

AGENDA TRANSMITTAL

MEETING DATE: June 17, 2014

CITY AGENDA ITEM: Downtown Waterfront Specific Plan Update:

- a. Council Adoption of Resolution No. 2014-__ : Adopting the First Amendment to the Annual Appropriation Resolution No. 2014-47 to Appropriate Funds to Update the Downtown Waterfront Specific Plan; and
- b. Council Adoption of Resolution No. 2014-__ : Authorizing the City Manager to Execute a Consultant Services Contract in the Amount of \$154,850 with AECOM Technical Services, Inc. for the Downtown Waterfront Specific Plan Update.

FISCAL IMPACT: The total project cost would be \$184,118. The City was awarded a grant to conduct PDA Planning activities for the amount of \$163,000, of which \$154,850 would go to the proposed consulting team, and \$8,150 would go to STA for grant administration. The City's required match for this project would be \$21,118 (or 11.47% of \$184,118). Staff time to administer the grant and manage the work of outside consultants may be used to meet the match requirement. The local match requirement may be met anytime within the life of the grant.

BACKGROUND: On March 5, 2013, the City Council adopted a resolution that authorized the City Manager to execute a grant contract to apply for planning funds to confirm, update and expand the Downtown Waterfront Specific Plan. The City was successful in applying for these funds and has been working on contract language with Solano Transportation Authority (STA). Approval of the proposed resolution would provide the City Manager with the authority to enter into a funding agreement with STA.

On February 4, 2014, the City Council adopted a resolution that authorized the City Manager to execute a funding agreement with Solano Transportation Authority (STA) to fund an update of the Downtown Waterfront Specific Plan. The first step of this process was to solicit proposals and to award a contract to an outside firm to undertake this work.

STAFF REPORT: The Downtown Waterfront Specific Plan was created in 1983 and was comprehensively amended in 1999. The creation of this specific plan was included as an implementation measure of the 1979 General Plan, as the General Plan recognized the need for special treatment of the Historic Downtown and Waterfront.

The Priority Development Area (PDA) program was jointly developed by the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) in order to facilitate infill development near existing and planned transportation facilities. Suisun City has one Priority Development Area; the Downtown Waterfront.

The regional agencies made available federal funding to Solano Transportation Authority (STA) for planning studies associated with Priority Development Areas. In March 2013, the City Council gave direction to confirm, update, and expand the current Downtown Waterfront Specific Plan, and to complete the associated environmental document through this funding opportunity. In February 2014, the Council authorized the City Manager to enter into a funding agreement with STA to begin the RFP process.

PREPARED BY:
REVIEWED/APPROVED BY:

John Kearns, Associate Planner
 Suzanne Bragdon, City Manager



The Specific Plan Update process would require just under two years to complete, and it would involve substantial public input, including residents, businesses, and property owners. The Plan must be completed and submitted to MTC by May 2016.

The City of Fairfield also received planning funds from STA and it will be creating a Specific Plan for both of its downtown PDA's. The City of Fairfield intends to bring forward a recommendation for its consultant selection this month as well. It is the intention of both cities to coordinate their respective planning processes. Areas that support coordination include TOD housing and connectivity between the two communities.

On March 20, 2014, City staff issued a Request for Proposals (RFP) for update the Downtown Waterfront Specific Plan. As a result of the RFP, the City received three proposals: Gates and Associates, PlaceWorks, and AECOM Technical Services, Inc. Staff interviewed the three firms and as a result chose to hold a second interview for the agreed upon top two firms. At the conclusion of the second interviews, the interview committee chose to recommend AECOM Technical Services, Inc. to the City Council. Some of the reasons the committee chose to recommend AECOM include:

- Local experience and familiarity.
- Approach of balancing planning and economic development interests.
- Creativity in maximizing work product within a constrained budget.

AECOM's proposal proposes 13 tasks and proposed timing for each item. The proposed budget is \$154,850 and the schedule shows the CEQA analysis and documentation being completed by February 2016. The remaining time would be for taking the plan for approval by the Planning Commission and City Council. AECOM has also expressed the possibility of accelerating the schedule if there is interest to do so.

RECOMMENDATION: It is recommended that the City Council adopt:

1. Resolution No. 2014-__: Adopting the First Amendment to the Annual Appropriation Resolution No. 2014-47 to Appropriate Funds to Update the Downtown Waterfront Specific Plan; and
2. Resolution No. 2014-__: Authorizing the City Manager to Execute a Consultant Services Contract in the Amount of \$154,850 with AECOM Technical Services, Inc. for the Downtown Waterfront Specific Plan Update.

ATTACHMENTS:

1. Resolution No. 2014-__: Adopting the First Amendment to the Annual Appropriation Resolution No. 2014-47 to Appropriate Funds to Update the Downtown Waterfront Specific Plan.
2. Resolution No. 2014-__: Authorizing the City Manager to Execute a Consultant Services Contract in the Amount of \$154,850 with AECOM Technical Services, Inc. for the Downtown Waterfront Specific Plan Update.
3. Scope of Work.
4. Cost Proposal.

RESOLUTION NO. 2014-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
ADOPTING THE FIRST AMENDMENT TO THE
ANNUAL APPROPRIATION RESOLUTION NO. 2014-47 TO APPROPRIATE FUNDS
TO UPDATE THE DOWNTOWN WATERFRONT SPECIFIC PLAN

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUISUN CITY:

THAT Section 138 of Part III of the Annual Appropriation Resolution No. 2014-47 be and is hereby amended as follows:

	<u>Increase/ (Decrease)</u>
TO: COMMUNITY DEVELOPMENT DEPARMENT Downtown Waterfront Specific Plan Update	\$ 163,000
TOTAL Section 138	<u>\$ 163,000</u>

THAT account titles and numbers requiring adjustment by this Resolution are as follows:

<u>General Fund</u>	<u>Sources</u>	<u>Uses</u>
Revenues:		
A/C No. 138-76950-3473 Reimbursements from Other Agencies	\$ 163,000	\$ -
Appropriations:		
A/C No. 138-93310-3473 Prof. Studies/Other	\$ -	\$ 154,900
A/C No. 138-93910-3473 Other Non-Recurring	<u>\$ -</u>	<u>\$ 8,100</u>
Total DWSP Update Grant Fund	<u>\$ 163,000</u>	<u>\$ 163,000</u>

THAT the purpose is to appropriate grant funds to necessary to complete the Downtown Waterfront Specific Plan Update.

ADOPTED AND PASSED by the City Council of the City of Suisun City at a regular meeting thereof held on the 17th of June 2014 by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS
ABSTAIN: COUNCILMEMBERS

WITNESS my hand and seal of the said City this 17th day of June 2014.

LINDA HOBSON, CMC
CITY CLERK

RESOLUTION NO. 2014-___

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES
CONTRACT IN THE AMOUNT OF \$154,850 WITH AECOM TECHNICAL SERVICES,
INC. FOR THE DOWNTOWN WATERFRONT SPECIFIC PLAN UPDATE**

WHEREAS, on March 5, 2013, the City Council authorized the City Manager to execute a grant application for Priority Development Area funding; and

WHEREAS, on February 4, 2014, the City Council authorized the City Manager to execute a funding agreement with Solano Transportation Authority to complete an update of the Downtown Waterfront Specific Plan; and

WHEREAS, on March 20, 2014, City staff released a Request for Proposals to update the Downtown Waterfront Specific Plan; and

WHEREAS, City staff conducted a selection process for update of the Downtown Waterfront Specific Plan; and

WHEREAS, the project will be funded by the Metropolitan Transportation Commission through the Solano Transportation Authority; and

WHEREAS, AECOM Technical Services, Inc. was selected as the best qualified firm.

