

DATE: May 17, 2006  
TO: Mayor and City Council Members  
FROM: Police Department  
SUBJECT: **ORDINANCE NO. 1057 - AN UNCODIFIED EMERGENCY ORDINANCE OF THE CITY OF FOLSOM RELATING TO SEXUAL OFFENDERS.**

**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; bus stops in the immediate vicinity of a school, park, or recreational facility; libraries; 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 Folsom 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

There are statutes that 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 provisions addressing residency and 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. That under certain circumstances, a person released under this section shall not be placed within one quarter mile of any public or private school providing instruction in kindergarten or any 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. In Folsom, this release of information is via 'flyering' in which officers canvas a particular offender.

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. The proposed ordinance language was drafted with the right to travel concerns in mind and was narrowly tailored to achieve the legitimate purpose of protecting the children of our community. It does not restrict large areas or the right to travel, per se, but imposes site specific restrictions.

The purpose of this ordinance is to reduce the potential risk of harm to children of our community by impacting the ability for sex offenders to be in contact with unsuspecting children.

Because the City's geographical size is twenty six square miles and the City may not prohibit sex offenders from residing in the City altogether, the prohibited distance of 300 feet from facilities designed primarily for children's use is determined to be appropriate.

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends adoption of Uncodified Emergency Ordinance No. 1057, An Uncodified Emergency Ordinance of the City of Folsom Relating to Sexual Offenders.

Submitted,



Paul Bonaventure, POLICE CAPTAIN

## **ORDINANCE NO. 1057**

### **AN UNCODIFIED EMERGENCY ORDINANCE OF THE CITY OF FOLSOM RELATING TO SEXUAL OFFENDERS**

The City Council of the City of Folsom hereby does ordain as follows:

#### **SECTION 1 PURPOSE**

Sex offenders pose a clear threat to the children residing or visiting in the community. Currently, thirty-eight (38) sex offenders reside in the City of Folsom who are required by Penal Code section 290 to register with the Folsom Police Department. Because convicted sex offenders are more likely than any other type of offender to re-offend for another sexual assault, the City Council of the City of Folsom desires to impose safety precautions in furtherance of the goal of protecting children.

The purpose of this ordinance is to reduce the potential risk of harm to children of the community by limiting the opportunity 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 public or private schools for children, centers or facilities that provide day care or children's services, video arcades, public and private playgrounds and play facilities, parks, youth sports facilities, skateparks and public swimming pools. Currently, state law does not address the areas that sex offenders can frequent. Instead, state law only regulates where sex offenders can reside in relation to a limited number of specified areas. This ordinance is not intended to conflict with existing state law but to add location restrictions to sex offenders where state law is silent.

For these reasons, the City Council of the City of Folsom finds that a public emergency exists that affects the life, health and public welfare of residents in, and visitors to, the City of Folsom. This uncodified emergency ordinance shall remain in effect for one hundred and twenty (120) days from the date of adoption to permit the City to further examine this situation and to enact a permanent ordinance that addresses this issue.

#### **SECTION 2 PROHIBITIONS**

##### **A. DEFINITIONS.**

"Children" means those persons who are under the age of eighteen (18).

"Sex offender" means a person who has been required to register with a governmental entity as a sex offender under California Penal Code section 290.

##### **B. PROHIBITION.**

A sex offender is prohibited from being on or within three hundred (300) feet of the grounds of public or private schools for children, centers or facilities that

provide day care or children's services, video arcades, public and private playgrounds and play facilities, parks, youth sports facilities, skateparks, public swimming pools and bus stops in the immediate vicinity of parks and schools. For purposes of this section, distances shall be measured from the edge of the parcel or contiguous parcels where the identified use is located. This prohibition does not apply to a sex offender's place of residence when regulated by state law. This prohibition does not apply to single trips while traveling past a location specified in this ordinance while in route to another destination.

C. VIOLATION. Any person violating this ordinance is guilty of a misdemeanor punishable by a fine up to One Thousand Dollars (\$1,000.00) or by imprisonment for up to one (1) year, or both. A person is guilty of a separate offense for each and every day during which a violation occurs.

### **SECTION 3 SEVERABILITY**

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

### **SECTION 4 EFFECTIVE DATE**

Pursuant to Section 2.13 of the Charter of the City of Folsom, California, this Emergency Ordinance shall become effective upon adoption by the City Council and shall remain in effect for one hundred and twenty (120) days from the date of adoption.

This ordinance was introduced and the title thereof read at the regular meeting of the City Council on May 23, 2006.

On a motion by Council Member, seconded by Council Member , the foregoing ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this 23rd day of May, 2006, by the following vote, to wit:

AYES: Council Member(s)

NOES: Council Member(s)

ABSTAIN: Council Member(s)

ABSENT: Council Member(s) Andrew J. Morin, MAYOR

ATTEST: Christa Schmidt, CITY CLERK