



CITY COUNCIL AGENDA REPORT



DEPARTMENT: City Attorney

MEETING DATE: September 19, 2017

PREPARED BY: Craig Steele, City Attorney

AGENDA LOCATION: AR-1

TITLE: Repeal of Chapter 9.66 of Title 9 of the Monrovia Municipal Code pertaining to Registered Sex Offender Residency Restrictions; Introduction of Ordinance 2017-07

OBJECTIVE: To introduce, read by title only and waive further reading of Ordinance No. 2017-07, an Ordinance of the City Council of the City of Monrovia repealing Chapter 9.66 of Title 9 of the Monrovia Municipal Code regarding Sex Offender Residency Restrictions and approve an associated CEQA exemption

BACKGROUND: On November 7, 2006, the voters of the State of California overwhelmingly approved Proposition 83, the "Sexual Predator Punishment and Control Act" commonly known as "Jessica's Law," with the intent of better protecting Californians, and, in particular, the State's children from sex offenders. Proposition 83 includes a provision which expressly authorizes further local regulation of sex offender residency. Penal Code Section 3003.5(c) states that municipal jurisdictions are not prohibited from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Penal Code Section 290.

Following the adoption of Jessica's Law, the City of Monrovia, like many other cities in California, adopted new residency and location restrictions applicable to registered sex offenders. Chapter 9.66 of the Title 9 of Municipal Code currently prohibits any registered sex offender from establishing a residence within in a "residential exclusion zone," which is defined be "any area located within 2,000 feet from the nearest property line of a public or private school (grades K through 12), park or library." The ordinance also prohibited registered sex offenders from residing with other registered sex offenders in single-family and multi-family residences and prohibited landlords from renting property to registered sex offenders that would result in a violation of these restrictions.

Recently, many Southern California cities have received letters demanding the repeal of registered sex offender ordinances, and at last count there were at least 20 pending lawsuits challenging ordinances similar to Monrovia's. Earlier this year, the City was sued by an attorney who apparently represents the interests of registered sex offenders. Based on an assessment of this overall issue performed by staff, it is recommended that the City repeal Chapter 9.66 of Title 9 of the Monrovia Municipal Code.

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ANALYSIS: The California Supreme Court's decision in *In Re Taylor* (2015) 60 Cal.4th 1019, created a significant doubt regarding the validity of any residency restrictions on sex offenders. The Court held that enforcement of state residency restrictions by the California Department of Corrections and Rehabilitation (CDCR) against sex offender parolees in San Diego County was unconstitutional. Those restrictions, "as applied and enforced in that county... cannot survive rational basis scrutiny because it has hampered efforts to monitor, supervise, and rehabilitate such parolees in the interest of public safety, and as such, bears no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators."

The Supreme Court observed the following facts with respect to registered sex offenders in San Diego County:

- Registered sex offender parolees are unlikely candidates to rent single family homes; they are most likely to be housed in apartments or low-cost residential hotels;
- By virtue of the residency restrictions alone, registered sex offender parolees are effectively barred from access to approximately 97 percent of the existing rental property that would otherwise be available to them;
- The remaining three percent of multi-family rental housing outside the exclusion areas is not necessarily available to registered sex offender parolees for a variety of reasons, including low vacancy rate, high rents, and the unwillingness of some landlords to rent to such persons;
- Rigid application of the residency restrictions results in large groups of registered sex offender parolees having to sleep in alleys and riverbeds, a circumstance that did not exist prior to Jessica's law;
- The residency restrictions place burdens on registered sex offender parolees that are disruptive in a way that hinders their treatment, jeopardizes their health and undercuts their ability to find and maintain employment, significantly undermining any effort at rehabilitation.

The Supreme Court cited the 2010 CDCR report that found Jessica's Law (Penal Code § 3003.5) increased the rate of homelessness among registered sex offenders on parole, which makes it more difficult to monitor and supervise the sex offenders and puts the public at risk. The Court noted the report found: "homeless sex offenders put the public at risk. These offenders are unstable and more difficult to supervise for a myriad of reasons.' Ultimately, the report recommended that 'residence restrictions as set forth in Penal Code section 3003.5(b) should be repealed in favor of targeted residence restrictions.'" The Court also stated: "CDCR has conceded in its briefs before this court that 'the evidence... demonstrated that the dramatic increase in homelessness has a profound impact on public safety,' and that 'there is no dispute that the residency restrictions have significant and serious consequences that were not foreseen when it was enacted.'"

We are aware of no other widely-accepted academic or policy research that contradicts the CDCR's position on the effectiveness of residency restrictions. Other groups have provided evidence consistent with these findings. This lack of contrary data makes it difficult to refute the argument that local restrictions are similarly ineffective and, perhaps, counter-productive.

Most recently, in *People v. Lynch* (2016) 2 Cal.App.5th 524, an appeals court held that the residency restrictions in Penal Code section 3003.5 apply *only to parolees* for the period of their parole term. (*Id.* at p. 528.) Given the court's rationale, the ruling most likely means that any further restrictions which a local government may impose also would apply *only to parolees* for the period of their parole term. Therefore, Penal Code section 3003.5 would not provide express authority for cities to impose residency restrictions on sex offenders who are no longer on parole. A logical next step for a court would be to rule that local restrictions could apply only to parolees for the length of their parole terms.