NOW, THEREFORE, BE IT RESOLVED, that that the City Council of the City of Suisun City authorizes the City Manager to execute a consultant services contract in an amount not to exceed \$154,850 with AECOM Technical Services Inc. for the update of the Downtown Waterfront Specific Plan.

PASSED AND ADOPTED at a Regular Meeting of the City Council of the City of Suisun City duly held on Tuesday, the 17th of June 2014, by the following vote:

AYES:	Councilmembers:	_____
NOES:	Councilmembers:	_____
ABSENT:	Councilmembers:	_____
ABSTAIN:	Councilmembers:	_____

WITNESS my hand and the seal this 17th day of June 2014

Linda Hobson, CMC
City Clerk

B. Scope of Services



We have reviewed the City's RFP carefully and, including our ongoing work on the General Plan and Zoning Ordinance Update, we have provided what we hope is a highly-responsive Proposal with the right baseline Scope of Services.

However, we strongly encourage an open discussion with the City to ensure that the tasks we have identified match your expectations and needs for this important project. We welcome a dialogue regarding the division of labor between City and AECOM staff. We have greatly enjoyed our previous collaborations with City staff and look forward to the ideal sharing of responsibilities for the Specific Plan Update and related tasks.

Our goal is to have 100% concurrence on the Scope of Services. We will be flexible and creative, if needed, to accomplish this goal.

Following is a summary of our proposed Scope of Services, which we will refine, in discussion with City staff as a part of the contracting process.

Task 1: Project Initiation

The AECOM team will coordinate with the City and other relevant service providers to identify, collect, and review studies that pertain to the Specific Plan Update. This task also includes collecting data from state and federal agencies, information for base maps, and infrastructure master plans and related information. Since AECOM already has collected and analyzed most pertinent data, this task will be limited.

AECOM will participate in 1 in-person kick-off meeting with the City, which, depending on City direction, may also include representatives from ABAG, MTC, and key members of the AECOM team. We will confirm and

clarify the roles and responsibilities of the team, the Scope of Services, the schedule, key milestones, and the project's vision, goals, and expectations. The project team will tour the Specific Plan Area/PDA to review physical conditions and characteristics and discuss known issues and opportunities.

Task 1 Deliverables

- 1 kickoff meeting involving the AECOM Project Director (PD) and Project Manager (PM)
- 1 Memo summarizing the meeting and providing meeting notes (electronic)

Task 2: PDA Profile

Following the MTC/ABAG guidance for the PDA profile, Applied Development Economics (ADE) will provide analysis of a variety of demographic, land use and travel characteristics. The Suisun City PDA, south of Highway 12, includes three Census Block Groups, as part of a Census Tract that includes all of Suisun City neighborhoods south of SR 12. At the Block Group level, data are available on population and households, but other data points will need to be estimated or obtained from other sources. ADE will obtain a physical count of housing units using Dataquick and will estimate housing values from Dataquick and other real estate sources, such as Loopnet. Based on housing values, ADE will be able to estimate household incomes and correlate other variables to the broader Census Tract data. ADE will use the Longitudinal Employment and Household Data (LEHD) to tabulate jobs and travel patterns for the residents and the workforce in the PDA. ADE will supplement this information with travel data from the American Community Survey (ACS). Finally, ADE will conduct a physical survey of the area to complete the description

of neighborhood amenities and other features not found in the secondary data sources.

We will provide the revised PDA profile to the City staff to summarize in a staff report to share as an informational item with the Planning Commission and City Council.

Task 2 Deliverables

- ADE will prepare 1 draft and 1 revised PDA profile to incorporate City staff comments (electronic)
- We assume City staff will summarize the PDA profile in a staff report and share as an informational item with the Planning Commission and City Council.

Task 3: Community Involvement Strategy

AECOM will collaborate with the City to identify an outreach strategy, including tools to engage community interest and input. The strategy will be designed to take into account the needs of the community, consistent with PDA guidelines, and ensure input from stakeholders, such as the Suisun City Business Improvement District and Main Street West.

The Community Involvement Strategy will be a very brief outline of the process for engaging decision makers, stakeholders, community groups, other public agencies, and other interested citizens. It will identify who should be involved, the best methods for communicating and soliciting comments from diverse members, groups, and interests in the community at key points of the planning process; describe the tools for project communication and noticing of public events; and a schedule for when these activities should occur.

We anticipate use of the City's website, newspaper, mail, email, public flyers, comment cards, surveys, and/or social media sites.

We have identified a number of workshops and meetings in this Scope of Services and assume that AECOM's role in implementing the Community Involvement Strategy can be accomplished within the number of meetings identified herein.

Task 3 Deliverables

- AECOM will prepare 1 draft list of stakeholders, community groups, and public agencies that should be involved in Specific Plan outreach (electronic) for review and revision by City staff.
- AECOM will prepare 1 draft Community Involvement Strategy (electronic) for review and revision by City staff.
- We assume the City will be responsible for maintaining public outreach lists and noticing public meetings and events.

We assume the City will be responsible for posting material related to the Specific Plan Update to the City's web site. AECOM will make Specific Plan-related materials available as PDFs to facilitate posting to the City's website.

Task 4: Market Demand Analysis

ADE will update previous work related to the retail and office markets in the PDA and will review the existing senior housing and hotel analysis and make updates, as necessary. ADE will develop a current description of the commercial and residential real estate market in Suisun City, particularly in the Downtown Waterfront Area, and focus our market research on specific sites that could potentially support development to meet the housing and employment goals for the PDA. Key areas of focus include the Benton Court Area, the Denverton Curve site and the 30 acres north of SR 12, as well as the property east of the Marina Shopping center. ADE has included several of these sites in previous market research. Working with City staff and the AECOM team, ADE will also identify other key sites that warrant attention in the analysis.

ADE will provide an overall assessment of the potential to develop more housing in the study area and evaluate the specific site characteristics that would either optimize or constrain residential development. ADE will also identify current and projected commercial development opportunities and indicate the extent of potential for mixed use development vs. single use retail development in the study area. The market analysis will also address the opportunity for more office space to create jobs as well as additional visitor services to support the tourist and entertainment component of activity downtown and along the waterfront. The update market study will address challenges in land assembly and public infrastructure funding.

We will provide the revised market study to the City staff to summarize in a staff report to share as an informational item with the Planning Commission and City Council.

Task 4 Deliverables

- ADE will prepare 1 draft and 1 revised market study to incorporate City staff comments (electronic)
- We assume City staff will summarize the market study in a staff report and share as an informational item with the Planning Commission and City Council.

Task 5: Vision and Alternatives Analysis

Specific Plan Diagnosis

Based on applicable development agreements, ongoing interest in development in the Downtown Waterfront Area, and other factors, we anticipate that there are certain aspects of the current Downtown Specific Plan that should not be subject to substantial revision. Based on the expansion of Specific Plan Area, PDA land use guidelines, current market conditions, the need for enhanced environmental streamlining, the lack of infrastructure information, and other factors, there are other areas of the Specific Plan that would experience more substantial revision. In order to ensure consensus regarding the overall direction of the Specific Plan Update, AECOM will prepare 1 draft Specific Plan Diagnosis Memo that outlines the general types of revisions that would be incorporated into the Specific Plan Update. To allow success of the Specific Plan Update, an overly detailed assessment must be avoided at this stage of the planning process and our Scope of Services is drafted on this assumption. Based on 1 set of consolidated comments, we will prepare 1 final Specific Plan Diagnosis Memo that can be summarized by City staff and used to inform decision makers, stakeholders, other agencies, and the public at-large about the general direction of the Specific Plan Update.

