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Via E-mail and U.S. mail

Mayor Tom Tait  
Anaheim City Council  
City Hall 7<sup>th</sup> Floor  
200 S. Anaheim Blvd.  
Anaheim, CA 92805

Dear Mayor Tait:

The City Council of Anaheim is scheduled to consider tomorrow a proposed ordinance that includes a significant prohibition for "registered sex offenders" within the City of Anaheim. 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, if adopted in its current form, 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 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 into a "City Park". The ordinance defines "City Park" as all community parks, neighborhood parks and special use parks located in the City of Anaheim.

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 Anaheim delay further consideration of that ordinance in order to allow City personnel additional time to conduct 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 Anaheim 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.

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. Such rights include the right of a registrant to enter a public park to jog, enjoy a picnic lunch, and sit on a park bench alone or with family members. It is important to note that ordinances similar to the proposed ordinance, which have already been adopted by the cities of Costa Mesa, Seal Beach, Huntington Beach and Lake Forest, are currently being challenged in federal district court.

#### 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.

It is noted that the proposed ordinance includes a statement that "(i)t is not the intent of this Chapter to...contradict state law". Although this statement is clear, it does not protect the City of Anaheim from a successful challenge in court that the ordinance contradicts and therefore preempts state law.

Thank you for your attention to this important issue. For the reasons stated above, the California Reform Sex Offender Laws organization reiterates that the proposed ordinance is unlawful for two reasons (1) it violates the constitutional rights of registrants and (2) it preempts state law.

California Reform Sex Offender therefore requests that the City of Anaheim delay any further consideration of the proposed ordinance in order to provide additional time for research on this complex topic. The organization is available to provide additional information, including citations to cases and reports included in this letter, to the City of Anaheim upon request.

Sincerely,

  
Janice M. Bellucci, President  
California Reform Sex Offender Laws

cc: Mayor Pro Tem Harry S. Sidhu, P.E.  
Council Member Lorri Galloway  
Council Member Gael E. Eastman  
Council Member Kris Murray