

ORDINANCE NO. 3-2009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE REPEALING ORDINANCE 29-2006 AND ENACTING ELK GROVE MUNICIPAL CODE CHAPTER 9.20 REGULATING SEX OFFENDERS' PROXIMITY TO CHILDREN'S FACILITIES

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority

The City Council of the City of Elk Grove desires to impose safety precautions in furtherance of the goal of protecting children. Under California Constitution Article XI, Section 7, the City of Elk Grove may enact ordinances to preserve and protect the public safety, health, and welfare. To this end, the City Council hereby repeals Ordinance No. 29-2006 and enacts Chapter 9.20 regulating sex offenders' proximity to children's facilities.

The City Council finds that sex offenders pose a clear threat to the children residing or visiting in the community. Further the City Council finds that there is no cure for sex offenders, that there are never any guarantees that they might not reoffend, and convicted sex offenders are more likely than any other type of offender to re-offend for another sexual assault. The City Council further finds that the City of Elk Grove has been and continues to be a targeted location in the past for placement of sexual offenders on their release from incarceration.

The City Council further finds that the purpose of this Ordinance is to harmonize with state law and other cities in Sacramento County to reduce the potential risk of harm to children of the community by limiting the opportunity for sex offenders to be in contact with unsuspecting children at facilities that are primarily designed for use by, or are primarily used by children, namely, public and private schools and day care centers. The City Council finds that currently, state law does not address the locations that sex offenders can frequent. Instead, state law only regulates where sex offenders can reside in relation to a limited number of specified areas. This Ordinance is not intended to conflict with existing state or federal law but to add location restrictions to sex offenders where state and federal law is silent.

For these reasons, the reasons stated in the staff report (which is incorporated herein by this reference) and for the reasons provided to the City Council at the City Council meeting on January 14, 2009 (all of which are incorporated herein by this reference) the City Council of the City of Elk Grove finds that this Ordinance is necessary for the preservation of the public peace, health, and safety of the City's residents and visitors, including children.

Section 2: Repeal of Ordinance No. 29-2006

Ordinance No. 29-2006 is hereby repealed.

Section 3: Enactment of Chapter 9.20

Chapter 9.20 is hereby enacted and added to the Elk Grove Municipal Code to read as follows:

Chapter 9.20

SEX OFFENDERS' PROXIMITY TO CHILDREN'S FACILITIES

Sections:

- 9.20.010 Definitions.
- 9.20.020 Prohibitions.
- 9.20.030 Violation.

9.20.010 Definitions.

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

"Sex offender" means a person who has been required to register with a governmental entity as a sex offender under California Penal Code section 290.

"Loitering" means to delay, to linger or to idle about without a lawful purpose for being present.

"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 1 to 12, inclusive.

"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 California Health and Safety Code section 1596.78, unless prior notice has been given to the suspect.

9.20.020 Prohibitions.

A. A sex offender is prohibited from loitering within three hundred feet of the following locations when children are present:

1. The grounds of public or private schools for children;
2. Day care centers;
3. Public and private playgrounds and children's play facilities, parks, teen centers, youth sports facilities, skate parks, and public swimming pools.

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

9.20.030 Violation.

Any person violating this chapter is guilty of a misdemeanor punishable by a fine up to one thousand dollars or by imprisonment for up to one year, or both.

Section 4: 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 5: 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 6: Savings Clause

The provisions of this Chapter 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 affect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect 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 7: 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 15 days after its passage, a summary of the ordinance may be published at least five 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: 3-2009
INTRODUCED: January 14, 2009
ADOPTED: January 28, 2009
EFFECTIVE: February 27, 2009



PATRICK HUME, MAYOR of the
CITY OF ELK GROVE

ATTEST:



SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

Date signed: February 2, 2009

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 3-2009**

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

I, Susan J. Blackston, 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 January 14, 2009 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on January 28, 2009 by the following vote:

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

NOES: COUNCILMEMBERS: *None*

ABSTAIN: COUNCILMEMBERS: *None*

ABSENT: COUNCILMEMBERS: *None*

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



***Susan J. Blackston, City Clerk
City of Elk Grove, California***