


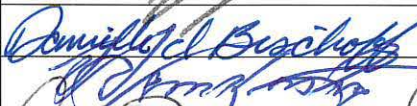
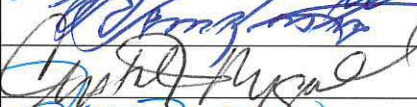
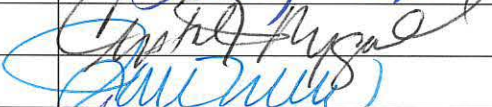
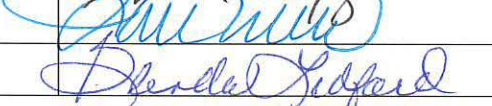
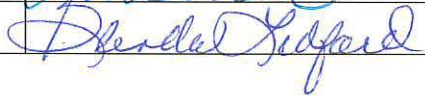
Action: Approved | Denied | Other
 Date Action Taken: May 13, 2022
 Verified By: Sarah Stumpf
 Clerk's Note: N/A

**City of Wasilla
 Action Memorandum No. 22-12**

Authorizing Staff To Submit A Request For Opinion From The State Of Alaska Attorney General On The Proposed Ordinance Adopting WMC Chapter 9.10 Sex Offenders.

Originator: Holly Wells, City Attorney
 Date: 5/10/2022

Agenda of: 5/23/2022

Route to:	Department Head	Signature	Date
X	Chief of Police		5/10/22
X	Public Works Director		5/16/22
X	Finance Director		5-11-22
X	Deputy Administrator		5/11/2022
X	City Clerk		5/11/2022
X	Mayor		5-16-22

Fiscal Impact: yes or no

Attachments: Draft Ordinance (7 pages)

Summary Statement: The purpose of the proposed Ordinance is to provide City Council with an ordinance adopting several restrictions on where individuals registered as sex offenders in the State of Alaska may live within the City of Wasilla ("City"). States and municipalities across the country have taken steps to limit and restrict residencies of sexual offenders within their borders. The State of Alaska requires sex offenders that pose a danger to society to register but does not categorically impose restrictions on where those on the registry are permitted to live. The only municipal laws limiting the location of sex offenders that we were able to find in Alaska have been adopted by the Municipality of Anchorage and, to a lesser extent, the City of Nome. Anchorage Municipal Code 21.50.035 prohibits "correctional community residential centers," a defined type of supervised housing program in Anchorage, from housing sex offenders. Similarly, Nome imposes licensing and permitting requirements on businesses, including correctional facilities. In order for a correctional facility to obtain a permit to operate, it must agree that it will not take "untreated sex offenders" unless they are temporary and in transit. See Nome Code of Ordinances 3.30.020(a)(11). There is substantial public and community debate regarding the risks posed by sex offenders living near where children congregate as well as the housing of sex offenders in residential districts. Since 2019, in the State of Alaska, individuals placed on the sex offender registry have the ability to contest registration by demonstrating that they do not pose a risk to society. Thus, it is reasonable for Council to determine that the State registry only includes sex offenders that pose a risk to society and that this risk of harm is more substantial for Wasilla's most vulnerable population, namely its children. For this reason, if City Council determines that the adoption of the ordinance serves a compelling public interest and its provisions are narrowly tailored to serve this interest, adoption of the ordinance should comply with the constitutional protections that may be afforded registered sex offenders under Alaska's extreme protection

rights to privacy and equal protection. The ordinance contains provisions designed to prevent registered sex offenders from living in areas where children congregate and to ensure that supervised housing programs that house individuals posing increased risk of harm on the community operate outside Wasilla's residential districts. These prohibitions do not apply retroactively. Individuals in supervised housing programs at the time the ordinance takes effect will be permitted to complete their programs. Individuals leasing property in a prohibited area will be able to complete their lease terms and registered sex offenders owning property and using it as their primary residence will be able to maintain their residence. Additionally, there are procedures for appeal and requests for both correction and exemption included in the ordinance. It also contains an expedited request for emergency exemption requiring a decision within 48 hours. The purpose of that provision is to ensure that any registered sex offender that needs to become a permanent resident in a prohibited area to receive medical care or provide it to a family member or otherwise may do so.

