

TITLE: ORDINANCE REPEALING PORTERVILLE MUNICIPAL CODE CHAPTER 18, ARTICLE V RELATING TO REGISTERED SEX OFFENDER RESTRICTIONS

SOURCE: CITY ATTORNEY

COMMENT: In 2006 the City Council enacted, via Ordinance No. 1707, Municipal Code Chapter 18, Article V which established regulations relating to sex offenders' proximity to children's facilities. At the time, State law prohibited sex offenders from living within 2,000 feet of a park or school and required written permission for them to enter a school, but it did not ban them from visiting parks or other children's facilities unless they were on parole for crimes against children under the age of 14. By enacting Ordinance No. 1707, the City Council supplemented the restrictions established by State law.

Article XI, Section 7 of the California Constitution and Government Code Section 37100 provide that local ordinance must not conflict with the Constitution and State and Federal laws. A conflict exists where State law "occupies the field" and there is no room for local legislation. At the time Ordinance No. 1707 was enacted, there had not been any judicial determination made that held State law regulating sex offenders occupied the field, which would then preempt additional local restrictions.

On January 10, 2014, the Fourth District Court of Appeal, Division Three, ruled unanimously, in an unpublished opinion entitled *People v. Godinez*, that California's "...statutory scheme imposing restrictions on a sex offender's daily life fully occupies the field and therefore preempts [Orange] county's efforts to restrict sex offenders from visiting County parks." Also on January 14, 2014, the Fourth District Court of Appeal, Division Three, ruled unanimously, this time in a published decision entitled *People v. Nguyen*, that the City of Irvine's ordinance, which imposes similar restrictions as the Orange County ordinance, is also preempted by State law. In January 2014, and in subsequent months, the City of Porterville has received letters from a statewide non-profit group requesting immediate repeal of the City's sex offender ordinance. The letters cite to the above-referenced decisions and have also made reference to the fact that sex offender ordinances in several California cities and one county had been successfully challenged in 2012 and 2013. The letters have additionally announced the non-profit group's intention to challenge Porterville and other cities' ordinances in court if not repealed.

Both of the above-referenced court decisions are based on the same legal theories and have virtually identical language in the rulings. The Court of Appeal noted that “Under Article XI, Section 7 of the California Constitution, ‘a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general [state] laws.’ If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation ‘*duplicates, contradicts, or enters an area fully occupied by general law*, either expressly or by legislative implication.’” The Court determined that the State has occupied the field and preempts the local legislation. The Court specifically found “...if the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a ‘municipal affair.’”

Per this office’s communications with the Porterville Police Department, the City has not issued any citations for violation of this Article for a year or more. The more typical scenario is that the Police Department receives a call about a “suspicious person” in the vicinity of a school or children’s facility and then they will determine if the person is a registrant after making contact. The Police Department will be able to continue these types of contacts even if this article of the Municipal Code is repealed.

In addition to the restrictions imposed by State law, each registrant has additional restrictions they must adhere to, depending on the crime the registrant committed and the conditions of parole imposed. In many cases, the restrictions imposed via the conditions of parole could impose similar restrictions to those imposed by the City’s sex offender restrictions, meaning the registrant’s proximity to children’s facilities would still be restricted even if Article V of Chapter 18 is repealed.

Based upon the foregoing, this office recommends that the City repeal Chapter 18, Article V (Sections 18-55 through 18-60) of the Porterville Municipal Code. This is the appropriate response to the recent appellate court decisions, the threat of a legal challenge, and the fact that the Police Department is not issuing citations for violation of this ordinance.

RECOMMENDATION: That the City Council adopt the draft Ordinance Repealing Chapter 18, Article V of the Porterville Municipal Code Relating to Registered Sex Offender Restrictions; give first reading; and order the ordinance to print.

ATTACHMENTS: 1. Draft Ordinance Repealing Chapter 18, Article V of the Porterville Municipal Code Relating to Registered Sex Offender Restrictions
2. Porterville Municipal Code Chapter 18, Article V

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF PORTERVILLE REPEALING
CHAPTER 18, ARTICLE V OF THE PORTERVILLE
MUNICIPAL CODE RELATING TO
REGISTERED SEX OFFENDER RESTRICTIONS**

WHEREAS, the City Council of the City of Porterville, California (“the City Council”) adopted Ordinance No. 1707 to impose safety precautions to reduce the potential risk of harm to children in our community by restricting the ability of sex offenders to be in contact with children in locations that are primarily used by children; and

WHEREAS, Article XI, Section 7 of the California Constitution and Government Code Section 37100 provide that a legislative body may pass ordinances not in conflict with the Constitution and laws of the State of the United States; and

WHEREAS, a conflict exists between State law and otherwise valid local legislation if the local legislation enters an area fully occupied by general law, either expressly or by legislative implication; and

WHEREAS, on January 10, 2014, two unanimous rulings were issued by the Fourth District Court of Appeal, Division Three, that held that California’s statutory scheme imposing restrictions on a sex offender’s daily life fully occupies the field and therefore preempts a local agency’s effort to impose further restrictions on sex offenders; and

WHEREAS, as a result of these rulings and the threat of a legal challenge to Ordinance No. 1707, the City Council finds that it is in the best interest of the City of Porterville, California to repeal Ordinance No. 1707 as it has been codified in the Porterville Municipal Code.

