

ORDINANCE NO. 2372

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VICTORVILLE, CALIFORNIA, REPEALING CHAPTER 13.80 OF TITLE 13 OF THE VICTORVILLE MUNICIPAL CODE RELATING TO RESIDENCY RESTRICTIONS FOR REGISTERED SEX OFFENDERS

WHEREAS, in November 2006, California voters approved Proposition 83, the "Sexual Predator Punishment and Control Act," more 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, among other things, Jessica's Law amended California Penal Code Section 3003.5 to prohibit registered sex offenders from residing within 2,000 feet of any public or private school or park where children regularly gather, and also authorized municipalities to enact local ordinances further restricting the residency of any registered sex offender beyond what is prohibited by the State; and

WHEREAS, following the adoption of Jessica's Law, and with the intent of making the City of Victorville (the "City"), a safer place in which to live and work, the City Council of the City of Victorville ("City Council") adopted ordinances adding Chapters 13.80 and 13.90 to the Victorville Municipal Code ("VMC") to further restrict the locations in which registered sex offenders could lawfully reside (Chapter 13.80) and the places in which they could congregate (Chapter 13.90); and

WHEREAS, in response to a 2014 appellate court decision and to resolve a pending legal challenge, the City Council adopted Ordinance No. 2328 in January of 2015 to amend and align the City's sex offender congregation restrictions (VMC Chapter 13.90) with State law standards for loitering by registered sex offenders; and

WHEREAS, additional court decisions—one from the California Supreme Court in 2015 (*In re Taylor*, 60 Cal. 4th 1019) and another in 2016 by the California Court of Appeal for the First District (*People v. Lynch*, 2 Cal. App. 5th 524)—have seriously called into question the constitutionality of certain sex offender residency restrictions similar to those in VMC Chapter 13.80, but enforced by the State; and

WHEREAS, the 2016 Annual Report issued by the California Sex Offender Management Board and the State Authorized Risk Assessment Tools for Sex Offenders Review Committee, determined that the local imposition of residency restrictions resulted in a marked increase in the number of homeless sex offenders in California, and that a lack of stable housing for sex offenders hampered the efforts of law enforcement to monitor, supervise and rehabilitate in the interest of public safety and increases the chances of reoffending; and

WHEREAS, a 2014 report from the U.S. Department of Justice Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking found that residency restrictions that “prevent convicted sex offenders from living near schools, daycare centers, and other places where children congregate have generally had no deterrent effect on sexual reoffending, particularly against children,” and further noted that “studies have revealed that proximity to schools and other places where children congregate had little relation to where offenders met child victims.”; and

WHEREAS, the aforementioned reports purportedly demonstrate that residency restrictions seem to have had the unintended consequence of increasing homelessness among registered sex offenders, thereby actually threatening public safety; and

WHEREAS, although the City has not actively enforced the existing residency regulations in VMC Chapter 13.80 since mid-December of 2015; leaving this Chapter intact following the *In re Taylor* and *People v. Lynch* decisions puts the City at risk of litigation and legal challenges, which risk has now been realized based on correspondence received by the City from attorneys representing certain sex offenders; and

WHEREAS, given the unconstitutionality of certain sex offender residency restrictions, the preemption by the State of local ordinances prohibiting sex offenders from being present near sensitive uses, and the potential for a legal challenge to residency restriction ordinances, many California cities have repealed or are repealing their residency restriction ordinances; and

WHEREAS, repealing the City’s residency restrictions in VMC Chapter 13.80 leaves intact residency restrictions under State law, which can still be implemented by law enforcement on an individual, case-by-case basis against registered sex offenders on parole if there is a nexus to certain factors, such as the parolee’s offense, criminal history, future criminality and/or their risk level warrants special restrictions; and

WHEREAS, other State Laws, including but not limited to, those in Penal Code Sections 3003.5, 3053.8(a), 626.81, 653b, and 290 *et seq.*, remain in force to regulate the activities of sex offenders and further require these individuals to register their residences with local police, who submit this information to the State Department of Justice for inclusion on its “Megan’s Law” website, providing the City with the protection of knowing where registered sex offenders reside and allowing law enforcement to thereby monitor their activities in the community; and

WHEREAS, in response to purported evidence from experts in the field, including those experts in California’s state government, suggesting that policies that further restrict sex offender residency could threaten public safety in the City, as well as the recent court decisions questioning the City’s authority to enforce blanket residency restrictions, the City Council has decided to adopt this Ordinance repealing VMC Chapter 13.80 and the sex offender residency restrictions therein.

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

Section 1. Recitals.

The recitals set forth above are true and correct, and are hereby incorporated by this reference as if set forth in their entirety.

Section 2. Repeal of Chapter 13.80 of the Victorville Municipal Code.

CHAPTER 13.80 OF THE VICTORVILLE MUNICIPAL CODE, TITLED, "RESIDENCY RESTRICTIONS FOR REGISTERED SEX OFFENDERS" IS HEREBY REPEALED IN ITS ENTIRETY.

Section 3. Repeal of Conflicting Provisions.

All the provisions of the Victorville Municipal Code and any resolutions establishing additional "protected locations" referenced in Chapter 13.80 heretofore adopted by the City of Victorville that are in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Severability.

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 5. CEQA Exemption.

