

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS REPEALING CHAPTER 9.24 "REGISTERED SEX OFFENDER RESTRICTIONS" CONTAINED IN TITLE 9 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

WHEREAS, the City of Desert Hot Springs ("City") is a charter city organized pursuant to Article XI of the California Constitution; and

WHEREAS, the City Council of the City of Desert Hot Springs adopted Ordinance No. 512, which enacted Desert Hot Springs Municipal Code ("DHSMC") Chapter 9.24, titled "Registered Sex Offender Restrictions", codifying Sections 9.24.010 to 9.25.230 of the DHSMC (hereinafter the "Ordinance 512"); and

WHEREAS, Ordinance 512, among other things, prohibits registered sex offenders from congregating within 2000 linear feet of "protected locations" (including but not limited to parks and recreation facilities); and

WHEREAS, the California legislature has enacted regulations on the residency and activities of registered sex offenders, including, but not limited to California Penal Code Section 653b, which prohibits registered sex offenders from loitering about any school or public place at or near which children attend or normally congregate (Penal Code Section 653b(a); and ;

WHEREAS, DHSMC Chapter 9.24, sections 9.24.010 through 9.24.230 create residency restrictions on registered sex offenders that conflict with court decisions that have examined and made determinations on the constitutionality of registered sex offender residency restrictions; and

WHEREAS, State law sets residency restrictions on registered sex offenders; and

WHEREAS, the California Supreme Court recently reviewed residency exclusion zones in San Diego County as a result of a constitutional challenge to the application of residential exclusion provisions in the California Penal Code in the case of *In re Taylor*, 60 Cal.4th 1019 (2105) ("*In re Taylor*"); and

WHEREAS, the California Supreme Court held that 1) all parolees retain certain basic rights and liberty interests, and enjoy a measure of constitutional protection against the arbitrary, oppressive and unreasonable curtailment of the core values of unqualified liberty and 2) Penal Code Section 3003.5(b), as applied and enforced cannot survive scrutiny because it has hampered efforts to monitor, supervise, and rehabilitate such parolees in the interests of public safety, and as such, bears no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators; and

WHEREAS, given the Court's binding determination, the City Council deems it appropriate to repeal the Ordinance to align with state law standards.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS
DOES ORDAIN AS FOLLOWS:**

Section 1. RECITALS.

The Recitals are hereby incorporated by this reference.

Section 2. REPEAL OF ORDINANCE NUMBER 512

Ordinance Number 512 adding Chapter 9.24, Sections 9.24.010 through 9.24.230 is repealed in its entirety.

Chapter 9.24 SEX OFFENDER RESIDENCY RESTRICTIONS

9.24.010 Definitions.

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~“Child” or “children” means any person(s) under the age of 18 years of age.~~

~~“Child care center” means any State of California, Department of Social Services licensed facility that provides nonmedical care to children in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis, including but not limited to a family day care home, infant center, preschool, extended day care facility, or school-age child care center.~~

~~“Duplex lot” means a lot designed for permanent residency and containing two dwelling units whether attached or detached.~~

~~“Hotel lot” or “motel lot” means a lot on which there is located a commercial land use for the rental of six or more guest rooms or suites for primarily temporary residency for a period of not more than 30 consecutive days.~~

~~“Inn lot” means a lot on which there is located a commercial land use for the rental of five or fewer guest rooms or suites primarily for temporary residency for a period of not more than 30 consecutive days.~~

~~“Mobile home” shall be considered to be a dwelling and means a structure designed for human habitation and for being moved on a street or highway under permit pursuant to Section 35790 of the Vehicle Code. Mobile home includes a manufactured home, as defined in Section 18007 of the Health and Safety Code, and a mobile home, as defined in Section 18008 of the Health and Safety Code, but does not include a recreational vehicle, as defined in Section 799.29 of the Civil Code and Section 18010 of the Health and Safety Code or a commercial coach as defined in Section 18001.8 of the Health and Safety Code. Mobile home does not include a trailer or other recreational vehicle located in a recreational vehicle park.~~

~~“Mobile home park” means a residential land use where two or more mobile home sites are rented, or held out for rent, to accommodate mobile homes designed for permanent residency, with such homes not affixed to a permanent foundation.~~

~~“Multifamily lot” means a lot designed for permanent residency and containing three or more dwelling units whether attached or detached. This includes a lot containing apartment houses and condominiums, but does not include hotels, motels, or inns.~~

