

## ORDINANCE NO. 2321

### **AN URGENCY ORDINANCE OF THE CITY OF WEST COVINA, CALIFORNIA, REPEALING SECTION 15-19 (SEX OFFENDER RESIDENCY RESTRICTIONS) OF ARTICLE I (GENERAL) OF CHAPTER 15 (MISCELLANEOUS PROVISIONS RELATING TO PUBLIC HEALTH AND SAFETY), RELATING TO SEX OFFENDERS**

- WHEREAS, on July 1, 2008, the City Council of the City of West Covina adopted Ordinance No. 2178, adding Section 15-19 (Sex Offender Residency and Loitering Restrictions) of Article I (General) of Chapter 15 (Miscellaneous Provisions Relating to Public Safety), which created child safety zones and residency restrictions for individuals registered pursuant to Section 290 of the California Penal Code (“registered sex offenders”); and
- WHEREAS, on January 10, 2014, the Fourth Appellate District of the California Court of Appeal, in People v. Nguyen, 222 Cal. App. 4th 1168 (2014), held that a local ordinance making it a misdemeanor for registered sex offenders to enter a park where children regularly gather without permission from law enforcement is preempted by state law; and
- WHEREAS, on March 2, 2015, the California Supreme Court in In re Taylor, 60 Cal. 4th 1019 (2015) held that blanket enforcement of residency restrictions under Pen. Code, § 3003.5(b) hampers efforts to supervise and rehabilitate sex offenders in the interests of public safety, such enforcement was arbitrary and oppressive, violating due process under the Fourteenth Amendment of the U.S. Constitution, as such enforcement caused many registered sex offenders on parole in San Diego County to be homeless, and that such blanket restrictions bear no rational relationship to advancing the state’s legitimate goal of protecting children from sexual predators; and
- WHEREAS, on June 16, 2015, the City Council of the City of West Covina adopted Ordinance No. 2275, repealing Section 15-19 (Sex Offender Residency and Loitering Restrictions) of Article I (General) of Chapter 15 (Miscellaneous Provisions Relating to Public Safety), Relating to Sex Offenders; and
- WHEREAS, on July 21, 2015, the City Council of the City of West Covina adopted as an urgency Ordinance No. 2281, adding Section 15-19 (Sex Offender Residency and Loitering Restrictions) of Article I (General) of Chapter 15 (Miscellaneous Provisions Relating to Public Safety), Relating to Sex Offenders, which imposed residency restrictions on only “Child Sex Offenders” and “Sexually Violent Predators,” as defined; and
- WHEREAS, on August 18, 2015, the City Council of the City of West Covina adopted Ordinance No. 2282, adding Section 15-19 (Sex Offender Residency and Loitering Restrictions) of Article I (General) of Chapter 15 (Miscellaneous

Provisions Relating to Public Safety), Relating to Sex Offenders, which imposed residency restrictions on only "Child Sex Offenders" and "Sexually Violent Predators," as defined; and

WHEREAS, the City Council of the City of West Covina hereby reaffirms its findings and rationale for its adoption of Ordinances 2281 and 2282, as though set forth herein, including the entirety of the record supporting the Council's adoption, as well as, specifically the following:

WHEREAS, on November 7, 2006, the voters of the State of California overwhelmingly approved Proposition 83, the Sexual Predator Punishment and Control Act, to better protect Californians, and in particular, the children of this State, from sex offenders; and

WHEREAS, before the passage of Proposition 83, Penal Code Section 3003.5(a) provided that a person released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Penal Code Section 290, 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 Penal Code Section 3003.5(a), "single family dwelling" does not include a residential facility which serves six or fewer individuals; and

WHEREAS, Proposition 83 enacted Penal Code Section 3003.5(b), which prohibits any sex offender who is required to register pursuant to Penal Code Section 290 from residing within 2,000 linear feet of any public or private school, or any park where children regularly gather; and

WHEREAS, Proposition 83, as codified in Penal Code Section 3003.5(c), specifically authorizes municipal jurisdictions to enact local ordinances that further restrict the residency of any sex offender who is required to register pursuant to Penal Code Section 290, beyond what is set forth therein; and

