

LAW OFFICES OF  
JANICE M. BELLUCCI

September 4, 2012

Via E-mail and U.S. mail

R. Rex Parris, Mayor  
City of Lancaster  
44933 Fern Avenue  
Lancaster, CA 93534

Dear Mayor Parris and City Council Members:

The City Council of Lancaster is scheduled to reconsider Ordinance 981 on September 11, 2012, in a second reading. The proposed ordinance includes a vast array of prohibitions for "registered sex offenders" (hereinafter referred to as "registrants") within the City of Lancaster.

Specifically, the proposed ordinance would prohibit registrants from residing within 2,000 feet of a school, park or day care center. In addition, the proposed ordinance would prohibit registrants from being present within 300 feet of a school, park, museum, and other public sites with a few exceptions. Further, the proposed ordinance would limit the number of registrants who could reside in a hotel/motel/inn at the same time and restrict how a registrant can celebrate Halloween.

As stated in my letter dated August 28, 2012, the proposed ordinance, if adopted in its current form, would violate the constitutions of both the nation and the state. The California Reform Sex Offender Laws (RSOL) organization and the 93,000 families it represents therefore repeat their opposition to the proposed ordinance and request that the City Council of Lancaster cease further consideration of that ordinance in order to conduct additional research.

Initial consideration of ordinance

The City Council formally considered Ordinance 981 for the first time at its meeting on August 28, 2012. The consideration included a presentation by the City's Criminal Justice Commission. During the presentation, the Commission stated that it spent 10 months crafting the ordinance at question and in doing so used as a model a similar ordinance passed by the City of Ontario in late 2011.

Because Ordinance 981 is so similar to the Ontario ordinance, it is difficult to understand why the Commission would require 10 months to draft an ordinance for the City of Lancaster. It is also difficult to understand why the Commission did not spend more time during that period conducting necessary research regarding the issues of constitutionality and preemption of state law.

The Commission made an unwise decision, for all intents and purposes, to virtually copy the provisions of the Ontario sex offender ordinance without conducting its own independent research. Did the Commission make its decision based upon the fact that the Ontario sex offender ordinance has not yet been challenged in court? If so, the Commission must be reminded that the lack of such a challenge does not mean that the Ontario ordinance is constitutional and does not preempt state law. It only means that it has not yet been challenged.

Does the City of Lancaster want to assume the same risk as the City of Ontario in passing an ordinance that is unconstitutional and preempts state laws? Even in the unlikely case that the City were to succeed in a judicial challenge of the proposed ordinance, the City would be required to expend a significant amount of funding to defend the defective ordinance.

There is another path for the City Council to take on September 11. The City Council can reject the recommendation of the Criminal Justice Commission to adopt Ordinance 981 and instead delay further consideration of that ordinance in order to obtain additional information this complex topic.

If the City chooses to move forward with Ordinance 981, it will be challenged in Court by this attorney, by this organization, by another attorney, and/or by another organization for the reasons stated below as well as for the reasons stated in my later dated August 28, 2012.

#### The proposed ordinance violates the federal constitution

As currently drafted, the proposed ordinance violates the federal constitution. This is true despite language in the ordinance that would allow registrants to enter into some public places when his/her child is present, allow registrants to work at a location within 300 feet of a protected location, or to practice a religion. In those limited circumstances, the ordinance would be a *de jure* violation of registrants' rights rather than a *de facto* violation. In the remaining circumstances, the ordinance would be a *de facto* violation of the federal constitution.

One provision within the proposed ordinance that is unconstitutional is a prohibition of all registrants from being within 300 feet of a public library when children are present. This prohibition is a *de jure* violation of the constitution because it would effectively prohibit registrants from using the library at all times. It would also prohibit registrants from shopping in stores or restaurants located within 300 feet of the library when a single child is present in that library.

How will a registrant or the owner of a store or restaurant know if a child is in the library? Is the city prepared to notify all registrants as well as store and restaurant owners when a child first enters and then later exits the library? Such a system would be costly and an unwise use of taxpayer funding. In addition, such a system, if not properly implemented, could expose the City to significant potential liability if a child were harmed.

As stated in my prior letter, the 10<sup>th</sup> Circuit Court of Appeals ruled earlier this year that the City of Albuquerque violated the 1<sup>st</sup> amendment rights of registrants to access information when that city banned registrants from its city library. It is probable that the 9<sup>th</sup> Circuit Court of Appeals, in a legal challenge, would follow this precedent if the City of Lancaster were to adopt a similar library ban. Is this then a wise use of taxpayer funds at a time when the City faces significant financial challenges?



There is a better way to protect the residents of Lancaster, including its children, while more narrowly limiting the constitutional rights of registrants. That example is California Penal Code Section 3053.8 which prohibits some, but not all, registrants from entering public parks.

The proposed ordinance also violates Article I, Section 9, Clause 3, of the federal constitution because, if adopted, it would become an *ex post facto* law. That is, it would apply retroactively to those whose offenses occurred before the ordinance was adopted. While the U.S. Supreme Court ruled in *Doe v. White* that registration is not a punishment and therefore registration laws could be applied retroactively, there can be no doubt that the penalties of the proposed ordinance – imprisonment for up to six months and/or a fine of up to \$1,000 – are punishment and therefore the ordinance cannot lawfully be applied retroactively.

It is important to note that the sex offender ordinance passed by Los Angeles County, codified in Municipal Code Chapter 13.59, applies only to registrants who committed an offense after its adoption. While the Los Angeles County code violates the federal constitution for other reasons, it is not an *ex post facto* law.

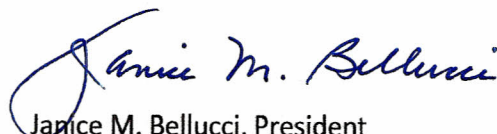
The proposed ordinance violates the state constitution

The proposed ordinance would violate the state constitution because if adopted, it would preempt state law. The state has passed a vast network of laws regarding registrants, including limitations regarding visiting parks. As stated above, the state law does not apply to all registrants, but instead is limited to registrants on parole whose victims are less than 14 years old. Article XI, Section 7, of the California constitution prohibits cities from preempting state laws in such cases.

The proposed ordinance, if adopted, would also violate Article I, Section 9, of the state constitution which protects all citizens of the State of California from *ex post facto* laws. As stated above, the ordinance as currently drafted applies to registrants who committed or pled guilty to offenses before adoption of the ordinance.

There are many additional examples that could be provided as to how the proposed ordinance, if adopted, would violate the federal and state constitutions. The California Reform Sex Offender Laws organization remains available to discuss upon the City's request those examples as well as examples cited in this letter and the organization's letter dated August 28, 2012.

Sincerely,

  
Janice M. Bellucci, President  
California Reform Sex Offender Laws

CC: Councilmember Ronald Smith  
Councilmember Marvin Crist  
Councilmember Ken Mann  
Councilmember Sandra Johnson