Vision Statement

Based on the General Plan Vision and Guiding Principles, the City's Economic Development Strategy work, other relevant City policy guidance, the City's RFP, the Specific Plan Diagnosis Memo, and PDA guidelines, AECOM will prepare 1 draft Specific Plan Vision Statement. Based on 1 set of consolidated comments from City staff, we will prepare 1 final Vision Statement to serve as a starting point for the development of Specific Plan alternatives.

The Specific Plan Diagnosis Memo and Vision Statement will be presented for public and decision maker input at 1 public workshop. We assume a joint session with the Planning Commission and City Council or alternative arrangement established through development of the Community Involvement Strategy. We can provide a PDF version of the Vision Statement for the City to post to the website to invite further input.

Based on the input received and 1 consolidated set of comments summarizing City staff direction, we will prepare 1 final Vision Statement, which will be used to develop Specific Plan alternatives.

Alternatives

AECOM will develop up to 3 draft conceptual alternatives for the Specific Plan Update, illustrating

options for land use, density, connectivity, infrastructure, and community design. These alternatives will have a brief narrative summary and will be based on the work of earlier tasks and input received throughout the planning process. Given the finite budget, the alternatives will provide a brief, qualitative assessment of pros and cons. Based on 1 consolidated set of comments summarizing City staff direction, we will prepare 1 revised set of conceptual alternatives.

AECOM's PM and PD will attend 1 joint workshop with the Planning Commission City Council, where the public and stakeholders are also invited, to summarize the alternatives, summarize input on the alternatives, and receive direction regarding the Preferred Alternative for the Specific Plan. We can provide PDF versions of the alternatives for the City to post to the website to invite further input. It is possible that another workshop to receive City Council input may be necessary and, if so, we assume City staff can receive input and share a summary of City Council input with the AECOM team.

Based on the input received and 1 consolidated set of comments summarizing City staff direction, we will prepare 1 draft and 1 revised Preferred Alternative to use in guiding development of the draft Specific Plan. We anticipate that the Preferred Alternative would include land use change assumptions that are consistent, for environmental analytical purposes, with assumptions included in our General Plan Update work.

Task 5 Deliverables

- AECOM will prepare 1 draft and 1 final Specific Plan Diagnosis Memo (electronic).
- AECOM will prepare 1 draft and 1 revised Vision Statement (electronic).
- AECOM's PM will attend 1 study session to present and receive input on the draft Specific Plan Vision Statement.
- AECOM will prepare 1 final Vision Statement based on input received, as directed by City staff (electronic).
- AECOM will prepare up to 3 draft alternatives and 1 set of revised alternatives (electronic).
- AECOM's PM will attend 1 public workshop to present and receive input on the draft alternatives.
- AECOM will prepare 1 draft and 1 final Preferred Alternative (electronic).

Task 6: Affordable Housing Strategy

Drawing from the residential market study, ADE will evaluate the likely market prices for units in the specific plan area. Based on analysis and policies in the

Housing element, ADE will determine the need for affordable housing in the project area and identify strategies and programs for implementing the affordable housing component of the project. Consistent with the Housing Element, the analysis may identify site opportunities for affordable housing that could contribute to meeting the overall affordability goal in the project area.

Task 5 Deliverables

- ADE will prepare 1 draft and 1 revised affordable housing strategy Memo (electronic)
- We assume City staff will summarize the affordable housing strategy in a staff report and share as an informational item with the Planning Commission and City Council.

Task 7: Multi-Modal Access & Connectivity Strategy

The draft Specific Plan will address ways of improving multi-modal connections, especially connectivity to the downtown Fairfield area and Solano County Government Center. The AECOM team, with City staff, will collaborate with the Fairfield PDA planning team to identify options to increase connectivity between the cities and the two PDAs. AECOM will collect information and create 1 exhibit describing existing vehicular, transit, bicycle, and pedestrian connections. We will collaborate with City staff to identify conceptual strategies to improve multi-modal connectivity, which will be described in 1 conceptual exhibit and will be used to develop the draft Specific Plan. AECOM prepared analyses showing accessibility throughout the City to key destinations and can incorporate this network analysis into this task. We assume City staff would lead identification of opportunities for connectivity improvements that are not identified in our General Plan Circulation Element Update.

Since AECOM will have included travel demand analysis of land use change within the Specific Plan Area as a part of the General Plan Update, including identified improvements (Railroad Avenue extension, West Avenue, etc.), we assume there will be no need for additional travel demand analysis to support the Specific Plan Update or environmental review.

Task 7 Deliverables

- AECOM will prepare 1 exhibit illustrating existing circulation in the Specific Plan Area (electronic).
- In coordination with City staff, AECOM will create 1 exhibit illustrating conceptual improvements to improve multi-modal connectivity in the Specific Plan Area (electronic).

Task 8: Design Standards and Guidelines

Based on input from City staff on the Specific Plan Vision Statement, Preferred Alternative, Specific Plan Diagnosis Memo, the market study, General Plan Update policies, and research to support the Zoning Ordinance Update, we will provide recommended revisions to the Design Standards and Guidelines that are included in the current Specific Plan. Design Standards and Guidelines will address both public streetscape and private development, including street trees and other landscaping, pedestrian and bicycle infrastructure, land use compatibility, street sections, parks and open space, signage, and other important topics. We assume minor revisions to the existing Design Standards and Guidelines will be required.

In collaboration with City staff, AECOM will identify candidate infill opportunity sites. Based on City staff direction, we will narrow to up to 8 sites for development of land use/design concepts and development prototypes. We will develop 1 set of draft land use/design concepts and development prototypes and 1 final revised set based on 1 consolidated set of comments. The land use/design concepts and development prototypes for infill opportunity sites will consider such factors as local context, local policy guidance, market viability, land use compatibility, interaction with public right-of-way design, accessibility and mobility, typical parking demands, and land use designations. The ideas embodied in these development prototypes will help to address specific design challenges in the Specific Plan Area within the context of viable infill projects. The ideas will also help to "test" revisions to the Design Standards and Guidelines, particularly for smaller infill parcels.

Task 8 Deliverables

- The Design Guidelines will be incorporated into the draft Specific Plan.
- AECOM will prepare 1 list of candidate infill opportunity sites and 1 revised list of up to 8 sites (electronic).
- AECOM will prepare 1 set of draft land use/design concepts and development prototypes and 1 final revised set (electronic).

Task 9: Parking Analysis and Management Concepts

AECOM will identify existing and future land use and shared parking demand, taking into account different peak demand periods for different uses and existing and future on-street parking throughout the Specific Plan Area. Conceptual recommendations for parking will be summarized in 1 brief Memo. We assume economic and fiscal analysis will not be required in support of a parking pricing strategy or construction of a parking structure.

Task 9 Deliverables

- The parking analysis and management concepts will be incorporated into the draft Specific Plan.