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

Section 1. Repeal. Chapter 18, Article V (Sections 18-55 through 18-60) of the Porterville Municipal Code is hereby repealed.

Section 2. Effective Date. This Ordinance shall take effect thirty (30) days from and after its adoption as provided by Porterville Charter Section 12.

Section 3. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to law.

PASSED, APPROVED AND ADOPTED this _____ day of _____ 2014.

Cameron J. Hamilton, Mayor

ATTEST:

John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk

Article V

PROXIMITY OF REGISTERED SEX OFFENDERS TO CHILDREN'S FACILITIES

http://sterlingcodifiers.com/codebook/index.php?book_id=679&chapter_id=49973

18-55: PURPOSE:

18-56: DEFINITIONS:

18-57: PROHIBITIONS:

18-58: EXCEPTIONS:

18-59: ENFORCEMENT:

18-60: SEVERABILITY:

18-55: PURPOSE:

Sex offenders pose a clear threat to the children residing, or visiting in the community. Because convicted sex offenders are more likely than any other type of offender to reoffend for another sexual assault, the city council desires to impose safety precautions in furtherance of the goal of protecting the children. The purpose of this regulation is to reduce the potential risk of harm to children of the community by impacting the ability for sex offenders to be in contact with unsuspecting children in locations that are primarily designed for use by, or are primarily used by children, namely, the grounds of a public or private school for children, a center or facility that provides daycare or children's services, a video arcade, a playground, park, or an amusement center. The city desires to add location restrictions to such offenders where the state law is silent. (Ord. 1707 § 1, 11-7-2006)

http://sterlingcodifiers.com/codebook/index.php?book_id=679§ion_id=461090

The section below has been affected by a recently passed ordinance, 1803 - PROJECTING SIGNS. [Go to new ordinance.](#)

18-56: DEFINITIONS:

ARCADE: Shall have the meaning ascribed by the Porterville zoning ordinance.

CHILD OR CHILDREN: Any person under the age of eighteen (18) years of age.

CHILDCARE AND DEVELOPMENT FACILITY: Shall have the meaning ascribed by California Education Code section 8208.

LOITERING: Remaining or wandering in a public or private place for the apparent purpose of observing any minor or minors, or with the apparent purpose or intent of engaging or soliciting any person to engage in any sexual act of any kind, or after having been told to leave by the owner or any authorized official of such place or facility.

PLAYGROUND: Shall have the meaning ascribed by the Porterville zoning ordinance.

PUBLIC BUILDING REGULARLY FREQUENTED BY CHILDREN: Shall have the meaning ascribed by section 15-43 of this code.

PUBLIC PARK OR RECREATION AREAS: Shall have the meaning ascribed by section 15-43 of this code.

SEX OFFENDER: An individual who is currently required by law to register with a governmental entity as a sex offender. (Ord. 1707 § 1, 11-7-2006)

http://sterlingcodifiers.com/codebook/index.php?book_id=679§ion_id=461091

18-57: PROHIBITIONS:

Any sex offender is prohibited from being on or within, or loitering on or within, three hundred feet (300') of a public or private school for children, a childcare and development facility, a public park or recreation area, playground, arcade, or public building regularly frequented by children. (Ord. 1707 § 1, 11-7-2006)

http://sterlingcodifiers.com/codebook/index.php?book_id=679§ion_id=461092

18-58: EXCEPTIONS:

- A. This article does not restrict access to public parks for the purpose of exercising the constitutional rights of free expression and assembly, so long as such activity does not amount to "loitering" as defined in section 18-56 of this article.
- B. This article does not restrict access to schools or childcare and development facilities for purposes limited to the education and care of child with regard to the sex offender's responsibilities as a parent or legal guardian.
- C. This article does not apply to restrict a sex offender's place of residence when regulated by state law. (Ord. 1707 § 1, 11-7-2006)

http://sterlingcodifiers.com/codebook/index.php?book_id=679§ion_id=461093

18-59: ENFORCEMENT:

Any person who violates this article is guilty of a misdemeanor. Each offense shall be punished by a fine not less than twenty five dollars (\$25.00) or more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment. A person is guilty of a separate offense for each and every day during which a violation occurs. (Ord. 1707 § 1, 11-7-2006)

http://sterlingcodifiers.com/codebook/index.php?book_id=679§ion_id=461094

18-60: SEVERABILITY:

http://www.sterlingcodifiers.com/codebook/getBookData.php?chapter_id=49973

It is declared to be the intention of the city council that the subsections, paragraphs, sentences, clauses, and phrases of this article are distinct and severable and, in the event that any subsections, paragraphs, clauses and/or phrases are declared to be unconstitutional, invalid, or unenforceable by any court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining subsections, paragraphs, clauses, or phrases of this article. (Ord. 1707 § 1, 11-7-2006)

http://sterlingcodifiers.com/codebook/index.php?book_id=679§ion_id=461095