In the event City Council determines that it is worth considering the proposed ordinance, given the lack of similar regulations by other municipalities or the State, the City should seek a formal opinion by the State of Alaska Attorney General confirming that Wasilla, as a first-class municipality, has authority to adopt the proposed restrictions, before its adoption date. If authorized and adopted, a separate but related ordinance adopting a more comprehensive administrative appeal and enforcement procedure may also be necessary to ensure that the property rights of registered sex offenders are protected to the extent required under the Alaska Constitution.

Staff Recommendation: Approve the Action Memorandum.

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**City of Wasilla
Proposed Ordinance**

An Ordinance Of The Wasilla City Council Amending Wasilla Municipal Code Title 9, Public Peace And Welfare, By Adopting Chapter 9.10, Sex Offenders, To Prohibit Registered Sex Offenders From Permanently Residing Within 1,000 Feet Of Schools, Daycare Facilities, And Parks And To Prohibit Housing Of Registered Sex Offenders In Residential Zoning Districts.

Section 1. Classification. This ordinance is of a general and permanent nature and shall become part of the Wasilla Municipal Code.

Section 2. Adoption of Chapter. WMC Title 9 Chapter 9.10 "Sex Offenders" is adopted to read as follows:

Chapter 9.10

Sex Offenders

Sections:

9.10.010 Definitions.

9.10.020 Prohibited residents of sexual offenders within city.

9.10.030 Measurement of distance in prohibited areas.

9.10.040 Notice.

9.10.050 Supervised housing program-sex offender limitation.

9.10.060 Request for correction.

9.10.070 Request for exemption.

9.10.080 Remedies and penalties.

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27 **9.10.010 Definitions.**

28 **When used in this chapter, the following words and phrases shall have the**
29 **meanings set forth in this section:**

30 **“Daycare facility” means any family or child care facility licensed by the State of**
31 **Alaska. This definition includes the parking lot, playgrounds, accessory buildings**
32 **and all outdoor areas of the facility.**

33 **“Prohibited area” means an area within 1,000 feet of any school, daycare facility or**
34 **public park within the boundaries of the city.**

35 **“Permanent residence” means a place a person resides or intends to reside as their**
36 **primary residence or, if a secondary residence, for a period of more than three**
37 **months.**

38 **“Public park” means a publicly owned or operated area used or available for use as**
39 **a playground or playing field or a community recreation center. It does not include**
40 **Alaska State Parks or National Parks, including but not limited to Chugach National**
41 **Park, Chugach State Park or State of Alaska recreation sites owned or managed by**
42 **the State of Alaska.**

43 **“Rules of behavioral conduct” means rules that regulate otherwise lawful conduct**
44 **of an adult, including but not limited to the imposition of requirements regarding**
45 **curfews, drug and alcohol use, job training, employment, therapy, medical**
46 **treatment or community service. Rules of behavioral conduct do not include rules**
47 **regarding uses permitted on a premises, including but not limited to maintenance**
48 **or repair requirement or drug or alcohol use on that premises. Behavioral conduct**
49 **does not include terms of payment for the use of a premises.**

50 **“Sex offender” means a person required by the state of Alaska to register as a sex**
51 **offender under AS 12.63.020.**

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52 “School” means a public or private facility or outside grounds associated with that
53 facility operated or used for the education and extracurricular activities of a group
54 of students. This definition does not include facilities dedicated exclusively to the
55 education of adults or dwelling units in which students residing in the dwelling
56 participate in a home school program.

57 “Supervised housing program” means a program, business or person that
58 provides housing to individuals in exchange for consideration and requires the
59 individuals receiving housing to comply with behavioral rules of conduct or to
60 agree to supervision of that person’s behavioral conduct.

61 9.10.020 Prohibited residences of sexual offenders within city.

62 A. Except as otherwise permitted in this chapter, no sex offender may
63 permanently reside in an area within 1,000 feet of any school, daycare facility or
64 public park within the city.

65 B. Sex offenders who reside in a prohibited area on or before the date
66 this chapter becomes effective may continue to reside in that location but may not
67 purchase or lease a new primary residence within the prohibited area after this
68 chapter becomes effective.

69 C. This section does not apply to sex offenders who are under 18 years
70 old or are a dependent of a resident in the prohibited area.

