

## ORDINANCE NO. 846

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE  
REPEALING CHAPTER 9.74, "REGISTERED SEX OFFENDERS," OF  
THE DUARTE MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF DUARTE ORDAINS AS FOLLOWS:

SECTION 1. The California Court of Appeal decision in *People v. Nguyen* (2014), No. G048228, Fourth Dist., Div. Three, filed January 10, 2014, held that city ordinances regulating and restricting the access to parks and other public facilities by registered sex offenders are preempted by State law because of the comprehensive regulatory scheme set forth in the California Penal Code [including Penal Code §§290 through 294 (*i.e.*, Chapter 5.5, "Sex Offenders," of Title 9 of Part I of the California Penal Code), and Penal Code §§626.81, 653b, 653c, 3000.07, 3003.5, 3004, and 3053.8]. Because city ordinances regulating registered sex offenders are preempted by State law, the Court of Appeal held that such city ordinances are invalid. In its published opinion, the Court of Appeal cited the multiple sections of the California Penal Code which regulate registered sex offenders:

- (1) a lifetime duty to register with local law enforcement for each city or county in which the offender resides and to update that registration annually or upon any relevant change (Penal Code §§ 290-290.024);
- (2) a state-maintained Web site that discloses information about the offender to the public (Penal Code §§ 290.4, 290.45, 290.46);
- (3) a sex offender's duty to submit to monitoring with a global positioning device while on parole and potentially for the remainder of the offender's life if the underlying sex offense was one of several identified felonies (Penal Code §§ 3000.07, 3004, subd. (b));
- (4) a prohibition against the offender "enter[ing] any park where children regularly gather without the express permission of his or her parole agent" if the victim of the underlying sex offense was under 14 years of age (Penal Code § 3053.8, subd. (a));
- (5) a prohibition against the offender residing with another sex offender while on parole and within 2,000 feet of a school or park for the rest of the offender's life (Penal Code § 3003.5);
- (6) a prohibition against the offender entering any school without "lawful business" and written permission from the school (Penal Code § 626.81);
- (7) enhanced penalties for the offender remaining at or returning to "any school or public place at or near which children attend or normally congregate" after a school or law enforcement official has asked the offender to leave (Penal Code § 653b, *italics added*);
- (8) a prohibition against the offender entering a day care or residential facility for elders or dependent adults without registering with the facility if the victim of the underlying sex offense was an elder or dependent adult (Penal Code § 653c);
- (9) a duty to disclose the offender's status as a sex offender when applying for or accepting a job or volunteer position involving direct and unaccompanied contact with minor children (Penal Code § 290.95, subds. (a) & (b));
- (10) a prohibition against the offender working or volunteering with children if the victim of the underlying sex offense was under 16 years of age (Penal Code § 290.95, subd. (c)); and
- (11) a prohibition against the offender receiving publicly funded prescription drugs or other therapies to treat erectile dysfunction (Penal Code § 290.02).

SECTION 2. The Orange County District Attorney, as the party that sought to enforce the local ordinance at issue in *People v. Nguyen*, filed a petition for review in the California Supreme Court seeking a further hearing on the Court of Appeal decision. On April 23, 2014, the California Supreme Court denied the petition for review of the Court of Appeal decision and thus the Court of Appeal decision is final. As a result, the City Council of the City of Duarte hereby adopts this Ordinance to conform to the Court of Appeal decision in *People v. Nguyen* and to avoid litigation against the City by the organization California Reform Sex Offender Laws (CA RSOL) which seeks repeal of city ordinances that are inconsistent with the Court of Appeal decision in *People v. Nguyen*.

SECTION 3. Chapter 9.74, "Registered Sex Offenders," of the Duarte Municipal Code is hereby repealed its entirety.

SECTION 4. In adopting this Ordinance the City Council declares that the City shall rely upon enforcement by the Los Angeles County Sheriff's Department within the City of Duarte of applicable State law with respect to registered sex offenders.

SECTION 5. The City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner provided for in the Duarte Municipal Code.

PASSED, APPROVED, AND ADOPTED this 27th day of May, 2014.

/s/ Elizabeth Nowak Reilly  
Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) ss.  
CITY OF DUARTE                )

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Ordinance No. 846 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 27th day of May, 2014, by the following vote:

AYES:       Councilmembers: Fasana, Finlay, Kang, Paras-Caracci, Reilly

NOES:       Councilmembers: None

ABSENT:     Councilmembers: None

/s/ Marla Akana  
City Clerk Marla Akana  
City of Duarte, California