WHEREAS, Local ordinances authorized by Penal Code Section 3003.5(c) are permitted to regulate the number of registered sex offenders that reside in a residential facility, including those facilities that serve six or fewer persons, commonly referred to as group homes and sober living facilities, which are considered a single-family dwelling pursuant to Health and Safety Code Section 1566.3; and

WHEREAS, Many families with children reside in the City of West Covina; and

WHEREAS, The City is concerned with recent occurrences within the City and elsewhere in California, where multiple registered sex offenders have been residing in clusters in violation of Penal Code Section 3003.5(b); and

WHEREAS, The repeal and replacement of Section 15-19 to the West Covina Municipal Code is intended to reduce the potential dangers associated with multiple child sex offenders living near families with children and places where children regularly gather; and

WHEREAS, Article XI, Section 7 of the California Constitution authorizes the City to enact and enforce ordinances that regulate conditions which may be public nuisances or health hazards, or that promote social, economic or aesthetic considerations; and

WHEREAS, California Government Code Section 38773.5 further authorizes cities to pass ordinances that provide for the recovery of attorney fees in any action, administrative proceeding, or special proceeding to abate a nuisance; and

WHEREAS, A 1998 report by the U.S. Department of Justice found that sex offenders are the least likely criminals to be cured or rehabilitated and the most likely to re-offend, and that they prey on the most innocent members of our society; that more than two-thirds of the victims of rape and sexual assault are under the age of 18; and that sex offenders have a dramatically high rate of recidivism; and

WHEREAS, The California Supreme Court in *People v. Mosley*, 60 Cal. 4th 1044 (2015), cited to established social science research, including two reports by the U.S. Department of Justice, Bureau of Statistics, and one report by the National Institute of Justice, finding extremely high rates of recidivism for those convicted of sex offenses, with some re-offenses occurring years after the initial commission. Accordingly, the Court found a constitutional and rational basis for continued regulation of sex offenders via registration following release, and irrespective of the type of underlying sex offense/victim; and

WHEREAS, The City of West Covina is required to comply with state law as interpreted by the courts of the state; and

WHEREAS, The City of West Covina recognizes that a balanced approach to the regulation of sex offenders includes measures that assist registrants by providing some housing opportunities, by reducing the opportunities to reoffend, and by adopting regulations that encourage more exclusive occupation of the City's varied land uses, all of which allows registrants to live in a less institutionalized environment; and

WHEREAS, The City of West Covina recognizes that a balanced approach to the regulation of sex offenders also includes maintaining policies and Municipal Code provisions proscribing certain conduct, holding registrants and property owners accountable for violations, and promoting constructive involvement of law enforcement in monitoring registrants as permitted by law; and

WHEREAS, The City Council recognizes that there is a need to enact the restrictions contained in this ordinance immediately to protect the public health and safety.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION NO. 1:** The City Council finds that this Ordinance is necessary as an emergency measure for preserving the public peace, health and safety.

**SECTION NO. 2:** Section 15-19.2 (Sex offender violation – Single family lots.) of Chapter 15-19 (Sex Offender Residency Restrictions) of Article I (General) of Chapter 15 (Miscellaneous Provisions Relating to Public Safety) of the West Covina Municipal Code is hereby repealed and replaced in its entirety with the following:

No child sex offender or sexually violent predator *while on parole* shall be a permanent or temporary resident in a single family lot already occupied by any other sex offender, unless those persons are legally related by blood, marriage or adoption.

**SECTION NO. 3:** Section 15-19.3 (Sex offender violation – Duplex lots.) of Chapter 15-19 (Sex Offender Residency Restrictions) of Article I (General) of Chapter 15 (Miscellaneous Provisions Relating to Public Safety) of the West Covina Municipal Code is hereby repealed and replaced in its entirety with the following:

No child sex offender or sexually violent predator *while on parole* shall be a permanent or temporary resident in a duplex lot already occupied by any other sex offender, unless those persons are legally related by blood, marriage or adoption.