Task 10: Infrastructure Development & Budget**Infrastructure Improvements**

AECOM will coordinate with the City and relevant service providers, who we assume will identify areas with surplus capacity and areas with deficiencies. We will coordinate with the City and District staff, who we assume will identify known capacity constraints and other deficiencies related to water, sewer, and drainage based on the proposed land use mix in the Specific Plan and taking into account approved or planned development projects within or near the Specific Plan that could also use remaining infrastructure capacity.

AECOM will coordinate with the City and District staff, using land use change assumptions in the draft Specific Plan, to identify conceptual backbone infrastructure improvements that may be needed to support development anticipated under the Specific Plan. We assume the City and/or Fairfield-Suisun Sewer District can refine the hydraulic models for water, wastewater, and drainage using Specific Plan land use change assumptions to confirm whether additional capacity is required. With recent improvements, we anticipate water and wastewater treatment capacities are adequate.

AECOM incorporate identified improvements by the City and/or Fairfield-Suisun Sewer District into 1 map and a list of major conceptual system improvements. We will prepare 1 revised map based on one set of consolidated comments. We assume that Specific Plan implementation would require limited upgrades to existing water, wastewater, and drainage infrastructure and some replacement in selected areas of the Specific Plan rather than the comprehensive replacement of such facilities throughout the entire Specific Plan. We assume the identified improvements would be briefly summarized in the Specific Plan.

Planning-Level Cost Estimates

We will collect recent bids for infrastructure improvement projects from the City, along with a review of our own internal resources related to infrastructure costing that could be relevant to the Specific Plan Area. We will prepare planning-level conceptual costs estimates for backbone water, wastewater, and drainage conveyance, as well as a list of transportation improvements separately identified and required to serve development under the Specific Plan. We will summarize the general cost estimates in

a brief Memo - 1 draft and 1 revised version (electronic only).

We will coordinate with the Fire Department, relevant transit providers, and other service agencies to include other required improvements and estimated costs for these facilities in the draft Specific Plan. We assume that AECOM will not be responsible for identifying these other service/facility improvements or their planning-level costs.

Task 10 Deliverables

- AECOM will prepare 1 draft and 1 final map illustrating conceptual backbone infrastructure improvements required to serve development anticipated under the Specific Plan (electronic).
- AECOM will prepare 1 draft and 1 final planning-level estimate of costs of conceptual backbone infrastructure improvements required to serve development anticipated under the Specific Plan (electronic).

Task 11: Implementation Plan & Financing Strategy**Implementation Summary**

The Specific Plan will include a chapter summarizing implementation actions, which will include estimated timeline for implementation of identified actions.

A subset of implementation actions may include strategies to encourage lot consolidation and mixed-use development.

ADE will identify and discuss a range of potential strategies for encouraging lot consolidation to achieve more substantial, coherently planned projects, especially featuring mixed uses. Such strategies may include a combination of density bonuses and development standards that reward greater size and density in the projects. The intent is to make the development more cost effective from the developers' standpoint, while achieving better designs and a higher level of public amenities from the public perspective. Higher-quality development often requires greater yield and value on the site and consolidation of small sites into larger projects can be rewarded with significant density bonuses that would increase the residential value of the land and encourage owners of small properties to sell rather than take a smaller return on their existing parcel. In addition, encouraging mixed use through development standards for ground floor spaces can be effectively combined with density bonuses to achieve the overall design concept. Such strategies must work in tandem with market demand, however. If there is insufficient demand for the commercial space or for the type of multi-family housing that can be achieved in the more dense

projects, developers will not respond to the incentive offered by the City. This work will be coordinated with the market demand analysis to ensure that the recommended development standards respond to anticipated market demand.

Financing Plan

As noted in the RFP, financing infrastructure is a critical element of successful implementation of the plan. Based on the preferred land use mix in the draft specific plan, ADE will analyze the funding capacity of the land uses in relation to anticipated infrastructure costs. The financing plan will identify potential funding sources in addition to land based financing, and will present an overall financing strategy to implement the plan. ADE has extensive experience working with state and federal grant funding sources for economic development and we will provide a discussion of how these sources may help to implement the plan.

Fiscal Impact Analysis

Part of this analysis will include a fiscal impact analysis of the proposed land uses. The City must consider not only capital projects financing but also funding for ongoing City services and maintenance of facilities. ADE will prepare a fiscal analysis to indicate to what extent the proposed plan generates sufficient ongoing revenue to meet this need and whether any surplus can be anticipated to help invest in required public facilities to implement the plan.

Task 11 Deliverables

- The implementation chapter will be provided as a part of the draft Specific Plan.
- ADE will prepare 1 draft and 1 revised financing plan (electronic).
- ADE will prepare 1 draft and 1 final fiscal impact analysis.

Task 12: Specific Plan

Building on the PDA Profile, the Specific Plan Diagnosis Memo, input received from staff and decision makers throughout the process, the market study, the Vision Statement and preferred alternative, AECOM will prepare 1 draft Specific Plan for review by City staff. Based on 1 set of consolidated comments from City staff, we will prepare 1 revised draft Specific Plan for public review. We assume components related to architectural features would not be revised as a part of this Specific Plan Update and that City staff comments will require only minor revision. We assume only minor changes to development standards would be required.

AECOM will attend up to 2 public workshops to receive public, stakeholder, agency, and decision maker input

on the draft Specific Plan. Based on 1 set of consolidated comments with direction from City staff, we will prepare 1 revised draft Specific Plan. We assume only minor revisions will be necessary.

AECOM will attend up to 2 workshops to receive comments from the Planning Commission and City Council on any final revisions to the Specific Plan.

Based on 1 set of consolidated comments with direction from City staff, we will prepare 1 final Specific Plan to be considered for recommendation by the Planning Commission and adoption by the City Council. We assume only minor revisions will be necessary. We assume workshops and hearings on the Specific Plan will be consolidated with those required for environmental review (described below).

Task 12 Deliverables

- AECOM will prepare 1 draft Specific Plan for City staff review and 1 revised version to incorporate City staff comments (electronic).
- AECOM's PM will attend up to 2 workshops to receive input on the draft Specific Plan.
- AECOM will prepare 1 revised draft Specific Plan for review and input by the Planning Commission and City Council (electronic).

Task 13: CEQA Analysis and Documentation

Initial Study and Mitigated Negative Declaration

AECOM will prepare 1 draft and 1 revised (electronic only) environmental Initial Study supporting a Mitigated Negative Declaration (MND). Given the potential land use change anticipated under the Specific Plan Update, a specific combination of our General Plan/General Plan CEQA work and this Specific Plan Update CEQA analysis is required.

We have created land use change assumptions for the General Plan Update that are designed to accommodate land use change under the updated Specific Plan. AECOM will maximize the level of analysis in the General Plan CEQA documentation for portions of the updated Specific Plan Area where land use change is anticipated.

CEQA Guidelines Section 15152 describes a tiering process intended to reduce duplicative analysis, but does not absolve the lead agency of the responsibility to address reasonably foreseeable significant environmental effects of the project. AECOM will use a strategic combination of our General Plan CEQA analysis and the Specific Plan Update environmental review in order to allow the requested planning, design, infrastructure, public outreach, market/economics,

transportation, and environmental work to occur within the allotted budget.

Given the finite budget, AECOM will also need to use the Initial Study to focus the analysis of topics included in the focused EIR to issues "peculiar to the parcel" based on CEQA Guidelines Section 15183 and Public Resources Code Section 21083.3. Under these provisions of the Guidelines and statutes, lead agencies can use programmatic environmental impact reports (EIRs) for the general plan to analyze impacts of projects that could be accommodated under the plan, and greatly limit later project-level analysis to site-specific issues.