The City Council finds that the adoption of this Ordinance is not subject to the California Environmental Quality Act ("CEQA"), pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3) because the adoption will not result in a direct or reasonably foreseeable indirect physical change in the environment and the adoption is not a project as defined in Section 15378 of the CEQA Guidelines.

Section 6. Effective Date.

This Ordinance shall take effect thirty (30) days after its final passage.

Section 7. Certification.

The City Clerk of the City of Victorville is hereby directed to certify to the passage and adoption of this Ordinance and to cause it to be published as required by law.

ORDINANCE NO. 2372

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT ON NOVEMBER 2, 2017.

PASSED, APPROVED AND ADOPTED THIS 3rd DAY OF OCTOBER, 2017.

Gloria Garcia
MAYOR OF THE CITY OF VICTORVILLE

ATTEST:

Carolee Bates
CITY CLERK

10-10-17
DATE

APPROVED AS TO FORM:

SIGNED IN
COUNTERPART

CITY ATTORNEY

I, CAROLEE BATES, City Clerk of the City of Victorville and ex-officio Clerk to the City Council of said City, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2372 which was duly adopted at a meeting held on the 3rd day of October, 2017 by the following roll call vote, to wit:

AYES: Councilmembers Garcia, Cox, Gomez and Kennedy

NOES: None

ABSENT: Councilmember Negrete

ABSTAIN: None

Carolee Bates
CITY CLERK OF THE CITY OF VICTORVILLE

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SIGNED IN
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MAYOR OF THE CITY OF VICTORVILLE

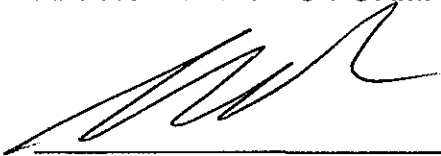
ATTEST:

SIGNED IN
COUNTERPART

CITY CLERK

DATE

APPROVED AS TO FORM:



CITY ATTORNEY

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AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED IN
COUNTERPART

CITY CLERK OF THE CITY OF VICTORVILLE

Chapter 13.80 - RESIDENCY RESTRICTIONS FOR REGISTERED SEX OFFENDERS

13.80.010 - Purpose.

Convicted sex offenders pose a clear threat to children and other residents of the city of Victorville. Because convicted sex offenders are likely to re-offend, the city council of the city of Victorville desires to impose safety precautions in furtherance of the goal of protecting children and all residents of the city. The purpose of this chapter is to serve the community's interest in promoting, protecting, and improving the health, safety, and welfare of its residents by establishing areas around locations where children generally congregate and where convicted sexual offenders shall be prohibited from establishing temporary or permanent residence. The city of Victorville desires to add protected locations restricting residency of sex offenders.

(Ord. 2179 § 1 (part), 2006)

13.80.020 - Definitions.

For purposes of this chapter, the following definitions shall apply:

"Child," "children," or "minor" means any person or persons under the age of eighteen years of age.

"Child care and development program facility" shall have the meaning ascribed by California Education Code Section 8208.

"Child day care facility" means any facility that provides non-medical care to children in need of personal services, supervision, or assistance essential for sustaining the activities of daily living for the protection of the individual on less than a twenty-four hour basis. Child day care facilities include infant centers, preschools, and employer-sponsored child care centers.

"Long-term care facility" shall have the same meaning as in California Welfare and Institutions Code Section 9701.

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

"Protected locations" means the locations established by the city council that are primarily dedicated to providing programs for children. Protected locations include, but are not limited to, public or private schools serving students from pre-kindergarten to twelfth grade, child day care facilities, child care and development program facilities, video arcades utilized by children, parks or recreation facilities operated and/or maintained by a government entity, amusement centers, and homeless shelters.

"Sex offender" means an individual who is currently required by law to register with a governmental entity as a sex offender under California Penal Code Section 290.

"Temporary residence" means a place where a person abides, lodges, or resides for a period of fourteen or more days in the aggregate during any twelve-month period and which is not the person's permanent residence, or a

place where a person abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any thirty-day period and which is not the person's permanent residence.

(Ord. 2179 § 1 (part), 2006)

13.80.030 - Prohibitions.

(a) It shall be unlawful for any sex offender to establish a permanent residence or temporary residence within two thousand feet of any of the protected locations as defined in Section 13.80.020.

(b) The city, by resolution, shall adopt a list of the protected locations, as well as a map showing the protected locations, and those properties within two thousand feet of the protected locations. The 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. A copy of the list and map shall be available to the public. Distance from protected locations shall be measured from the outer boundaries of the properties on which the facilities described in this subsection 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.

(c) For purposes of this chapter, the distance of two thousand feet shall be measured in a straight line from the closest property line of the residence of a sex offender, to the closest property line of any protected location.

(Ord. 2179 § 1 (part), 2006)

13.80.040 - Exceptions.

Notwithstanding the foregoing, a sex offender residing within two thousand feet of any protected location does not violate this section if any of the following apply:

(1) 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 codified in this chapter;

(2) 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;

(3) Such person is required to live in the residence as a condition of parole or probation; or

(4) Such person is in a long-term care facility that is located within two thousand feet of a protected location.

(Ord. 2179 § 1 (part), 2006)

13.80.050 - Violation.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor as provided in Section 1.04.010 of the Victorville Municipal Code.

(Ord. No. 2302, § 1, 10-15-13)