

**ORDINANCE NO. 21-2010**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AMENDING CHAPTER 9.20 TITLED SEX OFFENDERS' PROXIMITY  
TO CHILDREN'S FACILITIES**

**WHEREAS**, in November, 2006, California voters approved Proposition 83, entitled "The Sexual Predator Punishment and Control Act: Jessica's Law"; and

**WHEREAS**, Proposition 83 added new provisions to Penal Code Section 3003.5 to make it unlawful for registered sex offender parolees to reside or loiter within 2000 feet from any school (whether public or private) or from any park where children gather on a regular basis; and

**WHEREAS**, the stated premise for Proposition 83 was that sexual offenders showed a high likelihood to commit the same crime again and that their victims were disproportionately children under the age of 18; and

**WHEREAS**, Proposition 83 added language to Penal Code section 3003.5 providing local governments with the ability to adopt stricter residency and other restrictions than those contained with the Proposition itself; and

**WHEREAS**, the City Council of the City of Elk Grove desires to enact additional restrictions in order to control behavior by sex offenders to decrease the potential for their victimization of children and to protect its residents.

**NOW, THEREFORE**, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Amendment.

Chapter 9.20 "Sex Offenders' Proximity to Children's Facilities" is hereby amended to read as follows:

**Chapter 9.20  
SEX OFFENDERS' PROXIMITY TO CHILDREN'S FACILITIES**

Sections:

- 9.20.010 Purpose.
- 9.20.020 Definitions.
- 9.20.030 Presence Prohibitions
- 9.20.040 Residency Restrictions.
- 9.20.050 Prohibition against returning to a site.
- 9.20.060 Exemptions.
- 9.20.070 Notification of sex offenders.
- 9.20.080 Violation.

### **9.20.010 Purpose.**

On November 7, 2006, the voters of the State of California overwhelmingly approved Proposition 83 "The Sexual Predator Punishment and Control Act: Jessica's Law," so as to better protect Californians, and the children of this State in particular, from sex offenders. Proposition 83 enacted new subsection (b) of Penal Code 3003.5 which made it unlawful for any registered sex offender to reside within two thousand (2,000' 0") feet of any public or private school, or any park where children regularly gather. In addition, proposition 83 specifies in subsection (c) of Penal Code Section 3003.5 that municipal jurisdictions may enact local ordinances that further restrict the residency of sex offenders. The City Council of the City of Elk Grove has determined that the factors set forth in Section 2 of Proposition 83, including the high recidivism rate of sex offenders and the frequency with which they prey on victims under the age of eighteen (18), make it incumbent upon the City of Elk Grove to enact additional restrictions as to control behavior by sex offenders to decrease the potential for their victimization of children and to protect its residents.

### **9.20.020 Definitions.**

"Amusement center" means any establishment open to the public that provides entertainment directed at children, or whose play equipment is primarily used by children, including, but not limited to facilities providing activities such as gymnastics, laser tag, art classes, and cheerleading, so long as the primary users of the establishment are children. It does not include restaurants, movie theaters or shopping malls. It does not include businesses whose primary business is to sell toys or games or other similar products primarily used by children.

"Children" means those persons who are under the age of eighteen (18) years of age.

"Day care center" means any licensed child day care facility including infant centers, preschools, extended day care facilities, and school age childcare centers. It does not include a family day care home as defined in Section 1596.78 of the California Health and Safety Code, unless prior notice has been given to the sex offender.

"Loitering" means to delay, to linger or to idle about without a lawful purpose for being present which is in excess of five (5) minutes.

"Playground" means any outdoor premises or grounds owned or operated by the City or other governmental entity that contains any play or athletic equipment used or intended to be used by children, including but not limited to, teen centers, youth sports facilities, skate parks, and public swimming pools.

"Park" shall have the same meaning as set forth in California Penal Code section 3003.5(b).

"Reside" or "Residence" shall have the same meaning as set forth in California Penal Code section 3003.5(b).

“School” means the buildings and grounds of any public or private school used for purposes of the education of children in kindergarten or any of the grades one (1) to twelve (12), inclusive. “School” shall not include a residence where parents or guardians provide home schooling.

“Sex offender” means a person who has been required to register with a governmental entity as a sex offender pursuant to Section 290 of the California Penal Code.