The general plan process is a great opportunity to define and clarify just what is, and what is not considered "peculiar" to parcel. AECOM proposes to use the ongoing General Plan Update process to identify that "planning level" impacts, such as air quality, greenhouse gas emissions, traffic level of service, public services, utilities, loss of agricultural land, and other issues would not normally be considered "peculiar to the parcel" and therefore subject to project-level CEQA review. Peculiar impacts would be narrowly identified as those that relate to the ground conditions at the specific site in question and not impacts that would occur for any project of a similar type in the overall planning area. This will help to streamline not only the environmental review for the Specific Plan Update, but for other targeted reinvestment areas in the City.

CEQA Guidelines Section 15183 (f) establishes that impacts are not peculiar to the project if uniformly applied development policies or standards substantially mitigate that environmental effect. These findings related to uniformly applied development policies or standards, according to the Guidelines, shall be based on substantial evidence, but not necessarily presented in an EIR.

The streamlining benefit of Public Resources Code Section 21083.3 does not require that uniformly applied development standards be used throughout the entire jurisdiction, and therefore, we could provide focused standards that address the updated Specific Plan Area only.

We will provide guidance to the City on how to conduct SB 18 consultation for cultural resources. We anticipated that AECOM's DBE Subconsultant will provide a Phase I Environmental Site Assessment, which will be used to support findings related to hazardous materials. We anticipated that AECOM's DBE Subconsultant will provide a biological resources assessment, which will be used to support findings related to biological resources. We assume if a water supply assessment is to be required, City staff can provide this analysis for incorporation into the environmental documentation.

AECOM will prepare 1 draft and 1 final Notice of Completion (NOC) to accompany the draft Initial Study/MND to the State Clearinghouse. We assume the City will print the revised draft Initial Study/MND and NOC and ship to the Clearinghouse and lead notification of agencies not included as a part of the Clearinghouse circulation.

Responses to comments are not required for an environmental Initial Study/MND and, to the extent that responses are deemed necessary, we assume City staff can provide these responses.

AECOM will attend 2 workshops (Planning Commission and City Council) to receive input on both the draft Initial Study/MND and the draft Specific Plan. Based on one consolidated set of direction from City staff, we will prepare 1 administrative final Initial Study/MND, including a Mitigation Monitoring and Reporting Program (MMRP) and a brief set of CEQA findings.

AECOM's PM and PD will attend 2 workshops (Planning Commission and City Council) to consider recommendations and adoption of the final Initial Study/MND (and also on the draft Specific Plan).

Based on one consolidated set of direction from City staff, AECOM will make minor final revisions based on City input as a part of 1 final Initial Study/MND.

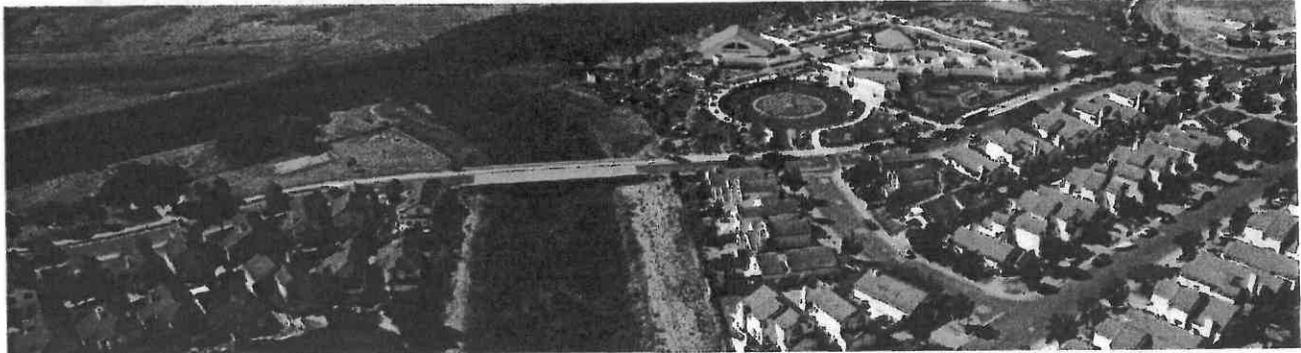
AECOM's PM and PD will attend 2 workshops (Planning Commission and City Council) to consider recommendations and adoption of the final Initial Study/MND and the draft Specific Plan.

AECOM will prepare 1 draft and 1 final Notice of Determination (NOD) and will hand deliver to the State Clearinghouse. We assume City staff will deliver the NOD to the County Clerk, along with any filing fee.

Task 13 Deliverables

- AECOM will prepare 1 draft and 1 revised draft Initial Study (electronic).
- AECOM will prepare 1 draft and 1 revised draft NOC (electronic).
- AECOM's PM and PD will attend 2 workshops (Planning Commission and City Council) to receive input on both the draft Initial Study/MND and the draft Specific Plan.
- AECOM will prepare 1 administrative final and 1 final Initial Study/MND (including MMRP and a brief set of CEQA findings) (electronic)
- AECOM will prepare 1 draft and 1 final NOD (electronic).
- AECOM's PM and PD will attend 2 workshops (Planning Commission and City Council) to consider recommendations and adoption of the final Initial Study/MND and the draft Specific Plan.

D. Project Timeline



We have thoroughly reviewed the City’s RFP, including the requested schedule. AECOM’s northern California offices have hundreds of planning, urban design, economics, and environmental staff members. Part of the benefit of this approach is technical depth on any issue that may arise within the context of the often complicated and controversial projects we lead. But another benefit is that we maintain redundancy in each relevant technical area, in part, to be able to ensure our clients’ schedule expectations are met.

The City’s RFP envisions a planning process that kicks off in June of 2014 and ends in May of 2016. Although this may seem like a very generous schedule, it will be important to ensure continuous progress for a project that we feel may attract substantial attention and will require extensive input – particularly from decision makers. Based on our deep staff resources and familiarity with the community, we have provided a slightly more aggressive schedule for your consideration. We are able to accelerate this schedule, if requested by the City.

We anticipate completion of Suisun City’s General Plan Update just as the labor-intensive portions of the Specific Plan Update begin, freeing staff capacity at the right moment.

This project timeline is provided based on our proposed Scope of Services.

Task	Date
Task 1: Project Initiation	June 2014
Task 2: PDA Profile	June-August 2014
Task 3: Community Involvement Strategy	July 2014
Task 4: Market Demand Analysis	June-August 2014
Task 5: Vision and Alternatives Analysis	September-November 2014
Task 6: Affordable Housing Strategy	November-December 2014
Task 7: Multi-Modal Access & Connectivity Strategy	November 2014-January 2015
Task 8: Design Standards and Guidelines	November 2014-March 2015
Task 9: Parking Analysis and Management Concepts	November 2014-March 2015
Task 10: Infrastructure Development & Budget	November 2014-April 2015
Task 11: Implementation Plan & Financing Strategy	November 2014-April 2015
Task 12: Specific Plan	April 2015-February 2016
Task 13: CEQA Analysis and Documentation	October 2015-February 2016

AECOM Cost Proposal



We anticipate a cost-efficient process that takes advantage of our work on the City's General Plan Update and Zoning Ordinance Update – both our collection of background information and analysis of the Specific Plan in the Citywide context. Various cost savings are reflected in our Proposal. Our cost estimate is provided in a table following our cost assumptions. The total cost is estimated to be \$154,850, assuming 6% of the total costs for AECOM's DBE subconsultant(s).

