



# CITY COUNCIL AGENDA REPORT

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MEETING DATE: FEBRUARY 18, 2014

ITEM NUMBER: NB-7

**SUBJECT: REPEAL OF COSTA MESA MUNICIPAL CODE CHAPTER XIII SEX OFFENDER PARK EXCLUSION ORDINANCE**

**DATE: FEBRUARY 18, 2014**

**FROM: POLICE DEPARTMENT**

**PRESENTATION BY: ELENA Q. GERLI, DEPUTY CITY ATTORNEY**

**FOR FURTHER INFORMATION CONTACT: LT. MARK MANLEY (714) 754-5043  
ELENA Q. GERLI (714) 446-1400**

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## **RECOMMENDATION:**

Introduce ordinance for first reading by title only and waive further reading.

## **BACKGROUND:**

In 2011, the City of Irvine enacted Ordinance 11-05 that prohibited registered sex offenders from entering city parks without written permission from the chief of police. On May 1, 2012, the City Council of the City of Costa Mesa adopted Ordinance No. 12-3, adding Chapter XIII (Sex Offenders Prohibited From Entering Parks and Sports Facilities) of Title 11 (Offenses – Miscellaneous), which prohibits all registered sex offenders, pursuant to Section 290 of the California Penal Code, from entering City parks and City sports facilities, as defined.

Recently, the Fourth District of the California Court of Appeal decided the case of People v. Nguyen, 2014 Cal. App. LEXIS 18 (Cal. App. 4th Dist. Jan. 10, 2014). In Nguyen, the Court of Appeal held that the Irvine Ordinance is invalid because it is preempted by state law. The Court of Appeal, in an almost identical but unpublished case, People v. Godinez, 2014 Cal. App. Unpub. LEXIS 159 (January 10, 2014), Appellate Court Case No. G047657, also held a similar ordinance enacted by the County of Orange to be preempted by state law. The Orange County District Attorney is likely to seek review by the California Supreme Court of the Nguyen and Godinez decisions.

A lawsuit filed by John Doe against the City of Costa Mesa, challenging the validity of Ordinance No. 12-3 is pending in federal court. The case has been on hold awaiting a final ruling on under state law.

The City has not enforced Ordinance 12-3 since the Superior Court's Appellate Department ruling in the Godinez case.

**ANALYSIS:**

In People v. Nguyen, the Court of Appeal held that the Legislature’s enactment of a comprehensive statutory scheme regulating the daily lives of sex offenders, including places they are allowed to go, indicates the Legislature’s intent to occupy the entire field of sex offender regulation to the exclusion of additional local restrictions. Because Ordinance 12-3 prohibits sex offenders from entering parks in a more restrictive manner than Irvine’s recently invalidated ordinance, Ordinance 12-3 is likely also preempted by state law.

**ALTERNATIVES CONSIDERED:**

The City could continue not to enforce Ordinance No. 12-3 and take no further action until it becomes clear whether or not the California Supreme Court will review the Nguyen decision.

**FISCAL REVIEW:**

There is no anticipated fiscal impact.

**LEGAL REVIEW:**

The City Attorney’s office has drafted and approved the attached ordinance repealing Chapter XIII.

**CONCLUSION:**

The Police Department recommends that the City Council approve the attached ordinance repealing Chapter XIII of Title 11 of the Costa Mesa Municipal Code.

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THOMAS R. HATCH  
Chief Executive Officer

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TOM GAZSI  
Chief of Police

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THOMAS P. DUARTE  
City Attorney (legal review only)

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MARK MANLEY  
Lieutenant

ATTACHMENT:            [Ordinance No. 14-](#)

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Assistant Chief Executive Officer  
City Council