



STAFF REPORT
TOWN COUNCIL MEETING OF AUGUST 12, 2014

TO: Town Council

FROM: Jeffrey Mitchell, Town Attorney
Rick Angelocci, Town Manager

SUBJECT: Second Reading of Ordinance 253, Repealing Chapter 7.20 of the Loomis Municipal Code (Sex Offender Separation)

DATE: July 29, 2014

STAFF RECOMMENDATION:

Hold second reading and adopt Ordinance 253, repealing Chapter 7.20 of the Loomis Municipal Code based on two recent court decisions holding that the extensive State legislation regulating and restricting the lives of registered sex offenders preempts any local regulation.

BACKGROUND:

As with most municipal jurisdictions within the State, Loomis has adopted a Code provision (Chapter 7.20 of the Loomis Municipal Code) to reduce the potential risk of harm to children in the community by limiting the opportunity for registered sex offenders to frequent specified locations that are primarily used or designed to be used by children. Recently a couple of state court decisions have been made which potentially expose the Town to litigation.

Article XI, section 7 of the California Constitution and Government Code Section 37100 provide that local ordinances may not conflict with the Constitution or state or federal laws. Courts can find that a conflict exists where state law "occupies the field" and there is no room left for local legislation. In 2006, when Chapter 7.20 was adopted by the Town, no California court had addressed the question of whether state laws regulating the lives of sex offenders were so comprehensive that they "occupied the field".

Earlier this year, the California Court of Appeals decided two cases that squarely addressed this question (*People v. Godinez* 2014WL99198 and *People v. Nguyen* 222 Cal.App.4th 1168). In the *Nguyen* case the Court of Appeals concluded that California statutes are "so extensive in scope that they clearly show an intention by the legislature to adopt a general scheme for the regulation of sex offenders"; in the earlier *Godinez* case, the Court found that California's ". . . statutory scheme

imposing restrictions on a sex offender's daily life fully occupies the field and therefore preempts [Orange County's] efforts to restrict sex offenders from visiting County parks."

DISCUSSION:

The decisions in both of these cases are final; the California Supreme Court denied review of the *Nguyen* case April 23, 2014. As a result, many cities and counties throughout California (28 as of May 2014) are repealing their local sex offender separation ordinances. Failure to do so could expose the Town to litigation, as has happened in South Lake Tahoe and at least 17 other California communities. For this reason we recommend that the Town Council repeal Chapter 7.20.

Finally, the Placer County Sherriff's Department has confirmed that it is not currently enforcing Chapter 7.20 and that there have been no citations under Chapter 7.20 for at least the last 8 years.

FINANCIAL IMPLICATIONS:

None.

ORDINANCE NO. 253

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS
REPEALING CHAPTER 7.20 OF THE LOOMIS MUNICIPAL CODE**

The Town Council of the Town of Loomis does hereby ordain as follows:

Section 1. Purpose. The Town Council finds that it is appropriate to repeal Chapter 7.20 of the Municipal Code because of recent court decisions concluding that local ordinances regulating registered sex offenders are preempted by state law.

Section 2. Repeal. Chapter 7.20 of the Loomis Municipal Code is hereby repealed.

Section 3. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance for any reason shall be held to be invalid or unconstitutional, the decision shall not affect the remaining portions of the Ordinance. The Town Council of the Town of Loomis hereby declares that it would have passed this Ordinance and each article, section, subsection, paragraph, sentence, clause or phrase which is a part thereof, irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

Section 4. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after its adoption. The Town Clerk shall cause this Ordinance to be published in the Loomis News and to be posted at three (3) locations within fifteen (15) days after its passage; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification to be entered in the Book of Ordinances of the Town of Loomis.

PASSED, APPROVED AND ADOPTED by the Town Council of the Town of Loomis on this 12 day of August, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Mayor

ATTEST:

Town Clerk