

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

242



**FROM:** County Counsel

**SUBMITTAL DATE:**

July 29, 2014

**SUBJECT:** Adoption of Ordinance No. 902.2, An Ordinance Amending Ordinance No. 902 Establishing Sex Offender Residency Prohibitions

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

**BACKGROUND:**

On July 29, 2014, in agenda item 3-15, the Board of Supervisors introduced Ordinance No. 902.2, as the first step in removing the loitering prohibitions of Ordinance No. 902 due to recent decisions by the Court of Appeal invalidating similar ordinance provisions in other jurisdictions. The Board's action on this agenda item will finalize the removal of those provisions which will be effective thirty days hereafter.

The attached Ordinance No. 902.2 repeals only the loitering prohibitions and related definitions while also renumbering and re-lettering the remaining sections of the ordinance sequentially. Also attached is a redlined version of the existing ordinance showing the sections that are recommended for repeal and those that will remain unchanged.

(continued on page 2)

\_\_\_\_\_  
GREGORY P. PRIAMOS,  
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	
<b>SOURCE OF FUNDS:</b> N/A				<b>Budget Adjustment:</b> No	
				<b>For Fiscal Year:</b> N/A	

**C.E.O. RECOMMENDATION:**

APPROVE

BY:

Denise C. Harden

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

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

**Prev. Agn. Ref.:** 3-10 7/1/14; 3-16 7/15/14; 3-15 of 7/29/14

**District:** All

**Agenda Number:** . .

3-4

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

**FORM 11: Adoption of Ordinance No. 902.2**

**DATE: July 29, 2014**

**PAGE: 2 of 2**

**BACKGROUND:**

As advised in the earlier agenda items, decisions from the Fourth District Court of Appeal Division 3, were issued 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.4<sup>th</sup> 1168, 1172. On April 23, 2014, the California Supreme Court declined to review the above cases. Accordingly the Court of Appeal's decisions are final law with regard to the loitering provisions and it is recommended that the loitering prohibitions of Ordinance No. 902 be repealed. Although the loitering prohibitions of Ordinance No. 902 are not identical to the ordinances in Orange County and Irvine, repeal of those provisions is recommended because the Court of Appeal has clearly ruled and reasoned that local ordinances regulating sex offenders' actions are preempted by state law. Several other jurisdictions have recently been sued because their ordinances are still in place despite the Court of Appeal decision.

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 future amendments for the Board's consideration consistent with the various state and federal laws and court decisions related to restrictions on locations registered sex offenders can legally reside and use.

**Impact on Residents and Businesses**

Even with repeal of the loitering prohibitions in Ordinance No. 902, there are numerous Penal Code sections regulating the daily activities 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

**ATTACHMENTS:**

1. Ordinance No. 902.2
2. A redlined copy of Ordinance No. 902 showing which provisions will be repealed and which will be retained through the adoption of Ordinance No. 902.2.



Section 9. 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

July 16, 2014

By:   
TIFFANY N. NORTH  
Supervising Deputy County Counsel

G:\PROPERTY\TNORTH\RCO NO 902 REPEAL\RCO NO 902 2 REPEALING 902 REINTRODUCED VERSION.DOC

**ORDINANCE NO. 902**  
**~~(AS AMENDED THROUGH 902.1)~~**  
**AN ORDINANCE OF THE COUNTY OF RIVERSIDE**  
**ESTABLISHING SEX OFFENDER RESIDENCY-~~AND~~**  
**~~LOITERING~~ PROHIBITIONS**

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

Section 1. FINDINGS. Studies have consistently shown that sex offenders are a substantial threat to the community. A 1998 U.S. Department of Justice study found that sex offenders are the most likely of all parolees to reoffend and that they prey on the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under the age of eighteen (18). A 2003 U.S. Department of Justice study found that over five (5) percent of sex offenders were arrested for another crime within three (3) years of being paroled. The same study also found an estimated three (3) percent of child molesters were rearrested for another sex crime against a child within three (3) years of release, and that most of the children they were alleged to have molested were thirteen (13) years old or younger. Studies conducted in California and throughout the United States substantiate the U.S. Department of Justice findings.

The Board of Supervisors is concerned about the public safety threat posed by multiple sex offenders living in dwellings or transient occupancy facilities within Riverside County, and is further concerned about the public safety threat posed by the presence of sex offenders near locations within the County that are frequented by children, such as day care facilities, schools and playgrounds. The Board of Supervisors finds that these public safety threats have not been adequately addressed by subdivisions (a) and (b) of Penal Code section 3003.5, or by the placement and oversight policies of the California Department of Corrections and Rehabilitation. The Board of Supervisors further finds that it must take the additional steps described in this ordinance to safeguard its residents from sex offenders, particularly those that prey on children.