Cost Assumptions

With the objective of ensuring clarity about the proposal, AECOM has prepared the following assumptions for our scope of services that explain the basis for the cost.

- Our scope and budget estimate relies primarily on existing studies, databases, and the available resources identified in our Scope of Services.
- Our cost estimate is based on the proposed schedule. Should significant delay occur (more than 120 days) for reasons beyond our control, additional changes may apply to the remaining work, based on labor rates in effect at the time of the delay.
- The budget is valid for up to six months from the date of submittal/opening, after which it may be subject to revision.
- Review cycles for preliminary documents are presented in the scope of work. Additional review cycles or additional versions of preliminary drafts or screencheck drafts are assumed to not be needed.
- Costs are included for the number of meetings specified in the scope of services. If additional meetings are needed, they can be included with an amendment of the budget. Additional meetings attended by the AECOM PM are estimated at \$900, including preparation time, but this would depend on the nature of the meeting.
- Costs have been allocated to tasks to determine the total budget. AECOM may reallocate costs among tasks, as needed, as long as the total budget is not exceeded.
- The CEQA statutes or guidelines may change during the course of this EIR. If amendments require redoing work already performed or substantially increasing effort, a contract amendment may be warranted.
- AECOM will review one set of consolidated, non-conflicting comments on deliverables.
- The proposed budget and scope does not include labor, reproduction, or other costs in the event the EIR is challenged or EIR certification is appealed. This scope does not presume another circulation of the EIR as a result of the appeal, nor support during any legal proceedings associated with a challenge to the certified EIR. AECOM may provide those services, if desired, subject to a contract and budget amendment.
- The Scope of Services and budget are based on the assumption that the project description does not change during the course of the work.
- AECOM has not included any reproduction costs in the Proposal.
- AECOM's approach to CEQA review assumes land use change assumptions under the General Plan will be consistent with those made under the Specific Plan.
- If a second reading is required for adoption of the Specific Plan, we assume City staff will facilitate this meeting without the need for AECOM assistance.
- We assume City staff would prepare any staff reports associated with this project.

COST ESTIMATE

Task No.	TASKS	Rate/Hour	Project Manager Gerken \$155	Project Director Goldman \$190	Sr Env Analyst Analyst \$120	Env Analyst Planner/ Designer \$110	Sr Engineer	Engineer	Infrastructure Analyst	GIS Graphics	Word Proc.	Total Hours	Total Dollars
1	Task 1 - Project Initiation		6	4	0	0	0	0	0	0	0	10	\$1,660
2	Task 2 - PDA Profile (ADE)		2	1	0	0	0	0	0	0	0	3	\$500
2.1	Review PDA Profile		2	1	0	0	0	0	0	0	0	3	\$500
	Subtotal for Task 2												
3	Task 3 - Community Involvement Strategy		1	1	0	2	0	0	0	0	0	4	\$665
3.1	Stakeholders List		2	1	0	8	0	0	0	0	0	11	\$1,360
3.2	Community Involvement Strategy		3	2	0	10	0	0	0	0	0	15	\$1,945
	Subtotal for Task 3												
4	Task 4 - Market Demand Analysis (ADE)		2	1	0	0	0	0	0	0	0	3	\$500
4.1	Review Market Demand Analysis		2	1	0	0	0	0	0	0	0	3	\$500
	Subtotal for Task 4												
5	Task 5 - Vision and Land Use Alternatives Study		4	2	0	12	0	0	0	0	0	18	\$2,320
5.1	Specific Plan Diagnosis		4	2	0	6	0	0	0	0	0	12	\$1,660
5.2	Vision Statement		4	2	0	16	0	0	0	0	0	34	\$4,020
5.3	Alternatives		6	3	0	16	0	0	0	0	0	11	\$1,610
5.4	1 Workshop		8	3	0	0	0	0	0	0	0	11	\$1,610
	Subtotal for Task 5		22	10	0	34	0	0	0	0	0	75	\$9,810
6	Task 6 - Affordable Housing Strategy (ADE)		1	1	0	0	0	0	0	0	0	2	\$345
6.1	Review Affordable Housing Strategy		1	1	0	0	0	0	0	0	0	2	\$345
	Subtotal for Task 6												
7	Task 7 - Multi-Modal Access & Connectivity		4	1	0	8	0	0	0	4	0	17	\$2,030
7.1	2 Exhibits on Connectivity		4	1	0	8	0	0	0	4	0	17	\$2,030
	Subtotal for Task 7												
8	Task 8 - Design Standards and Guidelines		1	1	0	4	0	0	0	0	0	6	\$785
8.1	Candidate Infill Opportunity Sites		3	1	0	80	0	0	0	0	0	84	\$9,455
8.2	Land Use/Design Concepts and Development Prototypes		4	2	0	84	0	0	0	0	0	90	\$10,245
	Subtotal for Task 8												
9	Task 9 - Parking Analysis and Management Concepts		0	0	0	0	0	0	0	0	0	0	\$0
	Subtotal for Task 9												
10	Task 10 - Infrastructure Development & Budget		4	2	0	0	8	16	8	8	0	38	\$4,032
10.1	Infrastructure Improvements		2	1	0	0	8	50	0	0	0	61	\$5,742
10.2	Planning-Level Cost Estimates		6	3	0	0	16	66	8	0	0	99	\$9,774
	Subtotal for Task 10												
11	Task 11 - Implementation Plan & Financing Strategy (ADE)		2	1	0	0	0	0	0	0	0	3	\$500
11.1	Review Implementation Plan & Financing Strategy		2	1	0	0	0	0	0	0	0	3	\$500
	Subtotal for Task 11												
12	Task 12 - Specific Plan		24	16	0	200	8	12	16	10	16	302	\$35,016
12.1	Administrative Draft Specific Plan		8	2	0	24	0	0	0	4	2	40	\$4,760
12.2	Revised Draft Specific Plan		8	0	0	0	0	0	0	0	0	8	\$1,240
10.3	2 Public Workshops		2	1	0	6	0	0	0	0	0	9	\$1,160
10.4	1 Revised Draft Specific Plan		2	1	0	6	0	0	0	0	0	9	\$1,160
10.5	1 Final Specific Plan		44	20	0	236	8	12	16	14	18	368	\$43,338
	Subtotal for Task 12												
13	Task 13 - GEOA Review		24	4	8	120	0	0	0	8	8	172	\$19,860
13.1	Initial Study		4	2	4	10	0	0	0	2	2	24	\$2,910
13.2	Revised Initial Study		1	1	0	1	0	0	0	0	0	3	\$455
13.3	NOC		18	12	0	0	0	0	0	0	0	28	\$4,760
13.4	Public Workshops/Hearings (4)		2	1	0	8	0	0	0	0	4	15	\$1,700
13.5	MURP, Brief Findings, NOC		47	20	12	139	0	0	0	10	14	242	\$29,765
	Subtotal for Task 13												
14	Task 14 - Project Management		199	74	12	611	8	29	62	44	33	661	\$114,457
	Total Labor Hours		\$34,046	\$14,060	\$1,440	\$64,210	\$1,260	\$3,472	\$6,970	\$3,740	\$2,840		
	Total Direct Labor Dollars												\$114,457

AECOM • Downtown Waterfront Specific Plan Expansion and Environmental Documentation

4/23/2014
Page 2 of 2

COST ESTIMATE

SUBCONSULTANT COSTS	
1. Subconsultants	\$30,000
Applied Development Economics	\$4,646
Niryo & Moore (DBE)	\$4,646
Sustain Environmental (DBE)	\$4,646
Total Subconsultant Costs	\$39,232
OTHER DIRECT COSTS	
1. Printing	\$0
2. Other Reproduction	\$0
3. Mileage/Vehicles Rental/Fuel/Per Diem	\$500
4. Maps/Supplies/Photos/GPS Unit Use	\$0
5. Communications/Postages/Delivery	\$61
6. Records Search (Cultural/Paleo/Bio/Haz)	\$300
7. Misc	\$260
Total Other Direct Costs	\$1,101
TOTAL ESTIMATED COST	\$154,850

AGENDA TRANSMITTAL

MEETING DATE: June 17, 2014

CITY AGENDA ITEM: Council Adoption of Resolution No. 2014 - __: Requesting that the State Include the Participation of City of Suisun City in the Pilot Program to Deal with the Property Squatters.