“Youth sports facilities” means any indoor or outdoor premises or grounds used or intended to be used for youth sports, including but not limited to soccer fields, ballparks, karate, dance, gymnastic and cheerleading schools.

**9.20.030 Presence Prohibitions.**

A. A sex offender is prohibited from being present or loitering within three hundred (300' 0") feet of the following locations when children are present:

1. Schools;
2. Day care centers;
3. Playgrounds;
4. Parks;
5. Amusement centers; or
6. Youth sports facilities.

B. For purposes of this section, distances shall be measured from the edge of the parcel where the identified use is located.

**9.20.040 Residency Restrictions.**

A. It is unlawful for any registered sex offender to reside within two thousand (2,000' 0") feet of any of the following places:

1. Schools;
2. Day Care Centers;
3. Playgrounds;
4. Parks;
5. Amusement centers; or

6. Youth sports facilities.

B. For purposes of this section, distances shall be measured from the edge of the parcel where the identified use is located.

**9.20.050 Prohibition against returning to a site.**

It is unlawful for any Sex Offender to return to any location within three hundred (300' 0") feet of any school, day care center, playground, park, amusement center or youth sports facility at any time after having been notified to leave such location by the owner or any authorized official or agent of any of the places listed in this Section.

**9.20.060 Exemptions.**

A. This Chapter shall not apply to any registered sex offender who is currently on probation or parole for an offense for which registration is required, and whose conditions of probation or parole would otherwise violate that subsection.

B. A registered sex offender may be on or within three hundred (300' 0") feet of a school if that sex offender is a parent or guardian of a child attending that school, or is a student at the school or has prior written permission for the entry from the chief administration office of that school. This exemption does not apply to the residence restriction, only to the presence restriction. This exemption is intended to be co-extensive with Penal Code section 626.8, and is not intended to authorize any conduct prohibited by Penal Code section 626.8.

C. Any registered sex offender who resides within three hundred (300' 0") feet of any of the places listed in this Chapter on the effective date of this ordinance is not required to move. However, the sex offender must proceed directly to and from his or her residence, and not loiter or remain within the three hundred (300' 0") foot zone.

D. Any registered sex offender who resides outside two thousand (2,000' 0") feet of any of the places listed in this Chapter on the effective date of this ordinance shall not be required to move if one of the entities listed in this Chapter moves within two thousand (2,000' 0") feet of the sex offender's residence after the effective date of this ordinance.

**9.20.070 Notification of sex offenders.**

The Elk Grove Police Department is directed to send a copy of Chapter 9.20 to each sex offender who on the effective date of Chapter 9.20 is residing within the City of Elk Grove.

**9.20.080 Violation.**

Any person violating this chapter is guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

## Section 2: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

## Section 3: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

## Section 4: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and effect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

## Section 5: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the Office of the City Clerk, pursuant to GC 36933(c)(1).

**ORDINANCE:** 21-2010  
**INTRODUCED:** September 8, 2010  
**ADOPTED:** September 22, 2010  
**EFFECTIVE:** October 22, 2010

  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
JASON LINDGREN, INTERIM CITY CLERK

APPROVED AS TO FORM:

  
SUSAN COCHRAN, CITY ATTORNEY  
001

Date signed: September 28, 2010

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 21-2010**

**STATE OF CALIFORNIA            )**  
**COUNTY OF SACRAMENTO        )**     **ss**  
**CITY OF ELK GROVE             )**

***I, Jason Lindgren, Interim City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on September 8, 2010 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 22, 2010 by the following vote:***

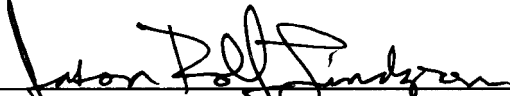
**AYES :            COUNCILMEMBERS:        Scherman, Detrick, Cooper, Davis, Hume**

**NOES:            COUNCILMEMBERS:        None**

**ABSTAIN:        COUNCILMEMBERS:        None**

**ABSENT:         COUNCILMEMBERS:        None**

***A summary of the ordinance was published pursuant to GC 36933(c) (1).***

  
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**Jason Lindgren, Interim City Clerk  
City of Elk Grove, California**