Section 2. PURPOSE. The purpose of this ordinance is to restrict the residency of sex offenders to a further extent than that specified in subdivisions (a) and (b) of Penal Code section 3003.5 ~~and to prohibit sex offenders from loitering in certain areas.~~

Section 3. AUTHORITY. This ordinance is adopted pursuant to subdivision (c) of Penal Code section 3003.5 which authorizes local jurisdictions to enact ordinances that further restrict the residency of sex offenders.

Section 4. APPLICATION. This ordinance shall apply to sex offenders released from custody for any criminal offense on or after the effective date of this ordinance.

Section 5. DEFINITIONS. As used in this ordinance, the following terms shall have the following meanings:

- a. Building. A structure supported by columns or walls that is more or less permanently located on the ground or affixed to something permanently located on the ground, including a mobile home or manufactured home.

- b. ~~Child Day Care Facility.~~ A facility licensed by the State of California that meets the definition set forth in Health and Safety Code section 1596.750.
- c. ~~Child Safety Zone.~~ 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.
- d. Dwelling. A building, or portion thereof, designed or occupied for residential purposes, including a building used to house a single family or two or more families, but not including a transient occupancy facility or a state-licensed residential care facility serving six (6) or fewer persons in the limited circumstance described in Section 5.a. of this ordinance.
- e. Knowingly. With knowledge of the existence of the facts in question. Knowledge of the unlawfulness of any act or omission is not required.
- f. ~~Loiter.~~ To delay, to linger or to idle without lawful business for being present.
- g. ~~Park.~~ Any area owned, leased, controlled, managed or maintained by Riverside County, the Riverside County Regional Park and Open-Space District or any city on which the public may engage in recreational, cultural or community service activities, including, but are not limited to, playgrounds, playfields, athletic courts, and dog parks.
- h. Property Owner. The person designated on the latest equalized County assessment roll as the owner of the parcel in question, or the holder of a subsequently recorded deed to the parcel in question, including, but not limited to, a part owner, joint owner, joint tenant or tenant in common of the whole or any part of the parcel in question. Property owner shall include any person or entity authorized by the property owner to act on his or her behalf.
- i. Released From Custody. Released on parole, probation or otherwise following conviction.
- j. Related by Blood, Marriage or Adoption. Consanguinity, affinity or adoption within the fourth (4<sup>th</sup>) degree.
- k. Reside. Occupy for any period of time pursuant to a legal right obtained as of a certain date.
- l. Sex Offender. A person required to register pursuant to Penal Code section 290.
- m. State-Licensed Residential Care Facility. A facility licensed by the State of California to provide residential care services, including those facilities described in Health & Safety Code sections 1250 et seq., 1500 et seq., 1568.01 et seq., 1569 et seq., 1760 et seq., and 11834.20 et seq. and those facilities described in Welfare and Institutions Code section 5116.

- n. Transient Occupancy Facility. A building, or portion thereof, designed or occupied for temporary residential purposes, typically for a period of not more than thirty (30) days, including, but not limited to, a hotel, motel or inn.

Section 6. SEX OFFENDER RESIDENCY PROHIBITIONS. A sex offender shall not do any of the following:

- a. Reside in a dwelling if a sex offender already resides there, unless the sex offenders are legally related by blood, marriage or adoption. Notwithstanding this prohibition, a sex offender on parole, may, during the period of parole, reside in a state-licensed residential care facility serving six (6) or fewer persons even if the facility is already occupied by a sex offender. As provided in subdivision (a) of Penal Code section 3003.5, a state-licensed residential care facility shall not be considered a dwelling in this limited circumstance. In determining whether a state-licensed residential care facility serves six (6) or fewer persons, the licensee, members of the licensee's family and persons employed as facility staff shall not be counted.
- b. Reside in a room in a transient occupancy facility if a sex offender already resides there, unless the sex offenders are legally related by blood, marriage or adoption.
- c. Reside in a transient occupancy facility if sex offenders already reside in ten percent (10%) of the facility, or they already reside in more than six (6) rooms, whichever is less.

Section 7. PROPERTY OWNER PROHIBITIONS. A property owner shall not do any of the following:

- a. Knowingly rent or lease a dwelling to more than one sex offender, unless the sex offenders are legally related by blood, marriage or adoption. Notwithstanding this prohibition, a property owner may, for the reasons set forth in Section 5. a. of this ordinance, rent or lease space to a sex offender on parole, during the period of parole, in a state-licensed residential care facility serving six (6) or fewer persons, even if the facility is already occupied by a sex offender.
- b. Knowingly rent or lease a room in a transient occupancy facility to more than one sex offender, unless the sex offenders are legally related by blood, marriage or adoption.
- c. Knowingly rent or lease a room in a transient occupancy facility to a sex offender if sex offenders already reside in ten percent (10%) of the facility, or they already reside in more than six (6) rooms, whichever is less.

