CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: El Paso Police Department

AGENDA DATE: March 27, 2007

CONTACT PERSON/PHONE: Representative Ann Morgan Lilly, 541-4151

DISTRICT(S) AFFECTED: All

SUBJECT:

AN ORDINANCE AMENDING TITLE 10 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 10.24 MISCELLANEOUS OFFENSES ADDING SECTION 10.24.040 (SEX OFFENDER RESIDENDCY REGULATION) OF THE EL PASO CITY CODE, TO CREATE RESTRICTIONS ON SEX OFFENDER'S RESIDENCY TO PROHIBIT CERTAIN SEX OFFENDERS FROM RESIDING WITHIN 1,000 FEET OF WHERE CHILDREN COMMONLY GATHER; PROVIDING FOR DEFINITIONS AND AFFIRMATIVE DEFENSES; PROVIDING FOR INJUNCTIONS; THE PENALTY BEING AS PROVIDED IN SECTION 1.08.010 TO 1.08.030 OF THE EL PASO MUNICIPAL CODE

BACKGROUND / DISCUSSION:

The United States Department of Justice, Office of Justice Programs Bureau of Justice Statistics (BJS) Studied the recidivism of sex offenders released since 1994 and found the following: 85% of those sex offenders who were arrested for another sex crime, the arrest occurred in the same state that released them. Of the 9,691 male Sex offenders released from prisons in 15 States in 1994, 5.3% were rearrested for a new sex crime within 3 years of release. Of released sex offenders who allegedly committed another sex crime, 40% perpetrated the new offense within a year or less from their prison discharge. Nearly 4,300 child molesters were released from prisons in 15 states in 1994. An estimated 3.3% of these 4,300 were rearrested for another sex crime against a child within 3 years of release from prison. The 9,691 released sex offenders included 4,295 men who were in prison for child molesting and the evidence that the recidivism rate for released sex offenders is significant, especially for those who are habitual offenders. Establishing a policy to restrict the property available for residence of sex offenders will provide better protection for children gathering in the City. This ordinance is necessary and appropriate to protect the health, safety, and welfare of the community.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

AN ORDINANCE AMENDING TITLE 10 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 10.24 MISCELLANEOUS OFFENSES ADDING SECTION 10.24.040 (SEX OFFENDER RESIDENDCY REGULATION) OF THE EL PASO CITY CODE, TO CREATE RESTRICTIONS ON SEX OFFENDERS' RESIDENCY TO PROHIBIT CERTAIN SEX OFFENDERS FROM RESIDING WITHIN 1,000 FEET OF WHERE CHILDREN COMMONLY GATHER; PROVIDING FOR DEFINITIONS AND AFFIRMATIVE DEFENSES; PROVIDING FOR INJUNCTIONS; THE PENALTY BEING AS PROVIDED IN SECTION 1.08.010 TO 1.08.030 OF THE EL PASO MUNICIPAL CODE

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07 APR -9 PM 1:02

WHEREAS, the City Council of the City of El Paso finds and declares that sex offenders are a serious threat to public safety; and

WHEREAS, the United States Department of Justice, Office of Justice Programs Bureau of Justice Statistics (BJS), studied the recidivism of sex offenders released since 1994 and found the following:

(1) 85% of those sex offenders who were arrested for another sex crime, the arrest occurred in the same state that released them.

(2) Of the 9,691male sex offenders released from prisons in 15 States in 1994, 5.3% were rearrested for a new sex crime within 3 years of release.

(3) Of released sex offenders who allegedly committed another sex crime, 40% perpetrated the new offense within a year or less from their prison discharge.

(4) Nearly 4,300 child molesters were released from prisons in 15 States in 1994. An estimated 3.3% of these 4,300 were rearrested for another sex crime against a child within 3 years of release from prison.

(5) The 9,691 released sex offenders included 4,295 men who were in prison for child molesting; and

WHEREAS, the City Council finds from the evidence that the recidivism rate for released sex offenders is significant, especially for those who are habitual offenders; and

WHEREAS, the City Council finds that establishing a policy to restrict the property available for residence of sex offenders will provide better protection for children gathering in the City; and

WHEREAS, the City Council finds and determines that this ordinance is necessary and appropriate to protect the health, safety, and welfare of the community.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Section 10.24.040 (Sex Offender Residency Regulation) be added and to read as follows:

A. Definitions.

For the purposes of this chapter:

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07 APR -9 PM 1:04

1. "Child Sex Offender" means any offender subject to registration under State Law, who has been convicted or received an order of deferred adjudication for a "sexual offense" involving a minor.

2. "Habitual Offender" means any offender subject to registration under State Law, who has for a "sexually violent offense" been convicted two or more times, received an order of deferred adjudication two or more times, or been convicted and received an order of deferred adjudication or any combination thereof and is required to verify every 90 days in accordance with the Texas Code of Criminal Procedure, Article 62.058.

3. "Minor" a person who is under the age of seventeen years of age.

4. "Permanent Residence" means a place where a person abides, lodges, or resides for 14 or more consecutive days.

5. "Temporary Residence" means a place where a person abides, lodges, or resides for a period of 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, resides, or lodges for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

B. Offenses.

For each person required to register on the Texas Department of Public Safety's Sex Offender Database (the "Database") because they are a "Habitual Offender" or a "Child Sex Offender", it is unlawful for that person to establish a permanent residence or temporary residence within 1,000 feet of any premise where children commonly gather, which, for purposes of this ordinance, shall be a city park, private or public school, child care facility or daycare center as such terms are defined in Title 20 of the City Code for the City of El Paso, Texas.

C. Evidentiary matters; measurements.

1. It shall be prima facie evidence that this Section applies to such a person if that person's record appears on the Database and the Database indicates that the person is required to verify every 90 days in accordance with the

Texas Code of Criminal Procedure, Section 62.058. For purposes of this ordinance, that person is classified as a "Habitual Offender".

2. It shall be prima facie evidence that this Section applies to such a person if that person's record appears on the Database and the Database indicates that the person is subject to registration for an offense involving a minor. For purposes of this ordinance, that person is classified as a "Child Sex Offender".

3. For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where children commonly gather, as described herein above, or, in the case of multiple residences on one property, measuring from the nearest property line of the premises to the nearest property line of the premises where children commonly gather, as described herein.

D. Affirmative defenses.

It is an affirmative defense to prosecution that any of the following conditions apply:

1. The person required to register on the Database established the permanent or temporary residence and has complied with all of the sex offender registration laws of the State of Texas, prior to the date of the adoption of this ordinance.

2. The premises where children commonly gather, as specified herein, within 1,000 feet of the permanent or temporary residence of the person required to register on the Database was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the State of Texas.

3. The information on the Database is incorrect, and, if corrected, this Section would not apply to the person who was erroneously listed on the Database.

E. Any person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred and No/100 Dollars ($500) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

CITY CLERK DEPT.
07 APR -9 PM 1:02

F. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

G. Any violation of this ordinance can be enjoined by a suit filed in the name of the City of El Paso in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the City Code of the City of El Paso.

PASSED AND APPROVED this ____ day of _____, 2007.

THE CITY OF EL PASO

_____
John Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Ernesto Rodriguez
Assistant City Attorney

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