



Office of the
City Attorney
City of Redlands

Daniel J. McHugh
City Attorney
dmchugh@cityofredlands.org

TO: MAYOR AGUILAR AND CITY COUNCIL MEMBERS

FROM: CITY ATTORNEY

DATE: MARCH 18, 2014

RE: THREAT OF LITIGATION REGARDING CITY'S PARK CHILD SAFETY ZONES

In 2011, the City Council adopted an ordinance which added Chapter 9.14 to the Redlands Municipal Code to establish regulations to protect children from registered sex offenders by restricting sex offenders' access to locations where children regularly gather. The ordinance establishing Chapter 9.14 is based upon a model developed by the county of Orange and adopted by that county and several cities. In particular, these regulations pertain to City parks and prohibit sex offenders from entering such parks without first obtaining written permission from the City's Police Department. Signage was required to be posted at City parks informing the public of this requirement, and violation of the Chapter's regulations is deemed a misdemeanor. To date, the City's Chief of Police has informed me that only one registered sex offender has made a request of the City's Police Department to enter a City park pursuant to the provisions of the City's ordinance.

As the City Council is aware, a letter was sent to the Mayor by legal counsel for an organization entitled the California Reform Sex Offender Laws ("CA RSOL") requesting the immediate repeal (within 60 days of the City's receipt of the letter) of Chapter 9.14 based upon a recent (January 10, 2014) published appellate court decision, *People v. Nguyen* 2014 WL 104098, which invalidated a city of Irvine ordinance similar to the City's ordinance, and a companion appellate court decision, *People v. Godinez*, which invalidated Orange County's similar ordinance. A copy of CA RSOL's letter is attached to this memorandum.

In both cases, the appellate court based its ruling upon its determination that the state legislature, by enacting the Sex Offender Punishment, Control, and Containment Act of 2006, "created a *standardized, statewide system* to identify, assess, monitor and contain known sex offenders for the purpose of reducing the risk of recidivism posed by these offenders, thereby protecting victims and potential victims from future harm" (emphasis original by the court). The court further held, "considering the Legislature's declared intent couple with the scope and nature of the restrictions in the foregoing Penal Code sections imposed, we conclude the Legislature established a complete system for regulating a sex offender's daily life and manifested a legislative intent to fully occupy the field to the exclusion of...other local

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regulations." Accordingly, the court held state law pre-empted the city of Irvine and the county of Orange from adopting ordinances which imposed a registration requirement as a precondition on sex offenders' entries into local parks.

Soon after these decisions, the Orange County District Attorney's office announced that it would seek review by the California Supreme Court. However, the *People v. Nguyen* ruling is state law unless and until the California Supreme Court accepts the case for review.

In light of the threat of litigation that the City has received, the City Attorney has prepared for the City Council's consideration the attached ordinance that would repeal Chapter 9.14 of the City's Code to avoid the possibility of a lawsuit from CA RSOL. In the event the California Supreme Court grants review and subsequently reverses the appellate court decision, the City Council may then reconsider this matter.

DANIEL J. MCHUGH

cc: N. Enrique Martinez
Chief Mark Garcia

emailed: Councilmembers, City Manager, PIO, xc: Press ASZ

RECEIVED

JAN 23 2014

CALIFORNIA REFORM SEX OFFENDER LAWS (CA RSOL)
ACLU Building - 1313 W. 8th Street
Los Angeles, CA 90017
(805) 896-7854

REDLANDS CITY CLERK

January 20, 2014

Honorable Pete Aguilar
City of Redlands
35 Cajon Street
Redlands, CA 92373

Dear Mayor:

The purpose of this letter is to request the immediate repeal of the sex offender ordinance adopted by the City of Redlands. This request is based, in part, upon two recent decisions in which the California Court of Appeal determined that similar sex offender ordinances adopted by Orange County and the City of Irvine were preempted by State law and, therefore, could not be enforced. Those cases are People v. Hugo Godinez, G047657, and People v. Nguyen, G048228.

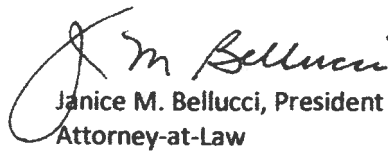
In both cases, the California Court of Appeal determined that the (State) Legislature has enacted a comprehensive statutory scheme regulating the daily life of sex offenders. The Court then concluded that the State statutory scheme fully occupies the field and therefore preempts the efforts of the county and the city to restrict sex offenders from visiting public parks and other recreational areas.

In addition to these two ordinances, the ordinances in several cities and one county have been successfully challenged in Federal court during 2012 and 2013. The cities include the City of Lancaster, the City of Lake Forest, the City of Sierra Madre, and the City of Cypress. The county is the County of El Dorado.

The California Reform Sex Offender Laws (CA RSOL), a statewide non-profit dedicated to protecting the U.S. Constitution by restoring the civil rights of sex offenders, has supported and/or been actively involved in the legal challenges listed above. The organization will monitor the city's activities related to repeal of its sex offender ordinance and is prepared to challenge city and county ordinances that are not repealed during the next 60 days.

Additional information regarding this important topic is available upon request. If you or your staff should have any questions or comments, please contact me at the phone number above or by E-mail at jmbellucci@aol.com. Thank you.

Sincerely,


Janice M. Bellucci, President
Attorney-at-Law