FISCAL IMPACT: No Fiscal Impact is expected in adopting this Resolution to be included in the pilot program.

BACKGROUND: Since the downturn of the housing market, Suisun City has seen an increase in the illegal tenancy of abandoned or foreclosed homes. Although there are trespassing laws, it is difficult for officers to take action because in most cases it is a “civil” issue, not a criminal one. Another area officers have difficulty in taking action is that it is a misdemeanor not committed in their presence and most people reporting the trespass decline taking any criminal action against the squatters.

Unfortunately our CAD/RMS system does not specifically record the amount of times homes have been occupied by squatters and the resolution of those cases. However, the CAD/RMS system does show that our officers have responded to 223 calls for service related to squatters since January 1, 2012.

STAFF REPORT: AB 1513 (Fox) is a pilot program designed to deal with squatters by allowing the owner of a vacant property to register that property with the local police department attesting that the property is vacant and is not authorized to be occupied. It also requires the owner to retain a licensed private security service to inspect the property not fewer than once every three days and notify the police if an unauthorized person is on the property.

The police department is then able to respond to the property as soon as practicable and verify that the property was inspected at least three days prior and found to be vacant, ascertain the identity of any persons found on the property, and request the written authorization to be on the property. Any person found on a vacant property not fewer than 48 hours after receiving the warning notification is guilty of trespass. The Bill allows local agencies to recover costs by charging the land owner the full-cost recovery rate for service.

Currently the bill only applies to Palmdale, Lancaster, and the County of Los Angeles, and expires on January 1, 2018. However, Suisun City may request inclusion to participate in this pilot program through the attached resolution, it but must be done prior to the Governor’s signing the Bill into law. The Bill is expected to be signed by the Governor sometime prior to July, but will not become effective until January 1, 2015.

RECOMMENDATION: It is recommended that the City Council adopt Resolution No. 2014 - __: Requesting that the State Include the Participation of City of Suisun City in the Pilot Program to Deal with the Property Squatters.

PREPARED BY:
REVIEWED/APPROVED BY:

Ed Dadisho, Police Chief
 Suzanne Bragdon, City Manager



ATTACHMENTS:

1. Council Adoption of Resolution No. 2014 - __: Requesting that the State Include the Participation of City of Suisun City in the Pilot Program to Deal with the Property Squatters.

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RESOLUTION NO. 2014-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
REQUESTING THAT THE STATE INCLUDE THE PARTICIPATION
OF CITY OF SUISUN CITY IN THE PILOT PROGRAM TO DEAL
WITH THE PROPERTY SQUATTERS**

WHEREAS, Suisun City has seen an increase in the illegal tenancy of abandoned or foreclosed homes since the downturn of the housing market; and

WHEREAS, the Police Department has responded to 223 calls for service relating to illegal squatting of abandoned/foreclosed homes since January 1, 2012; and

WHEREAS, the State has a pilot program designed to deal with squatters by allowing the owner of a vacant property to register that property with the local police department attesting that the property is vacant and is not authorized to be occupied; and

WHEREAS, the Police Department would be able to take action once it has determined that the homeowner has complied with the requirements of the program.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby requests that the State to include the participation of the City of Suisun City in the pilot program to deal with property squatters.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Suisun City duly held on Tuesday, the 17th day of June 2014, by the following vote:

AYES:	Councilmembers:	_____
NOES:	Councilmembers:	_____
ABSENT:	Councilmembers:	_____
ABSTAIN:	Councilmembers:	_____

WITNESS my hand and the seal of said City this 17th day of June 2014.

Donna Pock, CMC
Deputy City Clerk

AGENDA TRANSMITTAL

MEETING DATE: June 17, 2013

CITY AGENDA ITEM: Council Introduction of Ordinance No. 2014 - __: Repealing Title 8, Chapter 8.24 of the City of Suisun City Ordinance Regulating Sex Offender's Proximity to Children's Facilities.

FISCAL IMPACT: If Chapter 8.24 is not repealed, the City would potentially incur legal costs if sued.

BACKGROUND: In the 1990s, federal and state legislatures enacted various laws intended to protect minors from registered sex offenders. At the federal level, this legislation includes Megan's Law, which was adopted in 1996 and created a nationwide sex offender registry. At the state level, the California legislature adopted a series of regulations on the day-to-day lives of registered sex offenders, codified at California Penal Code §§ 290 *et seq.*, as well as a voter-approved measure known as "Jessica's Law," codified at California Penal Code § 3003.5 ("Section 3003.5").

Section 3003.5 regulates the residency of registered sex offenders. It specifically prohibits registered sex offenders from residing within two thousand feet of a school or park (Section 3003.5(b)), and expressly permits supplemental local regulation of sex offender residency (Section 3003.5(c).)

After the adoption of these state laws, concerns arose among numerous California cities regarding how local agencies could enforce Megan's Law and Jessica's Law. Due to these concerns, over seventy-five (75) California municipalities, including the City of Suisun City, enacted local ordinances further regulating the activities of registered sex offenders in their communities.

Specifically, Chapter 8.24 of the Suisun City Municipal Code prohibits a sex offender from being on or within one thousand feet of the following prohibited locations: (1) The grounds of public or private schools for children during such times as the location is being used by children for school activities or organized youth sports; (2) Facilities that provide daycare or children's services; (3) Video arcades; (4) Public and private playgrounds and play facilities, parks, youth sports facilities, skate parks, and public swimming pools.

On April 8, 2014, the City received a letter (Attachment 1) from the American Civil Liberties Union (ACLU) indicating that it had sent a previous letter dated January 20, 2014, requesting an immediate repeal of our Sex Offender Ordinance based on two recent Court of Appeals decisions determining that similar ordinances adopted by other cities were preempted by state law, and therefore could not be enforced by the City. The ACLU advised that cities who have failed to repeal their ordinances have been sued in Federal District Court and additional lawsuits can be expected. The letter states the City can avoid costly litigation costs by agreeing to repeal or stop enforcement of the Sex Offender ordinance.

