

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

977



FROM: County Counsel

SUBMITTAL DATE:

July 2, 2014

SUBJECT: Adoption of Ordinance No. 902.2, An Ordinance Repealing Ordinance No. 902 Establishing Sex Offender Residency and Loitering Prohibitions.

RECOMMENDED MOTION: That the Board of Supervisors adopt Ordinance No. 902.2, An Ordinance Repealing Ordinance No. 902 Establishing Sex Offender Residency and Loitering Prohibitions due to recent decisions by the Court of Appeal invalidating similar ordinances in other jurisdictions.

BACKGROUND:

On July 1, 2014 as agenda item 3-10, the Board of Supervisors introduced Ordinance No. 902.2 as the first step in repealing Ordinance No. 902. The Board's action on this agenda item will finalize the repeal which will be effective thirty days hereafter.

The Board first adopted Ordinance Nos. 901 (an urgency ordinance) and 902 (a non-urgency ordinance) establishing sex offender residency and loitering prohibitions in July 2010. On September 14, 2010, the Board reintroduced and adopted Ordinance No. 902 with revisions that strengthened the residency and loitering requirements. (Agenda item 3.54 of 9/14/10). Once Ordinance No. 902 was effective, Ordinance No. 901 was automatically repealed.

Departmental Concurrence

(continued on page 2)

Pamela J. Walls,
COUNTY COUNSEL

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	
SOURCE OF FUNDS: N/A				Budget Adjustment: No	
				For Fiscal Year: N/A	

C.E.O. RECOMMENDATION:

APPROVE

BY:

Denise C. Hand

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- Positions Added
- Change Order
- A-30
- 4/5 Vote

Prev. Agn. Ref.: 3-10 7/1/14; 3.43
10/18/2011; 3.90 7/27/10; 3.54 9/14/10

District: All

Agenda Number:

3-16

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Repeal of Ordinance No. 902

DATE: July 2, 2014

PAGE: 2 of 3

BACKGROUND:

The purpose of Ordinance No. 902 is to restrict the residency of registered sex offenders to a further extent than specified in Penal Code section 3003.5 (a) and (b) and to prohibit sex offenders from loitering in certain areas. Specifically, Ordinance No. 902 prohibits a sex offender from residing:

1. in a dwelling if a sex offender already resides there, unless the sex offenders are legally related by blood, marriage or adoption;
2. in a room in a transient occupancy facility (such as a hotel room) if a sex offender already resides there, unless the sex offenders are legally related by blood, marriage or adoption; and
3. in a transient occupancy facility (such as a hotel) if sex offenders already reside in ten (10) percent of the facility, unless the sex offenders are legally related by blood, marriage or adoption;

In addition, subject to certain exceptions, Ordinance No. 902 prohibits sex offenders from loitering in a "Child Safety Zone" which is defined as "the area located within three hundred (300) feet of any of the following: a child day care facility, a public or private school, a public or private school bus stop, a park, a public library, a public swimming or wading pool, a commercial establishment that has an on-site or adjacent children's playground, or a place where classes or group activities for children are held." Ordinance No. 902 was later amended to include time, place and manner restrictions on sex offenders to prohibit sex offenders from answering the door to children who are trick-or-treating on Halloween. (Agenda item 3.43 of 10/18/2011).

In September 2012, the Fourth District Court of Appeal, Division 1, issued an opinion in *In re William Taylor* ruling that some of the blanket residency restrictions of Jessica's Law were unconstitutional. The Court of Appeal stated that "its orders do not prohibit CDCR (California Department of Corrections and Rehabilitation) from individually enforcing the residency restriction of Jessica's Law as a parole condition for registered sex offender parolees in San Diego County. The orders merely disallow CDCR from blanket enforcement of the residency restriction. Parole agents retain the discretion to regulate aspects of a parolee's life, such as where and with whom he or she can live. (Penal Code §§ 3052, 3053, subd. (a).) Agents may, after consideration of a parolee's particularized circumstances, impose a special parole condition that mirrors section 3303.5(b) or one that is more or less restrictive. It is only the *blanket* enforcement—that is, to all registered sex offender parolees without consideration of the individual case—that the trial court prohibited and we uphold." *In re William Taylor* (2012) 209 Cal.App.4th 210, 235. Review of the *Taylor* case has been granted by the California Supreme Court but has not yet been heard.

