

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

156



FROM: County Counsel

SUBMITTAL DATE:
July 17, 2014

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

RECOMMENDED MOTION: That the Board of Supervisors introduce and adopt on successive weeks 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 1, 2014, the Board introduced the repeal of Ordinance No. 902 in its entirety due to recent decisions by the Court of Appeal invalidating similar ordinances in other jurisdictions (Agenda Item 3-10). On July 15, 2014, instead of adopting a full repeal, the Board directed County Counsel to come back to the Board at the next meeting with a reintroduction of Ordinance No. 902.2 repealing only the loitering provisions and retaining the residency prohibitions pending final decision by the California Supreme Court (Agenda Item 3-16). As directed, 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)

[Signature]
Tiffany N/ North, Deputy County
Counsel for PAMELA J. WALLS,
COUNTY COUNSEL

Departmental Concurrence

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 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: *[Signature]*
Denise C. Harden

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above ordinance is approved as reintroduced with waiver of reading.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: July 29, 2014
xc: Co.Co., COB

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

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

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

District: All

Agenda Number:

3-15

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BACKGROUND:

Ordinance No. 902 has two main components:

1. The loitering prohibitions that are over and above those set forth in Jessica's Law under the Penal Code; and
2. The residency prohibitions that are over and above those set forth in Jessica's Law under the Penal Code.

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.4th 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.

With regard to the residency prohibitions, 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. *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. Since the blanket residency restrictions have not yet been ruled on by the California Supreme Court, the residency prohibitions of Ordinance No. 902 can remain in place until such time as a final decision is issued by the California Supreme Court.

Even with the repeal of the loitering prohibitions in 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

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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 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

As stated above, 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.