeks compensation in any form from users. Cyber caf is synonymous with PC caf, internet caf, or cyber centers.

(8) *Health club providing childcare services*, as used herein shall mean facilities that provide for sport, exercise, and health related activities, group classes, and personal instruction and training, and childcare for children of patrons while using the facilities. Additional facilities may include pool/spa/sauna, tennis courts, racquetball/handball courts, weight and exercise equipment, etc. Additional uses may include retail sales of exercise clothing, accessories, food and beverages, and membership sales. This definition does not include facilities that provide yoga, Pilates, or similar type of studio (see Studio).

(9) *Movie theater*, as used herein shall mean establishments that are designed for the showing of motion pictures. Additional uses may include the sale of concession food items and non-alcoholic beverages.

(10) *Museum*, as used herein shall mean public or quasi-public facilities such as aquariums, arboretums, art exhibitions, botanical gardens, historical sites and exhibits that can be viewed by the public. Accessory uses include such uses as restaurants, cafeterias, and gift shops.

(11) *Non-traditional school*, as used herein shall mean any of the following:

- a. A public or private pre-school;

- b. A Montessori School;
 - c. A home school which has filed an affidavit or statement with the state superintendent of public instruction for the current year, pursuant to Education Code § 33190, and which provides regularly-scheduled home schooling to children as an alternative to their attendance of other public or private schools; and/or
 - d. A school approved by the State of California as a charter school.
- (12) *Studio*, as used herein shall mean small-scale facilities that typically provide for the teaching or tutoring of children including, but not limited to, the arts; music, drama, production rehearsal; dance instruction; photography instruction, and the processing of photographs produced by users of the studio facilities; martial arts training; or gymnastics instruction. This definition does not include larger facilities, such as a learning center.
- (13) *Sports center*, as used herein shall mean any of the following:
- a. A location designed for accommodating sports or recreational activities which is frequented by children, seasonally or otherwise, including but not limited to playgrounds, skate parks, baseball fields, basketball courts, tennis courts, soccer fields, swimming facilities, karate studios, dance and/or ballet studios, and other sports or recreational facilities frequented by children, regardless of whether such location is publicly or privately owned. Facilities open to members of a common interest development or homeowners association in which such facility exists shall be considered a sensitive use site. All other facilities open to the general public not otherwise addressed herein which are located in residential zones not open to the general public shall not be included in such definition of sports center.
 - b. A facility, frequented by children, which provides a wide range of recreational activities including, but not limited to, roller or ice rinks, skateboard, miniature golf, golf course, golf driving range, batting cages, go-karts, rock climbing. Additional uses at such facilities such as food concessions and retail sales of items related to the activity such as clothing and accessories and sundries are intended to be included as part of the definition and scope of sports center. Facilities open to members of a common interest development or homeowners association in which such facility exists shall be considered a sensitive use site. Facilities located within residential zones and not open to the general public, shall not be included in such definition of sports center, unless otherwise addressed herein.
- (14) *Traditional school*, as used herein shall mean any of the following:
- a. A private school, meaning any private education facility that provides education for grades kindergarten through the 12th grade and are not affiliated with a local school district;
 - b. A public school, meaning any public educational institutions providing instruction to kindergarten through the 12th grade; and/or
 - c. A community college, technical school, public or private college, university or professional school granting associate arts degrees, certificates, undergraduate and graduate degrees.
- (15) *Tutoring center or learning center*, as used herein shall mean any of the following:
- a. A location at which a public or private organization offers regularly-scheduled

tutoring and/or educational instruction to children for purposes of supplementing the regular school instruction of the children; and/or

b. Establishments that provide for the teaching or tutoring of school-aged children in general or specific academic subjects on an individual basis or in groups. Establishments are not affiliated with public or private schools. Services are intended to supplement and be in addition to normal school teachings and are not intended to replace or substitute for public or private school.

(16) *Youth center*, as used herein shall mean a location at which a public or private organization provides mentorship, educational and/or recreational programs to children on a regularly-scheduled basis, for purposes of social, educational, artistic, athletic, or community enrichment. Examples of youth centers include, but are not limited to, Boys and Girls Club facilities, YMCA facilities, and similar locations.

Sensitive use site parcel boundary shall mean the legal boundary of the parcel or parcels occupied by the sensitive use site, whether such site occupies the entire parcel or any portion thereof.

Sex offender shall mean any person for whom registration would be required for crimes committed by such person pursuant to the California "Sex Offender Registration Act," California Penal Code § 290 et seq., regardless of whether that person is on parole or probation.

