

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 8, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING
DIVISION 6, TITLED CHILD PROTECTION ACT, AND BY
ADDING SECTIONS 58.0601, 58.0602, 58.0603, 58.0604,
58.0605, 58.0606, 58.0607, 58.0608 AND 58.0609, ALL
RELATED TO THE CHILD PROTECTION ACT.

WHEREAS, the City of San Diego places a high priority on public safety, and particularly the safety of its children, and

WHEREAS, sex offenders pose a unique threat to public safety due to high recidivism rates; and

WHEREAS, according to a 1998 report by U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend and prey on the most innocent members of our society, and more than two-thirds of victims of rape and sexual assault are under the age of 18 and sex offenders have a higher recidivism rate for their crimes than any other type of violent felon; and

WHEREAS, California voters approved Proposition 83, an initiative known as “Jessica’s Law” on November 7, 2006; and

WHEREAS, Jessica’s Law made a number of changes to various statutes governing sex offenders; and

WHEREAS, one of the provisions in Jessica’s Law makes it unlawful for registered sex offenders to reside within 2000 feet of any public or private school, or parks where children

regularly gather and further allows municipal jurisdictions to enact ordinances that further restrict where registered sex offenders reside; and

WHEREAS, the City believes that one of the goals of Jessica's Law was to enable people to better protect themselves and their families, and to create ordinances furthering these goals; and

WHEREAS, California state law does not address or prevent sex offenders from being in or near places where children frequently gather, such as parks and amusement centers, nor does it prohibit sex offenders from being near schools; and

WHEREAS, the City finds that children are in need of further protection from sex offenders; and

WHEREAS, the City believes restricting sex offender access to the locations where children gather will further public safety; and

WHEREAS, the City intends that this ordinance be used to protect children, and not to harass or otherwise unreasonably restrict abiding law sex offenders; and

WHEREAS, it is the intent of this ordinance to enact stricter residency requirements than contained in Jessica's Law by criminalizing the offense and by adding other locations; NOW THEREFORE,

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

Section 1. That Chapter 5, Article 8, of the San Diego Municipal Code is amended by adding a new Division 6, titled "Child Protection Act" and adding new Sections 58.0601, 58.0602, 58.0603, 58.0604, 58.0605, 58.0606, 58.0607, 58.0608, and 58.0609, to read as follows:

§58.0601 Purpose

It is the purpose and intent of the Child Protection Act (CPA) to protect children from registered sex offenders by limiting their access to locations where children gather. It 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 this ordinance 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 of Jessica's Law, by restricting sex offenders from certain limited locations, and by allowing for both criminal and civil remedies, pursuant to Sections 12.0201-12.0205 of this Code. It is not the intent of this ordinance to allow conduct otherwise prohibited by state law, or to contradict state law.

§58.0602 Definitions

For purposes of 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*” means the same as it does in 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.

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

“*Park*” means the same as it does for purposes of California Penal Code section 3003.5(b).

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

“*Reside*” or “*Residence*” means the same as it does for purposes of 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-Presence

It is unlawful for any *registered sex offender* to be within 300 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 Restricted Areas for Sex Offenders-Residency

It is unlawful for any *registered sex offender* to be *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*

§58.0605 Measure of Distance

The 300-foot buffer zone and the 2000- foot buffer zone are 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), and 58.0604 (a) through (g).

§58.0606 Other Establishment Restrictions for Sex Offenders

It is unlawful for any *registered sex offender* to enter in to or remain in any *amusement center* contained within a non-restricted establishment, such as the play area of a fast food restaurant, or a video game arcade establishment in a shopping mall.

§58.0607 Exemptions

Any particular subsection of 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.

A *registered sex offender* may be on or within 300 feet of a school if that *sex offender* is a parent or guardian of a child attending that school, or is a student at the school or has prior written permission for the entry from the chief

administration office of that school. This exemption does not apply to the *residence* restriction, only to the presence restriction. This exemption is intended to be co-extensive with Penal Code section 626.8, and is not intended to authorize any conduct prohibited by Penal Code section 626.8.

Any *registered sex offender* who lives within 300 feet of any of the places listed in Section 58.0603 on _____ is not required to move. However the *sex offender* must proceed directly to and from her or her *residence*, and not loiter or remain within the 300 foot zone.

Any *registered sex offender* who *resides* outside 2000 feet of any of the places listed in Section 58.0604 on _____, is not required to move if one of the entities listed in 58.0604 moves within 2000 feet of the *sex offender's residence* after _____.

§58.0608 Defenses

It is an affirmative defense to Section 58.0603 when the person charged can show that traveling through the 300 foot zone was the only reasonable way to reach another destination. Loitering or unnecessarily remaining within the zone defeats the availability of the defense. For example, if a person takes a bus to work and the bus drives by or stops near a park, such person can use this subsection if charged with a crime under this section. Conversely, if a person walks to work, and must pass within 300 feet of a library, and if the person stands in front of the library rather than proceeding to his or her destination, the defense is not available. Entering into the prohibited establishment defeats the availability of the defense.

§58.0609 Effective Date for Residency Requirements

The residency restriction contained in Section 58.0604 applies to any person who is required to register as a *sex offender* based on a crime committed on or after the _____.

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

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 4. That the clerk is instructed to insert the effective date of this ordinance, once known, in the blanks in sections 58.0607 and 58.0609.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Mary Nuesca
Deputy City Attorney

MN:aml
01/17/08
02/25/08 (COR.COPY)
Dept: PD
O-2008-89

I hereby certify that the following Ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor