

LAW OFFICES OF
JANICE M. BELLUCCI

August 21, 2012

Via E-mail and U.S. mail

Jim Edwards, Mayor
City of Cerritos
18125 Bloomfield Avenue
Cerritos, CA 90703

Dear Mr. Edwards:

The City Council of Cerritos is scheduled on August 23, 2012, for a second reading of proposed Ordinance 971 which includes a vast array of prohibitions for "registered sex offenders" within the City of Cerritos. The stated purpose of the proposed ordinance is to increase the safety of City residents, in general, and children, in particular. However, the ordinance as currently drafted would have the opposite effect, that is, it would reduce the safety of the City's residents. In addition, it would expose the City to significant legal liability which would be costly to defend.

The proposed ordinance, as currently drafted, would prohibit all "registered sex offenders" (also known as "registrants"), that is, anyone required to register pursuant to California Penal Code Section 290, from entering upon or into any City Facility or City Park unless he or she has obtained prior written permission. In its definition of "City Facility", the proposed ordinance includes the City Library, Center for the Performing Arts, and the Senior Center. In its definition of "City Park", the proposed ordinance includes "any land owned, leased, operated or maintained as a park or recreation area."

California Reform Sex Offender Laws (CA RSOL), a statewide non-profit organization, is opposed to the proposed ordinance for the reasons stated below. CA RSOL respectfully requests that the City of Cerritos delay further consideration of the proposed ordinance in order to allow further research on this important and complex issue.

The proposed ordinance is based upon myths

The proposed ordinance is based upon four myths regarding registrants. The facts are that (1) many registrants have been convicted or pled guilty to a non-violent, non-contact offense, (2) most registrants do not re-offend, (3) most sexual assaults of children are not perpetrated by strangers, and (4) most sexual assaults occur in private, not public, places such as parks and libraries. Each of these facts is supported by data collected by the U.S. Department of Justice and the California Sex Offender Management Board.

First, the California registry of sex offenders includes many individuals who have either been convicted or pled guilty to non-violent, non-contact offenses such as public urination, sexting and streaking. Some of these individuals committed an offense more than 50 years ago, but remain on the public registry because California's registry is a lifetime sentence.

Second, the recidivism rate for sex offenders is extremely low, only 5.3 percent, according to the U.S. Department of Justice. This means that almost 95 percent of those on the registry do not commit a second sex-related offense. This is the second lowest recidivism rate for all offenders and significantly lower than the rates for those who commit robberies and burglaries.

Third, only 7 percent of the perpetrators of sexual assaults on children are strangers, according to the U.S. Bureau of Juvenile Statistics. The remaining 93 percent of the perpetrators were either family members or adults they knew well such as teachers, coaches, and members of the clergy.

Fourth, most sexual assaults do not occur in a public place. According to the California Sex Offender Management Board, only 6.8 percent of offenders met their victims in a public location while 82 percent of all sex offenses took place in a private setting such as a home – the home of the offender or the home of the victim.

The proposed ordinance is overly broad and not tailored to a government interest

The proposed ordinance's stated method of protecting residents will fail when subjected to judicial review because it is overly broad because it would apply to all "registered sex offenders" within the state. It would not be limited to the residents of Cerritos listed on the California Megan's Law website, but instead, would apply to more than 93,000 individuals listed on the California registry.

The proposed ordinance is overly broad, in part, because it does not distinguish between and among individuals who are required to register after they have been convicted of a sex-related offense. Such offenses cover a broad spectrum and range from single non-violent acts such as public urination and consensual teen sex to multiple violent acts. The proposed ordinance is also overly broad because it does not distinguish between and among registrants who are on probation of parole or who are beyond such restrictions.

In order to maintain its viability, an ordinance must be narrowly tailored to the government interest at issue while still permitting legitimate activities of registrants. An ordinance is subject to strict scrutiny where fundamental constitutional rights are infringed upon. Legitimate activities of a registrant include federal constitutional rights protected by the 1st, 4th, 5th, 8th, 10th and 14th amendments.

It is doubtful that the proposed ordinance could prevail in a judicial challenge for one reason alone – its ban on all registrants from the city's public library. A federal Court of Appeals has recently determined that a ban of all registrants from a city's public library violated a registrant's 1st Amendment rights. The court, in that case, ordered the city to open its library to registrants as well as to pay significant attorney fees. A court could also find that legitimate activities of a registrant include the right to walk, jog, or attend a family picnic in a City park.

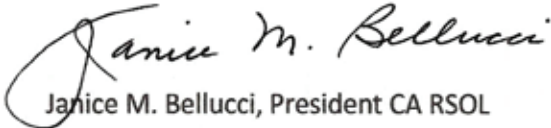
An ordinance that is not narrowly tailored can be construed as overly broad and struck down during judicial review. In the proposed ordinance, there is a blatant lack of balance between the purported protection of public safety and the legitimate activities of a registrant that are protected by both the

federal and state constitutions. Such a balance could be struck if the proposed ordinance was consistent with state law, in general, and Penal Code Section 3053.8, in particular. That law limits prohibition of a registrant from entering a public park to a registrant whose victim was less than 14 years old and is currently on parole.

If the City fails to adopt an ordinance that is consistent with state law, the City would be in violation of the state constitution and the ordinance would be unenforceable. That is because the ordinance would be a preemption of state law and thus in violation of Article XI, Section 7, of the California Constitution. A legal challenge on this basis could be filed as a taxpayer action pursuant to Code Civ. Proc. Section 526a. See *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1086.

Thank you for your attention to this important issue. The California Reform Sex Offender Laws organization is available to provide additional information to the City of Cerritos upon request.

Sincerely,


Janice M. Bellucci, President CA RSOL
Attorney-at-Law

CC: Councilmember Bruce Barrows
Councilmember Carl Chen
Councilmember Mark Pulido
Councilmember Joseph Cho