~~“Owner’s authorized agent” means any natural person, firm, association, joint venture, joint stock company, partnership, organization, club, company, corporation, limited liability company, business trust, manager, lessee, agent, servant, officer or employee authorized to act for the owner of a property.~~

~~“Park” means and includes any areas owned, leased, controlled, maintained or managed by a public entity, which are open to the public where children regularly gather, are used as public parks and/or which provide recreational, cultural, and/or community service activities, including but not limited to, playgrounds, playfields, athletic courts, trails and open space.~~

~~“Permanent resident” means any person who, as of a given date, obtained the legal right to occupy or reside in a dwelling, including, but not limited to, a single family lot, multifamily lot, duplex lot, mobile home park, hotel lot, motel lot, or inn lot for more than 30 consecutive days.~~

~~“Property owner” as applied to buildings and land means the owner of record of any parcel of real property as designated on the county assessor’s tax roll, or a holder of a subsequently recorded deed to trust, and includes any part owner, joint owner, tenant, tenant in common, or joint tenant, of the whole or part of such a building or land.~~

~~“Responsible party” means the property owner and/or owner’s authorized agent.~~

~~“School” means any public or private school with one or more grades K through 12.~~

~~“Sex offender” means any person for whom registration is required under California Penal Code Section 290, or as that section may be amended from time to time, regardless of whether that person is on parole or probation.~~

~~“Single family lot” means a lot designed for permanent residency and containing one dwelling unit.~~

~~“Temporary resident” shall mean any person who, for a period of 30 days or less, obtains the right to occupy or reside in, or has already, as of that date, occupied or resided, in a single-family lot, multifamily lot, duplex lot, mobile home park, a hotel lot, motel lot or inn lot for 30 days or less. (Prior code § 102.01)~~

~~9.24.020 Sex offender violation—Child care center, school, public library, park.~~

~~No sex offender shall reside as a permanent or temporary resident within 2,000 linear feet of a child care center, school, public library and/or park. (Prior code § 102.02)~~

~~9.24.030 Sex offender violation—Single family lots.~~

~~No sex offender shall be a permanent or temporary resident in a single family lot already occupied by a sex offender, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.03)~~

~~9.24.040 Sex offender violation — Duplex lots.~~

~~No sex offender shall be a permanent or temporary resident in a duplex lot already occupied by a sex offender, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.04)~~

~~9.24.050 Sex offender violation — Multifamily lots.~~

~~No sex offender shall be a permanent or temporary resident in a multifamily lot already occupied by a sex offender, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.05)~~

~~9.24.060 Sex offender violation — Hotel/motel/inn rooms.~~

~~No sex offender shall be a permanent or temporary resident in a guest room of a hotel, motel, or inn already occupied by a sex offender, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.06)~~

~~9.24.070 Sex offender violation — Hotel/motel/inn permanent resident.~~

~~No sex offender shall be a permanent resident in any guest room of a hotel, motel, or inn wherein a separate and distinct guest room is already occupied by a sex offender as a permanent resident. (Prior code § 102.07)~~

~~9.24.080 Sex offender violation — Mobile home.~~

~~No sex offender shall be a temporary or permanent resident in any mobile home located in or upon a rented space located within a mobile home park wherein the mobile home is already occupied by a sex offender, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.08)~~

~~9.24.090 Sex offender violation — Mobile home park permanent resident.~~

~~No sex offender shall be a permanent resident in any mobile home located in or upon a rented space located within a mobile home park wherein any other mobile home sited in and upon a rented space located within the same mobile home park is already occupied by a sex offender as a permanent resident, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.09)~~

~~9.24.100 Sex offender violation.~~

~~No sex offender shall reside within 2,000 linear feet of another sex offender, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.10)~~

~~9.24.110 Responsible party violation — Single family lots.~~

~~No responsible party shall knowingly rent a dwelling unit in a single family lot to, or allow occupancy as a permanent or temporary resident by, more than one sex offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.11)~~

9.24.120 Responsible party violation—Duplex lots.

~~No responsible party shall knowingly rent a dwelling unit in a duplex lot to, or allow occupancy as a permanent or temporary resident by, more than one sex offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.12)~~

9.24.130 Responsible party violation—Multifamily lots.

~~No responsible party shall knowingly rent a dwelling unit in a multifamily lot to, or allow occupancy as a permanent or temporary resident by, more than one sex offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.13)~~

9.24.140 Responsible party violation—Hotel/motel/inn.

~~No responsible party shall knowingly rent a guest room in a hotel, motel, or inn, or allow occupancy as a permanent or temporary resident by, more than one sex offender, unless those persons are legally related by blood, marriage, or adoption. (Prior code § 102.14)~~