**SECTION NO. 4:** Section 15-19.4 (Sex offender violation – Multi-family lots.) of Chapter 15-19 (Sex Offender Residency Restrictions) of Article I (General) of Chapter 15 (Miscellaneous Provisions Relating to Public Safety) of the West Covina Municipal Code is hereby repealed and replaced in its entirety with the following:

No child sex offender or sexually violent predator *while on parole* shall be a permanent or temporary resident in a multi-family lot already occupied by any other sex offender, unless those persons are legally related by blood, marriage or adoption.

**SECTION NO. 5:** Section 15-19.5 (Sex offender violation – Hotel, motel, boardinghouse.) of Chapter 15-19 (Sex Offender Residency Restrictions) of Article I (General) of Chapter 15 (Miscellaneous Provisions Relating to Public Safety) of the West Covina Municipal Code is hereby repealed and replaced in its entirety with the following:

(a) No child sex offender or sexually violent predator *while on parole* shall be a permanent or temporary resident in a guest room of a hotel, motel, or boardinghouse already occupied by any other sex offender, unless those persons are legally related by blood, marriage or adoption.

(b) No child sex offender or sexually violent predator *while on parole* shall be a permanent resident in any guest room of a hotel, motel, or boardinghouse wherein a separate and distinct guest room is already occupied by any other sex offender as a permanent resident.

**SECTION NO. 6:** Section 15-19.6 (Sex offender violation – Mobile homes.) of Chapter 15-19 (Sex Offender Residency Restrictions) of Article I (General) of Chapter 15 (Miscellaneous Provisions Relating to Public Safety) of the West Covina Municipal Code is hereby repealed and replaced in its entirety with the following:

(a) No child sex offender or sexually violent predator *while on parole* shall be a temporary or permanent resident in any mobile home sited in and upon a rented space located within a mobile home park wherein the mobile home is already occupied by any other sex offender, unless those persons are legally related by blood, marriage or adoption.

(b) No child sex offender or sexually violent predator *while on parole* shall be a permanent resident in any mobile home sited in and upon a rented space located within a mobile home park within 2000 feet of any other mobile home sited in and upon a rented space located within the same mobile home park which is already occupied by a sex offender as a permanent resident, unless those persons are legally related by blood, marriage or adoption.

**SECTION NO. 7:** Section 15-19.7 (Sex offender violation – Residential Exclusion Zone.) of Chapter 15-19 (Sex Offender Residency Restrictions) of Article I (General) of Chapter 15 (Miscellaneous Provisions Relating to Public Safety) of the West Covina Municipal Code is hereby repealed and replaced in its entirety with the following:

No child sex offender or sexually violent predator *while on parole* shall be a temporary or permanent resident in any Residential Exclusion Zone.

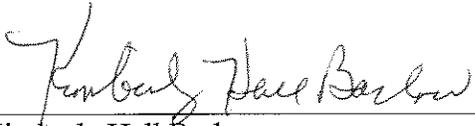
**SECTION NO. 8:** The Assistant City Clerk shall certify the adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

**SECTION NO. 9:** This ordinance shall take effect and be in force immediately from and after the date of its passage.

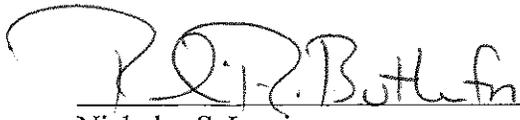
**PASSED, APPROVED AND ADOPTED** on this 15<sup>th</sup> day of August, 2017.

  
\_\_\_\_\_  
Corey Warshaw  
Mayor

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kimberly Hall Barlow  
City Attorney

**ATTEST:**

  
\_\_\_\_\_  
Nickolas S. Lewis  
City Clerk

I, NICKOLAS S. LEWIS, CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Urgency Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 15<sup>th</sup> day of August, 2017. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 15<sup>th</sup> day of August, 2017, by the following vote:

AYES: Johnson, Spence, Toma, Wu, Warshaw  
NOES: None  
ABSENT: None  
ABSTAIN: None

  
\_\_\_\_\_  
Nickolas S. Lewis  
City Clerk