71 D. This section does not prohibit a sex offender from maintaining a
72 permanent residence in an area that became a prohibited area after the sex offender
73 established permanent residence in that area.

74 9.10.030 Measurement of Distance in prohibited areas.

75 For purposes of measuring separation of a residence from a school,
76 daycare facility or park, all distances shall be measured from the outermost

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77 property line of the parcel upon which the residence is located running in a
78 direct line to the outermost property line of the school, daycare facility or
79 park.

80 9.10.040 Notice.

81 A. The city shall provide all sex offenders within a prohibited area
82 notice of the adoption of this provision within 60 days of its adoption. This
83 notice shall include a map showing the schools, licensed daycare facilities,
84 and public parks within the city.

85 B. Failure to receive notice under subsection (A) or failure to
86 identify a particular school, daycare facility or park on the map shall not be
87 defenses to a violation of this chapter.

88 C. Notice of violation shall be sent to the sex offender's primary
89 residence address notifying the sex offender of the violation and the appeal
90 process under this chapter.

91 9.10.050 Supervised housing program-sex offender limitation.

92 A. A supervised housing program may not provide housing to
93 registered sex offenders in a residential zoning district.

94 B. A supervised housing program housing sex offenders at the
95 time this section takes effect may permit these sex offenders to complete the
96 program and their term of housing under the program.

97 C. The names of the sex offenders that continue to reside in the
98 residential zoning district after the adoption of this section shall be provided
99 to the city upon request.

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101 9.10.060 Request for correction.

102 A. A person subject to this chapter may file a request for
103 correction with the city. The city shall provide a request for correction form
104 upon request. The request for correction form must be completed, signed,
105 dated, and filed with the city as instructed on the form before it will be
106 considered.

107 B. A request for correction shall be reviewed by the city attorney.
108 If the city attorney determines that the error is clear on its face, the city
109 attorney shall issue a statement granting the request for correction. If the
110 request is not clear on its face, the city shall transfer the request for
111 consideration by a hearing officer.

112 C. Requests for corrections filed under this chapter shall be
113 heard by an administrative hearing officer appointed under WMC 2.76.010.
114 The hearing officer shall have authority to determine the appropriate
115 administrative procedure for addressing the request for correction.

116 D. A request for correction shall be granted when a person
117 proves, by a preponderance of the evidence, that the person is not a
118 registered sex offender as defined under this chapter or that the person does
119 not reside in a prohibited area.

120 E. A request for correction filed by a supervised housing program
121 shall be granted if it proves, by a preponderance of the evidence, that it is
122 not a supervised housing program as defined in this chapter or is not
123 housing registered sex offenders in violation of this chapter.

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125 9.10.070 Request for exemption.

126 A. A person subject to this chapter may file a request for
127 exemption with the city. The city shall provide a request for exemption form
128 upon request. The request for exemption form must be completed, signed,
129 dated, and filed with the city as instructed on the form before it will be
130 considered.

131 B. Requests for exemptions filed under this chapter shall be
132 heard by an administrative hearing officer appointed under WMC 2.76.010.
133 The hearing officer shall hold a hearing that provides the person requesting
134 the exemption an opportunity to be heard and to present evidence in support
135 of the exemption. Except as otherwise required in this section or by law, the
136 hearing officer shall determine the appropriate administrative procedure for
137 addressing the request for exemption.

138 C. A request for exemption shall be granted if a hearing officer
139 finds that enforcement of the provisions of this chapter would violate the
140 person's constitutional or statutory rights under federal or state law.

141 D. A person may file an expedited request for an emergency
142 exemption with that person's request for exemption if substantial and
143 irreparable harm to that person's health or safety or the health or safety or
144 another is more likely than not to result if the exemption is not immediately
145 granted. An expedited request for an emergency exemption is temporary
146 and, if granted, remains in effect until a hearing is held as required under
147 this section and a final decision is issued granting or denying the exemption.

148 E. An expedited request for emergency exemption shall be
149 decided within 48 hours after it is filed with the city. If a hearing officer is

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150 not available to issue a decision within 48 hours, the city attorney may issue
151 a decision on the emergency request.

152 9.10.080 Remedies and penalties.

153 Remedies and penalties for violations of this chapter are as provided in WMC

154 Chapter 1.20.

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