

LAW OFFICES OF  
JANICE M. BELLUCCI

August 28, 2012

Via E-mail and U.S. mail

R. Rex Parris, Mayor  
City of Lancaster  
44933 Fern Avenue  
Lancaster, CA 93534

Dear Mayor Parris:

The City Council of Lancaster is scheduled tonight to consider proposed Ordinance 981 which includes a vast array of prohibitions for "registered sex offenders" within the City of Lancaster. 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, the ordinance would reduce the safety of the City's residents and 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 residing within 2,000 feet of a school, park or day care center. In addition, the proposed ordinance would prohibit all "registered sex offenders" from being present within 300 feet of a school, park, museum, and other public sites with a few exceptions. Further, the proposed ordinance would limit the number of registrants who could reside in a hotel/motel/inn at the same time and restrict how a registrant can celebrate Halloween.

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 Lancaster 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, not facts

The proposed ordinance is based upon four myths regarding registrants. The facts are that (1) many registrants have been convicted of crimes that do not involve children, (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 or the California Sex Offender Management Board.

First, the California registry of sex offenders includes many individuals who have not been convicted of offenses involving children. Instead, those individuals have been convicted or pled guilty to non-violent, non-contact offenses such as public urination, sexting and streaking. Individuals are also required to register because of consensual teen sex. It is also important to note that although some of these individuals committed an offense more than 50 years ago, they remain on the public registry today because California's registry is a lifetime sentence for most registrants.

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 about 95 percent of those on the registry will 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. That is because the proposed ordinance would apply to all "registered sex offenders" within the state --not just those who reside in Lancaster but more than 93,000 individuals in the state of California.

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.

#### Hotel restrictions could expose owners to violations of state law

The proposed ordinance, as currently written, would prohibit multiple registrants from residing in a hotel/motel/inn in which another registrant is already residing. This restriction would require a hotel owner and/or manager to determine whether each and every guest of that hotel is a registrant. Plausibly speaking, this situation is impossible to enforce. In addition, this restriction could be construed as a violation of the civil rights of all registrants in violation of 42 U.S.C. §1983 and/or a violation of CA Penal Code §290.46(l)(2)(G).

In the case of a potential violation of CA Penal Code Section 290.46(l)(2)(G), the proposed ordinance exposes hotel/motel operators to civil damages up to \$25,000.00 each occurrence for denying

occupancy based on the status of a registered person. The ordinance necessarily then contravenes the rights of hotel/motel owners to be free of litigation due to enforcement of the ordinance.

#### Registrants do not pose increased risk on Halloween

The proposed ordinance would prohibit all registrants from celebrating the holiday of Halloween alone or with family members and/or friends by prohibiting them from certain acts, including decorating his or her residence with Halloween decorations. This prohibition is overly broad in that it could be interpreted to mean that a registrant could not decorate the interior of his or her residence. For example, the proposed ordinance would prohibit a registrant from possession of a pumpkin, whether or not carved, for the enjoyment of his or her family even if the pumpkin could not be seen by anyone outside the residence.

In addition and more importantly, there are no reported instances in the state of California of a child being attacked by a registrant on Halloween when soliciting door-to-door for candy. Therefore, this onerous and vague restriction would not support the stated goal of protecting children within the City and could be successfully challenged in court.

#### U.S. Constitution Violated

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 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 14<sup>th</sup> amendments.

#### Library Ban Violates First Amendment

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. The Tenth Circuit Court of Appeals has recently determined in *Doe v. City of Albuquerque* that a ban of all registrants from a city's public library violated registrants' first Amendment right to receive public information. The court, in that case, ordered the city to open its library to registrants as well as to pay significant attorney fees. In response to a judicial challenge of the proposed ordinance, a court could also find legitimate activities of a registrant in the City of Lancaster include the right to walk, jog, swim, or attend a picnic in a City park.

#### State Law Preempted

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 with regard to the ban of registrants from the city's recreational areas 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.4<sup>th</sup> 1069, 1086.

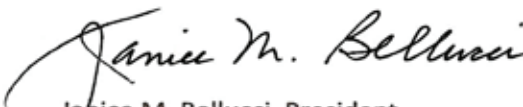
#### Staff Report Incorrect

It is important to note that the City Attorney's staff report dated August 28, 2012, does not address the issue of preemption in the context of presence restrictions such as the park and library bans in the proposed ordinance. That report only addresses the issue of preemption in the context of residency restrictions. The City Attorney's staff report correctly states that Penal Code Section 3003.5 authorizes municipal jurisdictions to enact local ordinances that further restrict the residency of registrants, however, it incorrectly concludes that the same section authorizes municipal jurisdictions to enact local ordinances that restrict registrants from not only using public parks, libraries, museums, etc., but from being within 300 feet of those sites.

The City Attorney's staff report is also incorrect in its statement that "sex offenders have a dramatically higher recidivism rate for their crimes than other types of violent felons." As stated above, the recidivism rate for registrants is 5.3 percent, according to the U.S. Department of Justice, a rate far lower than most violent felons, including those convicted of robbery and burglary.

Thank you for your attention to this important issue. The California Reform Sex Offender Laws organization is available to provide additional information, including citations to cases and reports included in this letter, to the City of Lancaster upon request.

Sincerely,

  
Janice M. Bellucci, President  
California Reform Sex Offender Laws

CC: Councilmember Ronald Smith  
Councilmember Marvin Crist  
Councilmember Ken Mann  
Councilmember Sandra Johnson