



## **CITY OF COMMERCE AGENDA REPORT**

**Item No. \_\_\_\_\_**

**TO:** Honorable Mayor and City Council Members

**FROM:** City Attorney

**SUBJECT:** CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING CHAPTER 9.10 OF THE COMMERCE MUNICIPAL CODE RELATING TO SEX OFFENDER RESIDENCY RESTRICTIONS – SECOND READING

**MEETING DATE:** September 3, 2019

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### **RECOMMENDATION:**

It is recommended that the City Council read the Ordinance by title only, and adopt the following ordinance: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING CHAPTER 9.10 OF THE COMMERCE MUNICIPAL CODE RELATING TO SEX OFFENDER RESIDENCY RESTRICTIONS.

### **ANALYSIS:**

The City Council will consider adopting an ordinance amending Chapter 9.10 of the Commerce Municipal Code ("CMC") pertaining to residency restrictions for registered sex offenders. First reading of the ordinance took place on August 20, 2019, and was approved by unanimous vote.

Similar regulations have been invalidated by the California Supreme Court, and the City has been served with a lawsuit challenging the constitutionality of Chapter 9.90. Staff recommends the City Council adopt the attached ordinance to resolve the litigation and avoid additional liabilities moving forward.

### **BACKGROUND:**

#### **A. Jessica's Law and Local Ordinances**

On November 7, 2006, California voters overwhelmingly approved Proposition 83, the "Sexual Predator Punishment and Control Act" commonly known as "Jessica's Law." Jessica's Law was intended to better protect the State's children from sex offenders and, among other things: increased the penalties for registered sex offenders; broadened the definition of certain sexual offenses; eliminated good time credits for early release of certain offenders; and, as relevant here, prohibited registered sex offenders on parole from residing within 2,000 feet of any school or park where children congregate.

Jessica's Law empowered cities to enact regulations that were more stringent than the statewide standard. Countless cities across California did so, including the City of Commerce. Specifically in 2014, the City Council adopted Ordinance No. 664, adding Chapter 9.10, "Sex Offender Residency Restrictions," to the CMC.

Among other things, Chapter 9.10 prohibits registered sex offenders from becoming a permanent or temporary resident in any "residential exclusion zone." A "residential exclusion zone" is defined as any area within 2,000 feet of a child care center, public or private school (grades K through 12), park, or public library. Chapter 9.10 additionally prohibits registered sex offenders from residing within the same single-family dwelling unit, or a unit in a multiple-family dwelling if another sex offender is renting or otherwise occupying another unit, unless those persons are legally related.

## **B. Supreme Court's Invalidation of Residency Restrictions**

In 2015, the California Supreme Court invalidated an ordinance similar to Chapter 9.10 on grounds that blanket enforcement of Jessica Law's residency regulations is unconstitutional. The Court reasoned that blanket enforcement of residency restrictions severely restricts the ability for offenders to find compliant housing, resulting in homelessness and difficulties with supervising and enforcing parole conditions. More recently in December 2017, a federal district court ruled that local ordinances regulating registered sex offenders may only be enforced against individuals on parole.

Following these cases, dozens of lawsuits have been filed challenging the constitutionality of cities' sex offender regulations. Given the Supreme Court's ruling, these communities have elected to repeal their regulations to avoid incurring damages and attorneys' fees. Similarly, the California Department of Corrections and Rehabilitation has ceased enforcing Jessica Law on a "blanket basis," and now will do so on a case-by-case basis for individuals on parole, depending on the nature of an individual's criminal history.

## **C. Proposed Amendment to Chapter 9.10**

On April 22, 2019, a lawsuit was filed in Superior Court of the State of California against the City to challenge Chapter 9.10. The lawsuit alleges the City's sex offender residency restrictions are preempted by California state law and unconstitutional. The attorney representing the plaintiff has filed identical lawsuits against cities throughout California.

In response to the lawsuit, the City Attorney's Office recommends the City Council repeal its current regulations in Chapter 9.10, and – in their place – incorporate by reference the provisions of Jessica's Law that remain enforceable. This would provide the City with a local mechanism for enforcing Jessica's Law, while protecting the City against further litigation. A proposed code amendment is attached for the City Council's consideration.

If the City moves forward with approving the ordinance, the City Attorney's Office will work expeditiously to resolve the pending litigation matter.

## **FISCAL IMPACT:**

None, though declining to amend Chapter 9.10 may result in the City incurring damages and attorneys' fees in the pending litigation matter.

ATTACHMENTS:

*Draft Ordinance No.*

Respectfully submitted: Noel Tapia, City Attorney  
Recommended by: Edgar P. Cisneros, City Manager  
Prepared by: Vanessa S. Ibarra, Deputy City Attorney