9.24.150 Responsible party violation—Hotel/motel/inn permanent resident.

~~No responsible party shall knowingly rent more than one guest room in a hotel, motel, or inn to, or allow occupancy as a permanent or temporary resident by, more than one sex offender as a permanent resident. (Prior code § 102.15)~~

9.24.160 Responsible party violation—Mobile home.

~~No responsible party shall knowingly rent a space for the location and placement of a mobile home, or allow occupancy as a permanent or temporary resident by, more than one sex offender during any given period of tenancy, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.16)~~

9.24.170 Responsible party violation—Mobile home park permanent resident.

~~No responsible party shall knowingly rent more than one mobile home in a mobile home park to, or allow occupancy as a permanent or temporary resident by, more than one sex offender in the mobile home park as a permanent resident, unless those persons are legally related by blood, marriage or adoption. (Prior code § 102.17)~~

9.24.180 Eviction requirements.

~~If, in order to comply with requirements of Sections 9.24.110 through 9.24.170, a responsible party is required to terminate sex offender's tenancy or other occupancy, the responsible party shall comply with all applicable state law procedures and requirements governing the eviction of tenants of real property. If, in accordance with these procedures and requirements, a court determines that such termination is improper, the responsible party shall not be in violation of this chapter by allowing a sex offender to remain as a tenant or other occupant. (Prior code § 102.18)~~

9.24.190 Applicability.

The provisions of this chapter shall not apply to:

A. ~~Tenancies or other occupancies which commenced prior to the effective date of the ordinance codified in this chapter, or the renewals of any such tenancies or occupancies;~~

B. ~~Sex offenders who were: (1) convicted prior to November 8, 2006; or (2) paroled, given probation, or release from incarceration prior to November 8, 2006. (Prior code § 102.19)~~

9.24.200 Offenses constituting nuisances.

~~Any single family lot, duplex lot, multifamily lot, mobile home, mobile home park, hotel lot, motel lot or inn lot established, operated or maintained in a manner inconsistent with the requirements of this chapter is declared to be unlawful and a public nuisance and may be abated by the City pursuant to Chapter 4.16 of the Desert Hot Springs Municipal Code or any available legal remedies, including, but not limited to, Title 4 (Code Enforcement) of the Desert Hot Springs Municipal Code, civil enforcement through a restraining order, preliminary or permanent injunction or administrative enforcement. (Prior code § 102.20)~~

9.24.210 Nuisances—Recovery of abatement expenses.

~~In any action or proceeding to enforce the provisions of this chapter, the prevailing party will be entitled to recovery of all costs, attorneys' fees and expenses, as provided in Chapter 4.16 of the Desert Hot Springs Municipal Code. (Prior code § 102.21)~~

9.24.220 Penalties—Enforcement.

A. ~~Any person who violates any provision of this chapter shall be guilty of a misdemeanor and shall be subject to the penalties and enforcement as set forth in Chapter 4.32 of the Desert Hot Springs Municipal Code.~~

B. ~~Any person who violates any provision of this chapter shall also be subject to the enforcement remedies of Chapters 4.04, 4.08, 4.12, 4.16, 4.20, 4.24, 4.36 and 10.52 of the Desert Hot Springs Municipal Code. In addition, the City may enforce the violation of this chapter by means of civil enforcement through a restraining order, a preliminary or permanent injunction or by any other means authorized under the law. (Prior code § 102.22)~~

9.24.230 Separate offense for each day.

~~Any person who violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly. (Prior code § 102.23)~~

Section 3. SEVERABILITY

That 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 4. CEQA EXEMPTION

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the Guidelines for California Environmental Quality Act (California Code of Regulations, Title 14, Chapter 3), because this projects does not have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Section 5. EXECUTION AND CERTIFICATION

That the City Clerk is directed to do all things necessary to cause the execution of this ordinance immediately upon its adoption and shall thereafter certify to the passage of this ordinance and cause the same to be published according to law.

Section 6. EFFECTIVE DATE

That this ordinance shall take effect thirty (30) days after its second reading by the City Council.

PASSED AND ADOPTED by the City Council at a regular meeting held on the 17th day of January, 2017, by the following vote:

AYES: 5 – Betts; McKee; Parks; Zavala; and Mayor Matas.

NOES: None.

ABSENT: None.

ABSTAIN: None.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

Jerryl Soriano, CMC, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney