

Public Comments

3-12-13

Barry Lewison
G. F.
CEO
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Dist. 1
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Dist. 5

ORDINANCE NO. 3149

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ADDING CHAPTER 7.150 OF TITLE 7 (PUBLIC SAFETY AND MORALS) OF THE FULLERTON MUNICIPAL CODE REGARDING REGISTERED SEX OFFENDERS WHO HAVE OFFENDED AGAINST CHILDREN

THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS WITH RESPECT TO THE ADOPTION OF THE FOLLOWING ORDINANCE:

WHEREAS, the City Council of the City of Fullerton finds that sex offenders who have offended against children pose a continuing and clear threat to the children residing in, or visiting our community; and

WHEREAS, the City Council finds that convicted sex offenders are likely to re-offend for another sexual assault; and

WHEREAS, the City Council desires to impose safety precautions in furtherance of the goal of protecting our children; and

WHEREAS, the purpose of this regulation is assist with the management of sex offenders, to reduce the potential risk of harm to children of our community by impacting the ability for sex offenders who have offended against children to be in contact with unsuspecting children in locations that are designed for use by, or are used by children, namely, the grounds of a school, a center or facility that provides day care or children's services, and a park; and

WHEREAS, Section 3003.5 confers authority on the City of Fullerton to enact a residency restrictions on sex offenders.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 7.150 Title 7 (Public Safety and Morals) of the Fullerton Municipal Code is hereby added as follows:

Chapter 7.150 Registered Sex Offender Restrictions

Sec. 7.150.010 Purpose

It is the purpose and intent of this ordinance to assist with the management of sex offenders, and to protect children from registered sex offenders who have offended against children by limiting their access to locations where children may gather. This ordinance is intended to reduce the risk of harm to children by impacting the ability of sex offenders to be in contact with children.

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This ordinance imposes additional restrictions beyond those provided for in Proposition 83, Jessica's Law (effective November 8, 2006) by adding locations to the residence restrictions of Jessica's Law, by restricting sex offenders from certain limited locations, and by allowing for both criminal and civil remedies. It is not the intent of this ordinance to allow conduct otherwise prohibited by state law, or to contradict state law.

Sec. 7.150.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

- A. "Adult" means a person eighteen years and older.
- B. "Child" means a person under the age of eighteen years.
- C. "Day care center" means a licensed facility that provides nonmedical care on a less than twenty-four-hour basis to children in need of personal services, supervision or assistance essential for sustaining the activities of daily living or for the protection of the individual. "Day care center" does not include a "family day care home" as that term is defined in California Health and Safety Code Section 1596.78.
- D. "Park" means an open space intended for recreational use where children gather, including, but not limited to, playground areas. The City of Fullerton finds that all parks within the City are places where children gather.
- E. "Reside" means a temporary or permanent dwelling place, which one keeps and to which one intends to return, as opposed to a place where one rests or shelters during a trip or visit. Depending upon the circumstances, one may have a single place of residence or more than one place of residence.
- F. "Registerable offense" means a public offense which, upon conviction, requires the person who committed the offense to register as a sex offender pursuant to Section 290 of the Penal Code.
- G. "School" means the buildings and grounds of any public or private school used for the education of children in kindergarten or in grades 1 through 12, inclusive.
- H. "Sex offender" means any person required by law to register with a governmental entity as a sex offender for an offense against or involving a child or children, including, but not limited to, the California Sex Offender Registration Act, Penal Code section 290, et seq.

7.150.030 Residency restriction.

A. Any registered sex offender is prohibited from residing within 2000 (two thousand) feet of any school, park or day care center.

B. Any registered sex offender who established residency within the City of Fullerton prior to the effective date of this ordinance is prohibited from changing residence if the new residence would be in violation of subsection (A), above.

C. Any person who is convicted of a registerable offense against a child subsequent to the effective date of this ordinance is prohibited from residing within 2000 (two thousand feet) of any school, park or day care center, irrespective of whether the residence was established prior to the effective date of the ordinance.