~~Section 8. SEX OFFENDER LOITERING PROHIBITIONS. A sex offender shall not loiter in a Child Safety Zone. It shall not be considered loitering for a sex offender to do any of the following:~~

- ~~a. Remain in a Child Safety Zone if the sex offender is a minor and accompanied by a parent or legal guardian.~~

- ~~b. Escort a minor to a place within a Child Safety Zone if the sex offender is the parent or legal guardian of the minor and if the sex offender remains in the Child Safety Zone only for so long as is necessary to provide care or supervision to the minor.~~
- ~~c. Exercise First Amendment rights protected by the United States Constitution, such as the free exercise of religion at a place of worship, or freedom of speech or the right of assembly at a traditional public forum.~~

~~Section 9. SEX OFFENDER TIME, PLACE AND MANNER RESTRICTIONS. A sex offender between 12:00 a.m. and 11:59 p.m. on October 31<sup>st</sup> shall:~~

- ~~a. Be prohibited from decorating the dwelling in which the sex offender resides with Halloween decorations, and shall remove any such decorations; and~~
- ~~b. During the evening hours starting at 5 p.m. until 11:59 p.m., leave all exterior residential, decorative and ornamental lighting off at the dwelling in which the sex offender resides; and~~
- ~~c. Be prohibited from answering the door of the dwelling in which the sex offender resides to children who are trick-or-treating."~~

Section 10. VIOLATIONS AND PENALTIES. Any person violating any provision of this ordinance shall be deemed guilty of a misdemeanor offense and punished by a fine not exceeding one thousand dollars (\$1000) or six months (6) in jail, or both. Such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this ordinance is committed, continued, or permitted. The penalties herein are in addition to any other remedies provided by law and the imposition of any penalty herein shall not relieve a person of the obligation to correct the violation or prevent the County from commencing any proceeding to ensure that the violation is corrected.

Section 11. CIVIL ACTIONS. Any person violating any provision of this ordinance shall be subject to a civil enforcement action filed by the County in any court of competent jurisdiction and shall be subject to reasonable abatement costs, costs of suit and attorney's fees incurred by the County.

Section 12. ENFORCEMENT. The Sheriff, District Attorney, County Counsel and Director of Code Enforcement shall enforce the provisions of this ordinance.

Section 13. COPY OF ORDINANCE TO CALIFORNIA DEPARTMENT OF CORRECTIONS. On the effective date of this ordinance, the County Counsel is directed to send a copy of this ordinance to the California Department of Corrections and Rehabilitation.

Section 14. COPY OF ORDINANCE TO REGISTERED SEX OFFENDERS. On the effective date of this ordinance, the Sheriff is directed to send copies of this ordinance to any sex offender who lives within the unincorporated area of the County.



Section 15. SEVERABILITY. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

~~Section 16. EFFECTIVE DATE. This ordinance is hereby declared to be an urgency measure and shall take effect immediately upon its adoption. The existing findings in Section 1 of Ordinance No. 902 support the need for this urgency measure and are incorporated herein by reference. Additionally, in accordance with the requirements of Government Code section 25123, subdivision (d), the Board of Supervisors hereby declares that the provisions contained herein are necessary for the immediate preservation of the public peace, health or safety for the following reasons: (1) there are numerous registered sex offenders who reside in the County of Riverside, including those on parole; (2) Halloween is an upcoming holiday that is widely celebrated throughout the County by children and their families, who often visit the residences of strangers in efforts to obtain treats on October 31<sup>st</sup> each year; (3) sex offenders pose an immediate threat to children trick-or-treating on Halloween because children often will engage a disproportionate number of complete strangers as part of their door-to-door activities; (4) children are often unaccompanied by their parents or guardians on Halloween; (5) the events of Halloween could put children unknowingly in close proximity to sexual offenders who have committed violations against children; (6) the existing regulations within the County ordinances are not adequate to address the current activities of sex offenders on Halloween; (7) immediate action is needed to protect children given that Halloween is this month and to provide advance notice to all sex offenders as reasonably possible in the effort to prevent any potential harm to children and/or other victims and preserve the public peace, health or safety.~~

**Adopted: 902**            3.54 of 09/14/2010 (Eff: 10/14/2010)  
                  **902.1**            3.43 of 10/18/2011 (Eff: immediately)