

# 51  
7/12/11

ORDINANCE NUMBER O- 20069 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 19 2011

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 8, DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 58.0601 AND 58.0602; REPEALING SECTION 58.0603; AMENDING AND RENUMBERING SECTION 58.0604 TO SECTION 58.0603; AMENDING AND RENUMBERING SECTION 58.0605 TO SECTION 58.0604; REPEALING SECTION 58.0606; AMENDING AND RENUMBERING SECTION 58.0607 TO SECTION 58.0605; REPEALING SECTION 58.0608; AMENDING AND RENUMBERING SECTION 58.0609 TO SECTION 58.0606; AND ADDING A NEW SECTION 58.0607, ALL RELATING TO THE CHILD PROTECTION ACT.

WHEREAS, the City of San Diego enacted the Child Protection Act in March 2008, which contained residency and presence restrictions for sex offenders; and

WHEREAS, the City of San Diego was sued in November 2008 over the constitutionality of the Child Protection Act, through an action known as *Arnold v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00095739; and

WHEREAS, on August 18, 2009, Judge Charles Hayes stayed enforcement of the presence restrictions portion of the Child Protection Act; and

WHEREAS, the City of San Diego has agreed to modify the Child Protection Act, including supporting the imposition of appropriately tailored restrictions upon sex offenders, during sentencing and as conditions of probation or parole; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 8, Division 6 of the San Diego Municipal Code is amended by amending sections 58.0601 and 58.0602; repealing section 58.0603; amending and renumbering sections 58.0604 to section 58.0603; amending and renumbering section 58.0605 to section 58.0604; repealing section 58.0606; amending and renumbering section 58.0607 to section 58.0605; repealing section 58.0608; amending and renumbering section 58.0609 to section 58.0606; and adding a new section 58.0607, all relating to the Child Protection Act, to read as follows:

**§58.0601 Purpose**

It is the purpose and intent of this Division 6, Child Protection Act (CPA), to protect children from registered sex offenders by limiting their access to locations where children gather. The CPA is intended to reduce the risk of harm to children by impacting the ability of sex offenders to be in contact with children. It is further the intent of the CPA to provide additional restrictions beyond those provided for in Proposition 83, Jessica's Law (effective November 8, 2006) by adding locations to the residence restrictions imposed by Jessica's Law, by supporting probation and parole conditions that restrict sex offenders from certain locations where children gather, and by allowing for both criminal and civil remedies, pursuant to sections 12.0201-12.0205. It is not the intent of the CPA to allow conduct otherwise prohibited by state law, or to contradict state law.

**§58.0602 Definitions**

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

*"Amusement center"* means any establishment open to the public who provides

entertainment directed at *minors*, or whose play equipment is primarily used by *minors*. It includes places like Chuck E. Cheese, Sea World, the San Diego Zoo and children's museums. It includes but is not limited to establishments that provide activities like gymnastics, laser tag, art classes, so long as the primary users of the establishment are *minors*. It does not include restaurants, movie theaters or shopping malls. It does not include businesses whose primary business is to sell toys or games or other similar products primarily used by *minors*.

"*Arcade*" has the same meaning as in San Diego Municipal Code section 33.1635.

"*Child day care facility*" means any facility licensed as such pursuant to California Health and Safety Code section 1596.750, except it does not include a small family day care home as defined in California Health and Safety Code section 1596.78(c).

"*Library*" means any public library operated by the City of San Diego.

"*Minor*" means any person less than eighteen (18) years of age.

"*Offense*" means any criminal offense requiring registration under California Penal Code section 290.

"*Park*" has the same meaning as in California Penal Code section 3003.5(b).

"*Playground*" means any outdoor premises or grounds owned or operated by the City of San Diego that contains any play or athletic equipment used or intended to be used by *minors*.

“*Registered sex offender*” and “*sex offender*” means any person required to register pursuant to California Penal Code section 290.

“*Reside*” or “*Residence*” has the same meaning as in California Penal Code section 3003.5(b).

“*School*” means any public or state licensed private elementary or secondary school, attendance at which satisfies the compulsory education laws of the State of California. It does not include a residence where parents or guardians provide home schooling. This definition shall be interpreted to be consistent with California Penal Code section 3003.5(b).

**§58.0603 Restricted Areas for Sex Offenders-Residency**

It is unlawful for any *registered sex offender* to *reside* within 2000 feet of any of the following places:

- (a) *Amusement center*
- (b) *Arcade*
- (c) *Child day care facility*
- (d) *Library*
- (e) *Playground*
- (f) *Park*
- (g) *School*

**§58.0604 Measure of Distance**

The 2000-foot buffer zone is measured in a straight line, in all directions, without regard to intervening structures, from the property line of the places listed in section 58.0603 (a) through (g).

**§58.0605 Exemptions**

- (a) Any particular subsection of section 58.0603 does not apply to any *registered sex offender* who is currently on probation or parole for an *offense* for which registration is required, and whose conditions of probation or parole would otherwise violate that subsection.
- (b) Any *registered sex offender* who *resides* outside 2000 feet of any of the places listed in section 58.0603 on April 13, 2008, is not required to move if one of the entities listed in section 58.0603 moves within 2000 feet of the *sex offender's residence* after April 13, 2008.

**§58.0606 Effective Date for Residency Requirements**

The residency restriction contained in section 58.0603 applies to any person who is required to register as a *sex offender* based on a crime committed on or after April 13, 2008.

**§58.0607 Sentencing, Probation, and Parole**

- (a) The City of San Diego finds that appropriately tailored stay away orders and similar specific restrictions on *sex offenders* will advance public safety and are necessary for the public health, safety, and welfare.

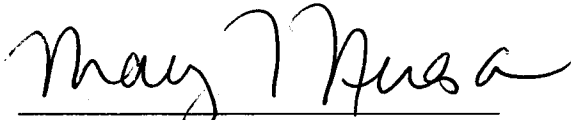
(b) The City of San Diego desires the inclusion of specific restrictions placed upon *sex offenders* as a condition of probation or parole, including restricting *sex offenders'* presence at *amusement centers, arcades, child day care facilities, libraries, playgrounds, parks, and schools*, as appropriate.

Judges and the California Department of Corrections and Rehabilitation are well justified in imposing such restrictions on probationers and parolees living within the City of San Diego.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Mary T. Nuesca  
Chief Deputy City Attorney

MTN:aml:jab  
06/15/2011  
Or.Dept:Atty  
Doc. No. 169303

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of ~~JUL 12 2011~~

ELIZABETH S. MALAND  
City Clerk

By Carolina J. Trajano  
Deputy City Clerk

Approved: 7-19-11  
(date)

JSL  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

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JERRY SANDERS, Mayor

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