7.150.040 Residency restriction -- Exceptions.

Section 7.150.030 shall not apply in any of the following circumstances:

A. The sex offender established the residency prior to the effective date of the ordinance codified in this chapter.

B. The sex offender established the residency prior to the initial operation of the child day care center, park, or school.

7.150.050 Proximity restrictions; Exceptions.

A. It is unlawful for any registered sex offender to be within 300 (three hundred) feet of any school, day care center or park.

B. Exceptions:

1. Any registered sex offender is prohibited from being located within 300 (three hundred) feet of a school, or day care center unless the registered sex offender is a parent or guardian of a child for whom the individual is legally responsible and the child attends the school or is a student at the school. Presence at the school or day care is permitted only for the limited time and purpose of picking up or dropping off the child, or to attend special events, and with the written permission of the school administrator who is responsible for child safety.

2. Any registered sex offender is prohibited from being located within 300 (three hundred) feet of a park, unless the registered sex offender is a parent or guardian of a child for whom the individual is legally responsible and the child is present at the park.

3. Any registered sex offender who lives within 300 (three hundred) feet of any school, park or day care center as of the effective date of this ordinance is not required to move. However the sex offender must proceed directly to and from his or her residence, and not loiter or remain within the 300 (three hundred) foot zone.

7.150.060 Measure of distance.

The 300 (three hundred) foot buffer zone and the 2000 (two thousand) foot buffer zone are measured in a straight line, in all directions, without regard to intervening structures, from any property line of any park, school or day care center.

7.150.070 Penalties.

A. Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished as set forth in Chapter 1.08 of the Fullerton Municipal Code.

B. Any person who violates any provision of this chapter shall also be subject to the enforcement remedies of Chapter 1.10 of the Fullerton Municipal Code. Peace officers of the Fullerton Police Department or such other police agency under contract to provide police services to the city shall be authorized to issue citations or take such enforcement action pursuant to Chapters 1.08 and 1.10.

7.150.080 Declaration of nuisance.

A. Any violation of the requirements of this Chapter by any sex offender is hereby declared to be a nuisance.

B. Any single family or multi-family residential structure, mobile home, mobile home park, hotel, or motel operated or maintained in a manner inconsistent with the residency restrictions of this Chapter, in violation of any applicable provision of the Penal Code, or in violation of any sex offender's conditions of parole is hereby declared a public nuisance.

7.150.090 Other legal and equitable remedies.

The city, at its discretion, may pursue any and all legal and equitable remedies to enforce the provisions of this Chapter. Pursuit of one remedy does not preclude the pursuit of any other remedies.


Section 2. Inconsistencies. Any provision of the Fullerton Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the

extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.


Section 3. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof. This Ordinance shall be posted at the following city of Fullerton locations within fifteen (15) days after adoption: City Hall Public Notice Display Case, 303 W. Commonwealth; Maintenance Services, 1580 W. Commonwealth; Museum Plaza, 301 N. Pomona; and Main Library, 353 W. Commonwealth.

ADOPTED BY THE FULLERTON CITY COUNCIL on October 5, 2010.


Don Bankhead, Mayor

ATTEST:


Beverley White, City Clerk

City of Fullerton
ORDINANCE CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF FULLERTON)

ORDINANCE NO. 3149

I, Beverley White, City Clerk and ex-officio Clerk of the City Council of the City of Fullerton, California, hereby certifies that the whole number of the members of the City Council of the City of Fullerton is four; and that the above and foregoing Ordinance No. 3149 had first reading by title only, introduction, and further reading waived at the September 21, 2010 City Council regular meeting and was adopted at the October 5, 2010 City Council regular meeting by the following vote:

COUNCIL MEMBER AYES:	Bankhead, Keller, Jones, Quirk-Silva
COUNCIL MEMBER NOES:	None
COUNCIL MEMBER ABSENT:	None



Beverley White, City Clerk