

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES ADDING A NEW CHAPTER 9.46 TO TITLE 9 OF THE MUNICIPAL CODE OF THE CITY OF EL PASO DE ROBLES PERTAINING TO RESIDENCY RESTRICTIONS FOR CERTAIN SEX OFFENDERS

WHEREAS, the City of El Paso de Robles (the "City") places a high priority on maintaining public safety; and

WHEREAS, the City is concerned about recent occurrences in California and elsewhere, whereby convicted sex offenders who have been released from custody repeat the unlawful acts for which they had originally been convicted; and

WHEREAS, sex offenders have recidivism rates as high as 45%. 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 tend to prey upon the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under 18 years of age. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon; and

WHEREAS, the City is becoming an increasingly attractive place of residence for families with small children; and

WHEREAS, the City is adjacent to the City of Atascadero, in which the Atascadero State Hospital is located, and at which many sex offenders are housed. City believes that upon their release, some sex offenders may decide to remain in the area; and

WHEREAS, California courts have consistently upheld ordinances of various California municipalities which reasonably restrict the establishment or operation of adult businesses within certain distances from sensitive locations, such as schools, within their jurisdictions; and

WHEREAS, it is as important to protect children from sexual offenders as it is to protect children from adult businesses; and

WHEREAS, Section 3003(g) of the California Penal Code prohibits a person who has been convicted of certain sex offenses from being placed or residing within certain specified distances from any public or private school attended by children within specified grade levels during the period of parole; and

WHEREAS, section 290 of the California Penal Code requires that any person determined to have committed certain offenses must register with the city chief of police or county sheriff of the community in which he or she resides; and

WHEREAS, in an effort to provide greater protection for persons in the City, especially the City's younger and more vulnerable residents, the City desires to increase (a) the range of sexual offenders subject to residency restrictions; (b) the protected locations within the community; (c) the minimum distance of residency restrictions imposed on qualifying sex offenders; and (d) the duration of the residency restrictions; and

WHEREAS, it is the intent of the City in enacting this Ordinance to help City residents protect themselves, their children, and the community; it is not the intent of the City to embarrass or harass persons convicted of sex offenses; and

WHEREAS, Article XI, Section 7 of the California Constitution and California Government Code Section 37100 provide the City with authority to enact local ordinances to protect the health, safety, and welfare of its residents so long as the state legislature has not preempted the field; and

WHEREAS, the City has the authority to protect its young citizens from the dangers presented by the presence of sexual offenders by enacting stricter residency restrictions for sexual offenders for the purpose of providing protection and not for the purpose of additional punishment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Chapter 9.46 is hereby added to Title 9 of the Municipal Code of the City of El Paso de Robles to read as follows:

Chapter 9.46 Residency Restrictions for Registered Sex Offenders

Section 9.46.010. Findings and Intent.

1. Based on the evidence available, sex offenders have recidivism rates as high as 45%. 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 tend to prey on the most innocent members of society. More than two-thirds of the victims of rape and sexual assault are under 18 years of age. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

2. It is the intent of this Chapter to serve the City's interest in promoting, protecting, and improving the health, safety, and welfare of the citizens of the City by establishing areas around locations where children regularly congregate wherein certain sexual offenders shall be prohibited from establishing temporary or permanent residence.

Section 9.46.020. Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Church or place of worship means, consistent with the definitions therefor of the Internal Revenue Service, a location with the following characteristics (all of which need not be present to result in a determination of existence), (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine or discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) an organization of ordained ministers; (8) ordained ministers selected after completing prescribed studies; (9) a body of literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) sessions for religious instruction of the young; or (14) schools for the preparation of its ministers.

Day care center means any child day care facility other than a family day care home, and includes infant centers, preschools, extended-day care facilities and schoolage child care centers, as defined in Section 1596.76 of the California Health and Safety Code and licensed pursuant to the provisions of the California Child Day Care Facilities Act (Health & Safety Code §§ 1596.70 *et seq.*).

Permanent residence means a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

Temporary residence means a place where a person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where a person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Youth-oriented facilities means properties on which facilities that are primarily dedicated to providing programs for children under the age of 18 are located. Such facilities may include, but are not limited to, the Paso Robles Children's Museum, the Paso Robles Youth Arts Center, the Boys and Girls Club of San Luis Obispo County, the (Boy) Scout Hut, and the Camp Fire Cabin.