In addition, decisions from the Fourth District Court of Appeal Division 3, were issued earlier this year invalidating ordinances in the City of Irvine and the County of Orange that prohibited sex offenders from entering public parks or recreational facilities without prior written permission. In both cases, the Court of Appeal invalidated the ordinances on preemption grounds and held that "the state statutory scheme imposing restrictions on a sex offender's daily life fully occupies the field and therefore preempts the county's efforts to restrict sex offenders from visiting city parks and recreational facilities." *People v. Nguyen* (2014) 222, Cal.App.4th 1168, 1172. The Court of Appeal had a similar holding in the unpublished decision in *People v. Godinez* (G047657). On April 23, 2014, the California Supreme Court declined to review the above cases. Accordingly the Court of Appeal's decisions stand.

As a result, given the above case decisions, it is recommended that Ordinance No. 902 be repealed. Although Ordinance No. 902 is not identical to the ordinances in Orange County and Irvine, the repeal is recommended because the Court of Appeal has clearly ruled and reasoned that local ordinances regulating sex offenders' actions are preempted by state law. At least eleven other jurisdictions have recently been sued because their ordinances are still in place despite the Court of Appeal decision.

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Repeal of Ordinance No. 902

DATE: July 2, 2014

PAGE: 3 of 3

Even with the repeal of Ordinance No. 902, there are several Penal Code sections still in place regarding sex offenders. Such Penal Code provisions include:

- a lifetime duty to register with local law enforcement for each city or county in which the offender resides and to update that registration 1180 annually or upon any relevant change (§§ 290–290.024);
- a state-maintained website that discloses information about the offender to the public (§§ 290.4, 290.45, 290.46);
- a sex offender's duty to submit to monitoring with a global positioning device while on parole and potentially for the remainder of the offender's life if the underlying sex offense was one of several identified felonies (§§ 3000.07, 3004, subd. (b));
- a prohibition against the offender “enter[ing] any park where children regularly gather without the express permission of his or her parole agent” if the victim of the underlying sex offense was under 14 years of age (§ 3053.8, subd. (a));
- a prohibition against the offender residing with another sex offender while on parole and within 2,000 feet of a school or park for the rest of the offender's life (§ 3003.5);
- a prohibition against the offender entering any school without “lawful business” and written permission from the school (§ 626.81);
- enhanced penalties for the offender remaining at or returning to “any school or public place at or near which children attend or normally congregate” after a school or law enforcement official has asked the offender to leave (§ 653b);
- a prohibition against the offender entering a day care or residential facility for elders or dependent adults without registering with the facility if the victim of the underlying sex offense was an elder or dependent adult (§ 653c);
- a duty to disclose the offender's status as a sex offender when applying for or accepting a job or volunteer position involving direct and unaccompanied contact with minor children (§ 290.95, subds. (a) & (b));
- a prohibition against the offender working or volunteering with children if the victim of the underlying sex offense was under 16 years of age (§ 290.95, subd. (c)); and
- a prohibition against the offender receiving publicly funded prescription drugs or other therapies to treat erectile dysfunction (§ 290.02).

County Counsel will keep the Board apprised of legal developments in this area of the law, and if warranted by those developments, prepare and bring back a new ordinance for the Board' s consideration consistent with the various state and federal court laws and decisions related to restrictions on locations registered sex offenders can legally use.

Impact on Residents and Businesses

As stated above, even with repeal of Ordinance No. 902, there are numerous Penal Code sections regulating the daily activities and locations of sex offenders to safeguard residents from sex offenders, particularly those that prey on children.

SUPPLEMENTAL:

Additional Fiscal Information

N/A

Contract History and Price Reasonableness

N/A

ORDINANCE NO. 902.2

AN ORDINANCE OF THE COUNTY OF RIVERSIDE

REPEALING ORDINANCE NO. 902

The Board of Supervisors of the County of Riverside ordains as follows:

Section 1. Ordinance Nos. 902 and 902.1 entitled "An Ordinance of the County of Riverside Establishing Sex Offender Residency and Loitering Prohibitions" are repealed in their entirety due to recent court decisions finding similar ordinances invalid on preemption grounds.

Section 2. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its adoption.

BOARD OF SUPERVISORS OF THE COUNTY
OF RIVERSIDE, STATE OF CALIFORNIA

By: _____
Chairman

ATTEST:
CLERK OF THE BOARD

By: _____

Deputy

(SEAL)

APPROVED AS TO FORM

June 5, 2014

By: 
TIFFANY N. NORTH

Supervising Deputy County Counsel