

DATE: September 12, 2006

TO: Mayor and City Council Members

FROM: Police Department

SUBJECT: **AN ORDINANCE OF THE CITY OF WEED CONCERNING  
SEXUAL OFFENDERS' PROXIMITY TO CHILDREN'S  
FACILITIES**

**BACKGROUND / ISSUE/ POLICY**

The City has a compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by ensuring that areas surrounding locations where children regularly congregate are not frequented by certain sexual offenders and sexual predators. The City may, consistent with its police powers, adopt local ordinances designed to protect the health, safety, morals, and general welfare of its residents. The proposed ordinance is consistent with this goal.

Existing California law provides an extensive scheme for regulating the placement of juvenile and adult sex offenders upon their release from incarceration. The State is updating a procedure for placement of registered sex offenders and violent sexual predators. However, this information was not available for this staff report.

California Penal Code section 3003 provides that an inmate who is released on parole shall be returned to the county of the last legal place of residence of the inmate prior to his or her incarceration, absent extraordinary circumstances. Section 3003(g)(2) further provides that such an inmate who is released on parole for the commission of lewd or lascivious acts or continuous sexual abuse of a child shall not be placed nor reside for the duration of the period of parole within one-half mile of a private or public school for kindergarteners through eighth graders.

State law clearly regulates certain residential placements of such offenders and preempts local jurisdictions from placing limits upon the residences of these offenders. Despite such provisions and other related residential regulations, state law lacks specific regulations that would prohibit sex offenders from frequenting locations that are primarily used by or designed for use by children. These would include: preschools, childcare facilities, and schools other than grades kindergarten through eighth; video arcades; parks, skate parks, playgrounds and recreational facilities; and other similar locations. The existing law also does not regulate such offenders after the terms of their parole, conditional release or juvenile placements or terms end.

As such, the City of Weed may place restrictions on sex offenders as to their frequenting certain facilities designed primarily for children's use where the State has failed or chosen not to act. This is not intended to conflict with existing state law but to expand the prohibitions of such offenders to include a broader area. The purpose of such a regulation is to reduce the potential risk of harm to children or our community by impacting the ability for sex offenders to be in contact with unsuspecting children.

## **ANALYSIS**

### **A. State Law.**

State statutes address where certain sexual offenders may reside in proximity to schools. These laws do not address where a sexual offender may remain in the area of locations frequented by children. The following are several statutes that address the residency of sexual offenders.

California Welfare and Institutions Code section 6600 et seq., the Sexually Violent Predators Act, provides a comprehensive and coordinated system of placements after incarceration for adults and juveniles and adjudicated to be sexually violent predators. The Act generally requires at least a two-year commitment after release from incarceration to the State Department of Mental Health for treatment in a secure facility. Section 6608 allows a sexually violent predator to petition for a conditional release to community outpatient treatment. In 2004, section 6608.5 was added, requiring that a person who is conditionally released shall be returned to the county of the last legal place of residence of the person prior to his or her incarceration, absent extraordinary circumstances. Under certain circumstances, a person released under this section cannot be placed within one quarter mile of any public or private school providing instruction in kindergarten or for grades 1 to 12.

California Penal Code section 290 requires that individuals convicted of specific sexual offenses must register with the law enforcement agency having jurisdiction over their residence. Megan's Law is a federal law passed in 1996 in response to the rape and murder of Megan Kanka of New Jersey. Federal law encouraged individual states to make information on sexual offenders available to residents. California's Megan's Law, signed in 1996, required the California Department of Justice to maintain a data base accessible to the general public on all "high risk" and "serious" sexual offenders. Law enforcement agencies serving populations of 200,000 or more are required to make this information available to the public. The release of information is optional for smaller departments.

The sole purpose for the disclosure of the information is so that people can protect themselves and their families from convicted sexual offenders. Megan's Law also allows for a more active release of information by law enforcement in certain circumstances.

To comply with Penal Code section 290, sexual offenders must register with the law enforcement agency in which they live within five days of establishing residence in that jurisdiction. The offenders must also do an annual updated registration or, if they are transient, must register every sixty days. Sexual offenders who have been convicted of a felony and fail to register can be charged with a felony. Strict conditions governing accessibility to children may be placed on offenders during their probation or parole terms.

Generally, if the sexual offender is no longer on probation or parole, law enforcement has no legal authority to dictate where an offender can live, work, volunteer, or frequent, etc. For example, the police have no legal authority to tell an offender who is no longer under any probation or parole restrictions that he or she can't live next to an elementary school or a day care center or frequent areas where children normally congregate.

**B. Proposed Ordinance.**

The purpose of this ordinance is to reduce the potential risk of harm to children of our community by limiting the opportunities for sex offenders to be in contact with unsuspecting children. The proposed ordinance was drafted with the right to travel concerns in mind and is narrowly tailored to achieve the legitimate purpose of protecting children in Weed. It does not restrict large areas or the right to travel, but imposes limited site-specific restrictions. The City's geographical size is six square miles and the prohibited distance of 300 feet from the specified facilities is reasonable in light of the size of the City and the distribution of the specified facilities.

The proposed ordinance establishes exceptions to the general prohibition for registrants who have children and allows those registrants to access certain restricted locations while in the company of their children. The proposed ordinance also establishes exceptions for registrants to attend religious services and to go to government buildings to take care of official business.

**RECOMMENDATION / CITY COUNCIL ACTION**

Recommend that the City Council conduct a first reading of Ordinance \_\_\_\_\_, AN ORDINANCE OF THE CITY OF WEED ADDING CHAPTER \_\_\_\_\_ TO TITLE \_\_\_\_\_ OF THE WEED MUNICIPAL CODE CONCERNING SEXUAL OFFENDERS' PROXIMITY TO CHILDREN'S FACILITIES.

Submitted,

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