Section 9.46.030. Sexual Offender Residence Prohibition; Penalties; Exceptions.

1. It is unlawful for any person who is subject to the registration requirements under Section 290 of the California Penal Code for a crime in which the victim was less than eighteen (18) years of age, to establish a permanent residence or temporary residence within 1,320 feet (1/4 mile) of any (i) public or private school serving pre-kindergarten through grade 12, (ii) Day Care Center, (iii) park or playground, (iv) youth-oriented facilities, (v) public library, or (vi) church or place of worship (collectively, the "protected locations").

The City Council shall, by resolution, adopt a list of the facilities described in the preceding paragraph as well as a map showing the protected locations and those properties within one-quarter(1/4) mile of said protected locations. Said list and map shall be updated on an annual

basis, but may be updated more frequently should new protected locations be established or where uses in existing protected locations have changed. Distance from protected locations shall be measured from the outer boundaries of the properties on which the facilities described in the first paragraph of this Section 9.46.030 are situated. Any parcels that are partially included within a protected area, as shown on the map, shall be considered to be wholly included within the protected area.

Penal Code Section 290(a)(2)(D) requires certain persons convicted in other courts, including other state courts, and federal and military courts, to register in California. This Section 9.46.030 shall apply, without limitation, if (1) the person would be required to register as a sex offender, under the laws of, and while residing within, the state of conviction for a sex offense committed in that state; or (2) the offense, had it been committed in California, would have been punishable as one or more of the offenses described in section 290(a)(2)(A). Nothing in this paragraph shall alter or limit the registration requirements set forth in Penal Code Section 290 nor the applicability of this Municipal Code Section 9.46.030 to all persons subject to the registration requirements under Section 290 of the California Penal Code for a crime in which the victim was less than eighteen (18) years of age.

2. For purposes of this Section 9.46.030, the distance of 1,320 feet (1/4 mile) shall be measured in a straight line from the closest property line of the residence of a person for whom registration is required pursuant to Section 290 of the California Penal Code to the closest property line of any protected location.

3. A person who violates this Section 9.46.030 may be charged with a misdemeanor or infraction, pursuant to the provisions of Chapter 1.02 of the Paso Robles Municipal Code.

4. Notwithstanding the foregoing, a person residing within 1,320 feet (1/4 mile) of any protected location does not violate this Section if any of the following apply:

a. Such person established the temporary residence or permanent residence and was registered in accordance with California Penal Code Section 290 prior to the effective date of the Ordinance adding this Chapter 9.46.

b. Such person was a minor when he or she committed the offense and was not convicted as an adult.

c. Such person is a minor.

d. The protected location was established after such person established the temporary residence or permanent residence and registered in accordance with California Penal Code Section 290.

Section 9.46.040. Disclosure of Ordinance in Residential Transactions

1. All owners or their agents of residential property for sale, lease, or rental, shall be required to provide a copy of Chapter 9.46 of the Municipal Code of the City of El Paso de Robles, as well as a map prepared by the City showing the affected areas, to the parties in a sale, lease or rental transaction. For a sales transaction, the documents shall be provided before or during the disclosure period. For a lease or rental of residential property, the documents shall be provided prior to execution of the lease or rental agreement. All buyers, lessees or renters shall be required to sign and date a form acknowledging that the information described above has been provided to them. The City shall be responsible for preparing and periodically updating the map to be provided by owners and agents, as well as for making the map available on the City's website.

2. The City may pursue any enforcement action or legal remedy available under controlling State law for violation of this Section 9.46.040.

Section 9.46.050 No Supersedure of State Law

1. Nothing in this Chapter 9.46 is intended to supersede or replace any provision of state law regarding residency restrictions or registration requirements for registered sex offenders.

Section 2. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of El Paso de Robles hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases be declared invalid.

INTRODUCED on February 7, 2006 and PASSED AND ADOPTED on February 21, 2006 by the following vote:

AYES:

NOES:

ABSENT:

Frank Mecham, Mayor

ATTEST:

Cathy M. David, Deputy City Clerk