

ORDINANCE NO. 12-3

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, ADDING CHAPTER XIII (SEX OFFENDERS PROHIBITED FROM ENTERING PARKS AND SPORTS FACILITIES) OF TITLE 11 (OFFENSES -- MISCELLANEOUS) OF THE COSTA MESA MUNICIPAL CODE, RELATING TO SEX OFFENDERS.

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Costa Mesa has the broad authority to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Sections 290 to 290.023 of the California Penal Code, the Sex Offender Registration Act, require that individuals who have been convicted of certain sex offenses register with the chief of police of the city in which he or she is residing within five working days of coming into, or changing his or her residence within, the city where he or she resides. The Act requires registration for life. Subdivision (c) of Section 290 enumerates the offenses that require registration; and

WHEREAS, State law currently provides that registered sex offenders must obtain written permission from the principal of a school before they can enter school grounds, Cal. Pen. Code § 626.81; and

WHEREAS, State law provides that registered sex offenders may not enter parks where children regularly gather while on parole for sex crimes committed against a victim under 14 years of age, Cal. Pen. Code § 3053.8; and

WHEREAS, State law does not prevent the following sex offenders from entering parks where children regularly gather: sex offenders who are no longer on parole; sex offenders who have offended against children older than 14; sex offenders who have been convicted of other offenses that would warrant their exclusion from parks, including but not limited to being convicted of child pornography distribution; and

WHEREAS, the City Council of the City of Costa Mesa finds that incidences have occurred where sex offenders who have offended against adults also have offended against children; and

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WHEREAS, the City Council finds that predictions relating to which sex offenders will or will not offend against children in the future are unreliable; and

WHEREAS, the City Council finds that conviction of some offenses not against a child nonetheless may indicate a propensity for praying on children, for example, a conviction for possession and distribution of child pornography, and that therefore limiting the exclusion from parks to sex offenders who have offended only against children will not achieve the City Council's objective to keep children safe from sexual predators; and

WHEREAS, the City Council finds that keeping children safe from sexual predators constitutes a compelling interest; and

WHEREAS, the City Council finds that all parks are places where children regularly gather; and

WHEREAS, the City Council finds that all City owned sports facilities are places where children regularly gather; and

WHEREAS, the City Council finds that the publication of the entire text of this ordinance in a newspaper of general circulation would cost significantly more than the cost of publishing other ordinances and it is infeasible to prepare a fair and accurate summary of the ordinance; and

WHEREAS, pursuant to subdivision (c) of Section 36933 of the California Government Code, the City Council may publish a summary of this ordinance in lieu of the entire text; and

WHEREAS, the City Clerk published a summary of this ordinance in the Daily Pilot and posted a certified copy of the full text of this ordinance in the City Clerk's Office at least five (5) days prior to the date of the City Council meeting at which this ordinance was adopted.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter XIII (Sex Offenders Prohibited From Entering Parks) of Title 11 (Offense -- Miscellaneous) is added as follows:

11-201 Purpose and intent.

It is the purpose and intent of this chapter to protect children from registered sex offenders by restricting sex offenders' access to locations where children regularly 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 article to provide additional restrictions beyond those provided for in state law by restricting sex offenders from certain limited locations, and by allowing for criminal penalties for violations of this article. It is not the intent of this article to allow conduct otherwise prohibited by state law, or to contradict state law. City parks are recognized by the City Council of the City of Costa Mesa as locations where children regularly gather.

11-202 Definitions.

(a) "City-owned sports facility" means any area of cleared enclosed land, as well as any facilities adjacent to it, used primarily for sporting events, which is owned and/or run by the city, and shall include, but is not limited to:

Jack Hammett Farm Sports Complex	2750 Fairview Road
Te Winkle Athletic Complex	970 Arlington Drive
Luke Davis Field	570 W. 18th Street
Downtown Aquatic Center	1860 Anaheim Avenue.

"City-owned sports facilities" shall not include sports fields owned by the Newport Mesa Unified School District.

(b) "City park" shall have the same meaning as section 12-1 of the Costa Mesa Municipal Code. City parks shall include, but not be limited to:

Balearic Park	1975 Balearic Drive
Brentwood Park	265 E. Brentwood Street
Canyon Park	970 Arbor Street
Civic Center Park	77 Fair Drive
Del Mesa Park	2080 Manistee Drive
Estancia Park	1900 Adams Avenue
Fairview Park	2501 Placentia Avenue
Gisler Park	1250 Gisler Avenue

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Harper Park	425 E. 18th Street
Heller Park	257 E. 16th Street
Jordan Park	2141 Tustin Avenue
Ketchum-Libolt Park	2150 Maple Street
Lindbergh Park	220 E. 23rd Street
Lions Park	570 W. 18th Street
Marina View Park	1035 W. 19th Street
Mesa Verde Park	1795 Samar Drive
Moon Park	3377 California Street
Paularino Park	1040 Paularino Avenue
Pinkley Park	360 E. Ogle Street
Shalimar Park	782 Shalimar Drive
Shiffer Park	3143 Bear Street
Smallwood Park	1656 Corsica Place
Suburbia Park	3302 Alabama Circle
Tanager Park	1780 Hummingbird Drive
TeWinkle Park	970 Arlington Drive
Vista Park	1200 Victoria Street
Wakeham Park	3400 Smalley Street
Wilson Park	360 Wilson Street
Wimbledon Park	3440 Wimbledon Way

(c) "Sex offender" shall mean any person required to register pursuant to Section 290 of the California Penal Code, or any person who has been convicted in another jurisdiction of offenses comparable to those that require registration pursuant to Section 290(c) of the California Penal Code. A conviction of a comparable offense in another jurisdiction shall mean a conviction in another state or a federal conviction for an offense that includes all of the elements of the particular offense as defined under California law.

11-203 Prohibitions.

Any sex offender who enters into or upon any city park or city owned sports facility is guilty of a misdemeanor. Each entry into any such area, regardless of the time period between entries, shall constitute a separate offense under this chapter.

11-204 Penalties for violation.

Punishment for a violation of this article shall be as follows:

(a) Upon a first conviction, by imprisonment in a county jail for a period of not more than six (6) months, or by a fine not exceeding one thousand dollars (\$1,000.00), or by both imprisonment and a fine.

(b) Upon a second conviction, by imprisonment in a county jail for a period of not less than ten (10) days and not more than six (6) months, or by both imprisonment and a fine not exceeding one thousand dollars (\$1,000.00). Upon a second conviction, however, the person shall not be released on probation, parole, or any other basis until he or she has served not less than ten (10) days.

(c) Upon a third or subsequent conviction, by imprisonment in a county jail for a period of not less than ninety (90) days and not more than six (6) months, or by both imprisonment and a fine not exceeding one thousand dollars (\$1,000.00). Upon a third or subsequent conviction, however, the person shall not be released on probation, parole, or any other basis until he or she has served not less than ninety (90) days.

11-205 Severability.

If any section, paragraph, sentence, clause, phrase or portion of this article is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have adopted this article irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the article be enforced.

Section 2. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of

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such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this 1st day of May, 2012.

Eric R. Bever, Mayor

ATTEST:

APPROVED AS TO FORM:

Christine Cordon,
Acting Deputy City Clerk

Thomas Duarte, City Attorney