



## City Council Agenda Item

**City Council Meeting Date:** August 6, 2019

**TO:** Jim Throop, City Manager

**FROM:** Jeff Malawy, City Attorney  
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**SUBJECT:** Introduction of Ordinance No. 1671(19) to Repeal Lompoc Municipal Code Chapter 9.44 Relating to Registered Sex Offender Residency Restrictions

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### **Recommendation:**

Staff recommends the City Council introduce, for first reading by title only with further reading waived, Ordinance No. 1671(19) (Attachment 1), which would repeal the residency restrictions on registered sex offenders imposed by Lompoc Municipal Code (LMC) chapter 9.44 because they are largely duplicative of current state law.

### **Background:**

In 2012, the City first adopted the residency restrictions codified in LMC chapter 9.44. Since then, LMC chapter 9.44 has resulted in repeated threatened and actual litigation as the law regarding registered sex offenders evolved. The residency restrictions in LMC Chapter 9.44 are very similar to those found in state law, and state law provides nearly identical protections without the City being at risk of repeated lawsuits challenging LMC chapter 9.44.

LMC section 9.44.010 defines a "Residential Exclusion Zone" as follows:

Residential Exclusion Zone. "Residential exclusion zone" means any area located within 500 feet from the nearest property line of the subject property to the nearest property line of a child care center, public or private school (grades K through 12), park, or public library.

State law provides a similar, but larger exclusion zone in California Penal Code section 3003.5(b):

Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 [requiring registration

of sex offenders] to reside within 2000 feet of any public or private school, or park where children regularly gather.

LMC section 9.44.040.A provides the following restriction on registered sex offenders co-habiting:

A registered sex offender shall be prohibited from renting or otherwise occupying a single-family dwelling or a unit in a multifamily dwelling with another registered sex offender, regardless of whether either registered sex offender is a permanent or temporary/transient resident, unless those persons are legally related by blood, marriage, or adoption.

California Penal Code section 3003.5(a) provides substantially the same protection as follows:

Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, "single family dwelling" shall not include a residential facility which serves six or fewer persons.

LMC section 9.44.020 prohibits registered sex offenders from loitering about places where children congregate as follows:

A registered sex offender shall be prohibited from loitering in or about a school or public place at or near which children attend or normally congregate.

The California Penal Code effectively provides the same protections as follows:

Penal Code section 3053.8(a): Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment for any of the offenses specified in subdivision (b) in which one or more of the victims was under 14 years of age, and for which registration is required pursuant to the Sex Offender Registration Act, it shall be a condition of parole that the person may not, during his or her period of parole, enter any park where children regularly gather without the express permission of his or her parole agent.

Penal Code section 626.81: A person who is required to register as a sex offender pursuant to Section 290, who comes into any school building or upon any school ground without lawful business thereon and written permission indicating the date or dates and times for which permission has been granted from the chief administrative official of that school, is guilty of a misdemeanor.

Penal Code section 653b also provides enhanced punishments for any registered sex offender who return to a school or place where children gather after being asked to leave by an official or a police officer.

In fact, the California Penal Code generally provides greater protection than that provided by LMC chapter 9.44, as it provides for prohibitions on registered sex offenders entering facilities for the care of the elderly (Penal Code section 653(c)), and prevents registered sex offenders who committed crimes involving children from volunteering with children (Penal Code section 290.95).

**Discussion:**

The City has repeatedly been the target of litigation since the adoption of LMC chapter 9.44 in 2012. Currently, due to the development of law in the courts of California, it is doubtful whether LMC chapter 9.44 can be enforced at all because it is likely preempted by state law.

Accordingly, when the City is forced to expend resources in litigation as a result of LMC chapter 9.44, it gains nothing by keeping LMC chapter 9.44 as a part of the municipal code. State law provides virtually identical protections to LMC chapter 9.44, protections that are stronger in many ways, and it is therefore likely that state law preempts some or all of LMC chapter 9.44.

Thus, there is no benefit to the City in retaining LMC chapter 9.44; rather, the City may simply enforce state law.

**Fiscal Impact:**

There is no negative fiscal impact to the City if LMC chapter 9.44 is repealed. In fact, repeal of LMC chapter 9.44 may ultimately save money, for it reduces the risk of litigation.

**Conclusion:**

Adoption of Ordinance No. 1671(19) to repeal LMC chapter 9.44 will prevent the City from being subject to further litigation over LMC chapter 9.44 while not depriving the City of any ability to protect its citizens, as the City can still enforce the substantially similar protections contained in the California Penal Code. Repealing LMC chapter 9.44 costs the City nothing but removes the threat of future litigation.

Respectfully submitted,



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Jeff Malawy, City Attorney

August 6, 2019  
Introduction of Ordinance to Repeal LMC chapter 9.44  
Page 4 of 4

Attachment: Ordinance No. 1671(19)