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**MEMORANDUM OF LAW**

**DATE:** February 11, 2004

**TO:** Councilmember Jim Madaffer

**FROM:** City Attorney

**SUBJECT:** Megan's Law Web Site  
M-04-01-05

**BACKGROUND**

This memorandum is in response to your January 20, 2004, memorandum concerning the City's Megan web site. Your memorandum included a December 23, 2003, article from the North County Times which discusses other jurisdictions' sex offender online notifications and how those differ from the City of San Diego's web site in the level of detailed sex offender information provided.

**QUESTIONS PRESENTED**

1. May the City of San Diego revise its Internet web site to provide more detailed information (offenders' pictures, descriptions, criminal histories and hundred-block street locations) regarding registered sex offenders?

**SHORT ANSWERS**

1. No. Current California law does not authorize disseminating detailed information regarding registered sex offenders via the Internet.

**ANALYSIS**

Prior to the adoption of Megan's Law, law enforcement officials could not release information to the public regarding an individual's convictions for sex offenses or the requirement to register as a sex offender. Even if children or others were in close contact with a sex offender, officers were not allowed to provide this information to the public.

In 1996, California enacted the state's Megan's Law (Megan's Law) that authorized California residents to access information in order to protect themselves and their families from dangerous sex offenders. Cal. Penal Code §§ 290, 290.4 and 290.45. Megan's Law also required the state's Department of Justice (Department) to create a statewide system that allowed the public access to view sex offender information from a CD-ROM (or other electronic medium) at designated law enforcement locations. Additionally, the Department was required to create and maintain a "900" telephone number (900 Line) that members of the public could call to inquire whether a named individual is listed. These are the only two authorized means of obtaining information about a registered sex offender. Sex offender information is categorized by community of residence and ZIP Code. Cal. Penal Code § 290.4(a)(2).

Before a CD-ROM may be viewed, the law enforcement agency may require the person applying to view the CD-ROM (or other electronic medium) to state a valid purpose. Similarly, the Department may request a caller to articulate a reason before the requested information is released. Whether the information is obtained in person or via the 900 Line, the person applying for the sex offender's information is required to provide personal identifying information (name, address, and driver's license, identification card or military identification with proof of assignment in California) showing California residency and that he or she is at least 18 years of age. The applicant is also required to sign (or affirm if calling the 900 Line) a statement acknowledging that he or she is not a registered sex offender and that he or she will not use the information to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. Cal. Penal Code §§ 290.4(a)(3) and 290.4(a)(4).

Megan's Law further provides that:

The record of the compilation of offender information of each CD-ROM or other electronic medium . . . shall be used only for law enforcement purpose and the public safety purposes specified in this section and Sections 290 and 290.45. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section, Section 290, 290.45, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

Cal. Penal Code § 290.4(c).

With the implementation of Megan's Law, a convicted, registered sex offender is classified as a "high-risk" sex offender, as defined by California Penal Code section 290.45(b)(1)(A); or as a "serious" sex offender, an offense enumerated in Penal Code section 290.4(a)(1); or as an "other" sex offender. Megan's Law allows certain types of information to

be disseminated to the public by local law enforcement based upon a sex offender's classification. However, no information may be disclosed to the public about convicted sex offenders classified as "other."

Although there are limitations, Megan's Law allows public dissemination of information regarding sex offenders. Fremont Police Department was the first agency to distribute "pin-dot" maps identifying the approximate location of high-risk and serious sex offenders. These maps identify the locations of registrants within a one-mile radius of elementary schools, a one-and-one-half mile radius of middle or junior high schools, and a two-mile radius of high schools. The Fremont Police Department made these maps available for viewing via the agency's web site.<sup>1</sup>

Both federal and state law address whether more explicit Internet notification of registered sex offenders is allowed. Under federal law, there is a more lenient standard. Recently, the United States Supreme Court considered two state laws [Alaska and Connecticut] that required posting of information about registered sex offenders on the Internet. In *Smith v. Doe*, 538 U.S. 84 (2003), the Court upheld as constitutional Alaska's ability to post truthful information about registered sex offenders on the Internet, including their home and business addresses, descriptions, photographs, dates of birth, and other relevant information. Concurrently, in *Connecticut Dep't. of Pub. Safety v. Doe*, 538 U.S. 1 (2003), the Court held that registered sex offenders were not entitled to a hearing to determine the degree of risk each offender posed to the public before information about the offender could be posted on the Connecticut Internet site.

California only permits personal information regarding convicted sex offenders to be released under certain and limited circumstances. For "high-risk" sex offenders, California Penal Code section 290.45(a)(9)(b) provides that, "[i]n addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders *in its community* pursuant to this subdivision." [Emphasis added.] In *Byron M. v. City of Whittier*, 46 F. Supp. 2d 1037, 1042 (C.D. Cal. 1998) (dissemination of information to the media), the Court affirmed that "California's Megan's Law ha[s] [n]ever contemplated dissemination of information regarding 'high-risk' sex offenders beyond the geographical area where Plaintiff is likely to encounter new victims."

Global distribution of registered sex offender information exceeds the mandates of California law. Contrary to federal and other states' law, California's enhanced restrictions prevent Internet distribution of registered sex offenders' information beyond the designated law enforcement entity's community.

Therefore, absent a change in California law, Internet distribution of a registered sex offender's personal identifying information could subject the City to liability if a registered sex

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<sup>1</sup>The City of Fremont was sued for posting its "pin-maps" on the City's web site. The City prevailed at the trial court level and the case is now pending before the California Court of Appeal – First Appellate District.

offender sued the City. It could also subject the person releasing the information or directing another to release the information to misdemeanor charges.

### **CONCLUSION**

Currently, California's Megan's Law does not allow for via the Internet viewing information about serious or high-risk registered sex offenders. Future legislation may change the law and permit the posting of information regarding serious and high-risk sex offenders via the Internet. Until California's Megan's Law changes, the City's posting of serious or high-risk sex offender information on the City's web site may expose the City to civil liability and the person or persons releasing the information to criminal sanctions.

CASEY GWINN, City Attorney

By \_\_\_\_\_  
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