Single-family dwelling shall mean one permanent residential dwelling located on a single lot with yard areas that separate that dwelling from other dwellings.

Temporary resident shall mean any person who, for a period of 30 days or less, obtained the right to occupy a dwelling including but not limited to a hotel, motel or inn.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-701. Penalty; nuisance; recovery of abatement expenses.

(a) *Penalty*. Any person violating sections 34-705, 34-713 or 34-717 of this article is guilty of a misdemeanor punishable by a fine of up to \$1,000.00 or by confinement in the county jail for up to one year, or both such fine and confinement. A person is guilty of a separate offense for each and every day during which a violation occurs.

(b) *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 article or the restrictions of Penal Code § 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.

(c) *Civil action authorized*. The city attorney, or his/her designee, is authorized to bring a civil action in order to enforce any of the provisions of Penal Code § 3003.5(a) or (b), or this division. Such action may be for injunctive relief, declaratory relief, or other relief sufficient to prevent the continued violation of those provisions.

(d) *Recovery of nuisance abatement expenses*.

(1) 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.

(2) Moneys due the city pursuant to this article 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 18-31 et seq. of the Pomona City Code relating to assessment for abatement of property nuisances.

(e) *Criminal penalties do not satisfy administrative or civil actions.* Neither the arrest, prosecution, conviction, imprisonment, or payment of any fine for the violation of this article 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 article.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-702. Summary of requirements.

The city attorney, or his/her designee, shall prepare a summary of the requirements in this article for distribution to sex offenders residing in the city. The summary shall be distributed to each such sex offender at the time of his/her initial registration and each subsequent annual registration. The police chief, or his/her designee, shall keep a log of all sex offenders to whom the summary is provided. Nothing in this section shall create an affirmative defense due to lack of receipt of such notice. Nothing in this article is a directive to not fulfill or otherwise shall prevent the police chief from fulfilling duties required under state law regarding receiving registration materials from sex offenders.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-703. Timing of application of this article.

Notwithstanding anything to the contrary contained herein, this article shall apply to all sex offenders who locate within the City of Pomona after the effective date of this chapter, and to all responsible parties who allow occupancy by a sex offender within the City of Pomona after the effective date of this chapter. Nothing in this article 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 § 3003.5.

It is intended that this article shall apply to all sex offenders without regard to probationary status, parole status, or date(s) of conviction or release from jail, prison, or confinement, and without regard to whether residency was established before or after the effective date of this article.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-704. Reserved.

DIVISION 2. SEX OFFENDER RESIDENCY RESTRICTIONS

Sec. 34-705. Unlawful residency.

(a) *Residency exclusion zone.* It is unlawful for any sex offender to reside, on either a temporary resident or permanent resident basis, within 2,640 feet of any sensitive use site, as defined in section 34-700 of this article.

(b) *Residency exclusions.*

(1) *Single-family dwelling.* 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.

(2) *Multi-family dwelling.* 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.

(3) *Duplex dwelling.* 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.

(4) *Multi-unit residential.* 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.

(5) *Hotel/motel/inn.* 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.

(6) *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.

(c) *[Factors.]* For purposes of this division, the following factors shall be considered in determining whether a location is an individual's residence:

(1) The length of time that the individual intends to occupy the location;

(2) The length of time the individual has occupied the location;

(3) The individual's ownership or leasehold interest in the location;

(4) The extent of personal property stored or maintained by the individual at the location;

(5) The extent to which the individual represents to others that the location is his or her residence;

(6) The routine performance of every-day life tasks at the location, such as eating, sleeping, cooking, bathing, and personal care;

(7) The extent to which others identify the location as the individual's residence; and

(8) The extent to which the location is utilized for voter registration, mail delivery, tax collection, and other governmental and/or commercial purposes.

(d) *[Transient residency status.]* Notwithstanding the foregoing, for purposes of this article, individuals maintaining "transient" residency status, changing location in order to evade declaration or determination of place of residence, or otherwise not declaring a permanent place of residence, shall be considered as having established such residence at all places within the city associated with criteria in section 34-705(b) that such person has been affiliated with on a temporary basis within the preceding 30 days.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-706. Measurement of distance.