FISCAL IMPACT: There is no fiscal impact associated with adopting the Ordinance.

ENVIRONMENTAL IMPACT: It can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance could have a significant effect on the environment. Specifically, by allowing sex offenders to reside within 2000 feet of schools, parks or libraries, due to the City's inability to enforce such regulates, no new environmental impacts will occur. The Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations (the "CEQA Guidelines").

OPTIONS: The following options are presented for consideration:

- 1) Introduce and at the next City Council meeting adopt Ordinance 2017-07 thereby repealing the City's registered sex offender residency restrictions and finding that the ordinance is categorically exempt from the California Environmental Quality Act.
- 2) Do not adopt Ordinance and face potential litigation challenging the restrictions.

RECOMMENDATION: Staff and the City Attorney recommend that the City Council repeal Chapter 9.66 of Title 9 of the Monrovia Municipal Code Regarding Sex Offender Residency Restrictions and find that the ordinance is categorically exempt from the California Environmental Quality Act.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to introduce, read by title only and waive further reading of Ordinance No. 2017-07.

ORDINANCE NO. 2017-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA, REPEALING CHAPTER 9.66 OF TITLE 9 OF THE MONROVIA MUNICIPAL CODE PERTAINING TO SEX OFFENDER RESIDENCY RESTRICTIONS

RECITALS

WHEREAS, on November 7, 2006, the voters of the State of California overwhelmingly approved Proposition 83, the “Sexual Predator Punishment and Control Act” commonly known as “Jessica’s Law,” with the intent of better protecting Californians, and, in particular, the State’s children from sex offenders; and

WHEREAS, Proposition 83 also includes a provision which expressly authorizes further local regulation of sex offender residency. Penal Code Section 3003.5(c) states that municipal jurisdictions are not prohibited from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290; and

WHEREAS, following the adoption of Jessica’s Law, the City of Monrovia, like many other cities in California, adopted new residency and location restrictions applicable to registered sex offenders. Chapter 9.66 of Title 9 of the Monrovia Municipal Code currently prohibits any registered sex offender from establishing a residence within 2,000 feet of a school or public park. The Chapter also prohibits, with certain exceptions, sex offenders from residing with any other sex offender; and

WHEREAS, studies and reports released after the passage of Jessica’s Law suggest that blanket enforcement of residency restrictions has not improved public safety. The California Department of Corrections and Rehabilitation (CDCR) reports that evidence suggests residency restrictions have the unintended consequences of increasing homelessness among registered sex offenders, thereby actually threatening public safety. Convicted sex offenders who are homeless are reportedly not only more difficult to supervise than those who have established residences; but are also more likely to re-offend. Additionally, two court decisions, one from the California Supreme Court (*In re Taylor* (2015) 60 Cal.4th 1019) and one from the Court of Appeal (*People v. Lynch* (2016) 2 Cal.App.5th 524) have called into question the constitutionality of certain residency restrictions similar to Chapter 9.24, but enforced by the State. This creates significant doubt about the remaining authority of cities to regulate the residency of sex offenders under Penal Code section 3003.5; and

WHEREAS, the Sex Offender Supervision and GPS Monitoring Task Force is a multi-agency Task Force created to assist CDCR to develop a comprehensive approach to sex offender supervision. In October 2010, the Task Force released a report based on a review of reports generated by the Office of Inspector General and the California Sex Offender Management Board, best practices throughout the nation, effective use of GPS, as well as relevant CDCR sex offender supervision policies and practices. The Task Force found that blanket residence restrictions have “not improved public safety and have compromised the effective monitoring and supervision of sex offender parolees.” Specifically, the Task Force stated:

“There is no evidence that residence restrictions for sex offenders make the community any safer. Since the passage of Proposition 83, residence restrictions have expanded significantly with an unintended consequence. Transient sex offender parolees have increased by approximately 24 times. Presently, more than 1/3 of all sex offenders on parole have become transient. Before the passage of Proposition 83, residence restrictions were already in place. Penal Code Section 3003(g) prohibited high risk sex offenders with child victims from residing within 1.2 mile from schools. Additionally, Parole Agents used discretion to prevent parolees from residing in any housing location that would increase their risk of re-offense. Repealing the blanket residence restrictions imposed by Proposition 83 will provide adequate housing options for sex offenders while continuing to provide public safety”; and

WHEREAS, after careful consideration of the growing evidence from experts in the field, including those experts within California state government, suggesting that policies that further restrict sex offender residency could threaten public safety in our community, as well as the recent court decisions that bring into question the City’s authority to enforce blanket residency restrictions, the City Council has decided to repeal its sex offender residency restrictions and rely on enforcement of other State laws to protect the public.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROVIA DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 9.66 of Title 9 of the Monrovia Municipal Code is hereby repealed.

Section 2. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law.

INTRODUCED this 19th day of September, 2017.

PASSED, APPROVED, AND ADOPTED this 3rd day of October, 2017.

Tom Adams, Mayor
City of Monrovia

ATTEST:

APPROVED AS TO FORM:

Alice D. Atkins, CMC, City Clerk
City of Monrovia

Craig A. Steele, City Attorney
City of Monrovia