In determining whether a particular point is within 2,640 feet of any sensitive use site, distance

for determining compliance shall be determined by the shortest straight-line distance between Point A and Point B as such are described below:

(a) "Point A" shall be the location of ingress and/or egress of the residence a sex registrant occupies. If more than one location of ingress and egress exist for that residence, then the location nearest to the sensitive use site by straight-line measurement ("as the crow flies") shall be deemed Point A.

(b) "Point B" shall be the closest point of the sensitive use site parcel boundary to Point A.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Secs. 34-707--30-712. Reserved.

Sec. 34-713. Responsible party violation; accessory.

(a) *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 sex offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption.

(b) *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 sex offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption.

(c) *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.

(d) *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 sex offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption.

(e) *Responsible party violation--Duplex dwellings multiple units.* No responsible party shall knowingly rent more than one 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.

(f) *Responsible party violation--Multi-unit residential.* No responsible party shall knowingly rent a unit within a multi-unit residential dwelling to, or allow occupancy as a permanent or temporary resident by, more than one sex offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption.

(g) *Responsible party violation--Multi-unit residential multiple units.* No responsible party shall knowingly rent more than one unit within a multi-unit residential dwelling or allow occupancy as a permanent or temporary resident by more than one sex offender during any given period of tenancy.

(h) *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 sex offender, unless those persons are legally related by blood, marriage, or adoption.

(i) *Responsible party violation--Hotel/motel/inn permanent resident.* No responsible party shall

knowingly rent more than one 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.

(j) *Accessory.* No responsible party, individual, or entity shall actively and knowingly assist a sex offender's continued violation of the provisions of this article.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-714. Report of violation.

The police chief, or his/her designee, shall report to the California Department of Corrections and Rehabilitation, Division of Parole, any occurrence of a sex offender who is a parolee and is determined to be in violation of either Penal Code § 3003.5(a) or (b), or the provisions of this division. Penal Code § 3003.5(a) or (b) shall be supplemental, and not an alternative, to the provisions of this division.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-715. Exemptions.

The provisions of this article shall not apply to the following sex offenders:

- (a) Sex offenders who are children (until such individuals reach the age of majority).
- (b) Sex offenders who are exercising their First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly.
- (c) Sex offenders who are confined to and reside at a prison or mental health facility within 2,640 feet of any sensitive use site.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-716. Conflict with other Code provisions.

If a conflict occurs between any provision of this division and any other provision of the Pomona City Code, including the Pomona Zoning Ordinance, the requirements set forth in this division shall control.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

DIVISION 3. SEX OFFENDER LOITERING RESTRICTIONS

Sec. 34-717. Unlawful loitering.

Except as provided for in section 34-719, it is unlawful for any sex offender to be physically present and delay, linger, or idle about within 300 feet of any sensitive use site, as defined in section 34-700 of this article.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-718. Measurement of distance.

In determining whether a particular point is within 300 feet of any sensitive use site, distances shall be measured in a direct straight line from any point of the boundary of the legal parcel on which the sensitive use site is located.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)

Sec. 34-719. Exemptions.

The provisions of section 34-711 of this article shall not apply in the following instances:

- (1) Where the sex offender is a minor, and he/she is present within 300 feet of a sensitive use site while accompanied by a parent or legal guardian.
- (2) Where the sex offender is present within 300 feet of a sensitive use site only because he/she is traveling (whether on foot, by car, or by other means) to or from a destination beyond said 300-foot area, and his/her presence within said 300-foot area is temporary and incidental to such traveling.
- (3) Where the sex offender is present within 300 feet of a sensitive use site only because he/she is accompanying a related minor to that site, and only for so long as is necessary to provide care and/or supervision to the related minor. As used herein, related minor means a minor to whom the sex offender is the legal parent or guardian.
- (4) Where the sex offender reasonably does not know that he/she is present within 300 feet of a sensitive use site, provided that he/she immediately takes steps to move beyond such 300-foot area upon learning or being notified of the existence of the sensitive use site.
- (5) Where the sex offender is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion at a place of worship, or freedom of speech or the right of assembly at a traditional public forum.
- (6) Where the sex offender is present within 300 feet of a sensitive use site only because he/she is traveling (whether on foot, by car, or by other means) to or from his/her place of employment for employment purposes.
- (7) Where the sex offender is present within 300 feet of a sensitive use site only because he/she is traveling (whether on foot, by car, or by other means) to or from a medical facility, such as a hospital or doctor's office, for a legitimate and verifiable medical appointment.

(Ord. No. 4102, § 3, 5-5-2008; Ord. No. 4103, § 3, 5-27-2008)