PREPARED BY:

Anthony R. Taylor, City Attorney
Ed Dadisho, Police Chief
Suzanne Bragdon, City Manager

REVIEWED/APPROVED BY:



STAFF REPORT: The County of Orange’s and City of Irvine’s park restriction ordinances (less strict versions of the Ordinance’s “loitering” restriction) have recently been challenged in court in the matters of: *Hugo Godinez v. People of the State of California*, Court of Appeals Case No. G047657 (“*Godinez*”), and *People v. Nguyen*, Court of Appeals Case No. G048228 (“*Nguyen*”). (Please see Attachment 2.) The challenged ordinances provide, in relevant part, any registered sex offender “who enters upon or into any City [or County] park and recreational facility where children regularly gather without written permission from the Director of Public Safety/Chief of Police or his designee is guilty of a misdemeanor.”

These cases were both decided by the California Court of Appeals, Fourth District, Division Three, on January 10, 2014. While the *Godinez* decision is “unpublished” (and, therefore, not citable as precedent), the Court determined to publish the *Nguyen* decision – making its ruling binding only in the Fourth Appellate District. As the decisions are virtually identical, they are described together in this staff report.

In *Godinez* and *Nguyen*, the Court of Appeals ruled California’s “statutory scheme imposing restrictions on a sex offender’s daily life fully occupies the field and therefore preempts [Orange] county’s efforts to restrict sex offenders from visiting county parks.” In so holding, the Court noted that “under article XI, section 7 of the California Constitution, ‘a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general state laws.’ If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation ‘duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.’”

Conversely, in examining the *Godinez* and *Nguyen* facts, the Court found the State did preempt the field of sex offender regulation, because “the Legislature expressly declared its intent to establish a comprehensive and standardized system for regulating sex offenders when it passed the Sex Offender Punishment, Control, and Containment Act of 2006 . . . which contains more than 60 sections and made numerous changes to the statutes regulating sex offenders”

After these Court of Appeal decisions were issued, a petition for California Supreme Court review was filed concerning these decisions. On April 28, 2014, the California Supreme Court denied the petition for review of the *Godinez* and *Nguyen* decisions. The Supreme Court’s denial of these petitions for review has wide-ranging implications and puts cities at risk of litigation if their existing sex offender ordinances are not repealed. Advocacy groups have already begun threatening litigation against cities, including Suisun City, if these sex offender ordinances are not repealed.

The following local entities have recently repealed sex offender ordinances: El Centro, Costa Mesa, Duarte, Lancaster, Palmdale, Lake Forest, El Dorado County, and Redlands. Other cities will be considering these same issues in the coming weeks.

RECOMMENDATION: It is recommended that the City Council:

1. Receive the staff report; and
2. Conduct the Public Hearing; and

3. Introduce and waive the reading of Ordinance No. __: Repealing Title 8, Chapter 8.24 of the City of Suisun City Ordinance Regulating Sex Offender's Proximity to Children's Facilities.

ATTACHMENTS:

1. Copy of the ACLU letter.
2. Copy of the *Nguyen* decision.
3. Ordinance No. 2014 - __: Repealing Title 8, Chapter 8.24 of the City of Suisun City Ordinance Regulating Sex Offender's Proximity to Children's Facilities.

Suzanne

Pete 4/15

**CALIFORNIA REFORM SEX OFFENDER LAWS (CA RSOL)
ACLU Building - 1313 W. 8th Street
Los Angeles, CA 90017
(805) 896-7854**

RECEIVED

APR 14 2014

April 8, 2014

CITY OF SUISUN CITY

Honorable Pete Sanchez
City of Suisun
701 Civic Center Boulevard
Suisun City, CA 94585

Dear Mayor:

The purpose of this letter is to provide you with an update to our letter dated January 20, 2014, which requested the immediate repeal of the sex offender ordinance adopted by your city. That request was based, in part, upon two recent decisions in which the California Court of Appeal determined that similar sex offender ordinances adopted by Orange County and the City of Irvine were preempted by state law and, therefore, could not be enforced.

In response to our request, several cities have agreed to either repeal or stop enforcement of their sex offender ordinances. Those cities include Costa Mesa, El Centro, La Habra and Loma Linda.

Cities that have not agreed to repeal or stop enforcement of their sex offender have been sued in federal district court. The first city to be sued is the City of Pomona (March 24), followed by the City of South Lake Tahoe (March 31), and then National City (April 4). Additional lawsuits can be expected.

Your city can avoid costly litigation by agreeing immediately to repeal or stop enforcement of its sex offender ordinance. Model agreements are available upon request.

If you or your staff should have any questions or comments, please contact me at the phone number above or by E-mail at jmbellucci@aol.com. Thank you.

Sincerely,

Janice M. Bellucci
Janice M. Bellucci, President
Attorney-at-Law

CONTACT:

California Reform Sex Offender Laws
Janice Bellucci, President
ACLU Building – 1313 W. 8th Street
Los Angeles, CA 90017
(805) 896-7854

FOR IMMEDIATE RELEASE:

April 7, 2014

**NATIONAL CITY SEX OFFENDER ORDINANCE
CHALLENGED IN FEDERAL COURT**

A sex offender ordinance adopted by National City, a city located within San Diego County, is the subject of a lawsuit filed today in federal district court. The ordinance includes restrictions regarding where more than 105,000 individuals can be present.

Specifically, the ordinance prohibits registered citizens from being present in or within 300 feet of a wide range of locations including schools, parks, video arcades, playgrounds and amusement centers. A registered citizen who violates the ordinance is subject to incarceration for a period up to one year and a fine of up to \$1,000 for each day of violation.

"The sex offender ordinance adopted by National City in 2005 is in violation of both the federal and state constitutions," stated CA RSOL President and attorney Janice Bellucci. "The provisions of the ordinance directly affect all registered citizens in the state of California as well as indirectly affect an additional 400,000 individuals who are family members."

The National City ordinance is based upon two myths: (1) that registered citizens have a high rate of re-offense and (2) that strangers commit sexual assaults. The true rates of re-offense*, according to state and federal government reports, are 1.9 percent for registrants on parole and 5.3 percent for registrants overall. More than 90 percent of sexual assaults upon children are committed not by strangers but by family members, teachers, coaches and clergy.**

"The presence restrictions within the National City ordinance are inconsistent with recent decisions of the California Court of Appeals which invalidated two ordinances – one by the City of Irvine and the other by the County of Orange – as being preempted by existing state law," stated CA RSOL board member and attorney Chance Oberstein. "The court held that the state statutory scheme imposing restrictions on a sex offender's daily life fully occupied the field."***

- more -

California RSOL sent a letter to National City and more than 70 additional cities within California on January 20 notifying them of the recent Court of Appeal decisions and that the sex offender ordinances the cities had adopted were inconsistent with those decisions. California RSOL requested in those letters that the cities repeal their ordinances within 60 days or face a potential legal challenge.

Subsequent to issuance of the California RSOL letter, the cities of Costa Mesa and El Centro repealed their sex offender ordinances. Several additional cities, including Anaheim, Grand Terrace, and South Pasadena have agreed in writing not enforce their sex offender ordinances pending a decision from the California Supreme Court whether to grant review of the California Court of Appeal decisions.

"Future legal challenges by sex offenders can be expected of cities that have failed to either repeal their sex offender ordinances or agree in writing to stay enforcement of those ordinances," stated Bellucci. "The lawsuit filed against National City today is the third in a series of such legal challenges."

The first legal challenge was filed on March 24 against the City of Pomona. The second legal challenge was filed on March 31 against the City of South Lake Tahoe. Both lawsuits were filed in federal district courts.

#

*See 2013 Outcome Evaluation Report, California Department of Corrections and Rehabilitation dated January 2014 at page 26 and Recidivism of Sex Offenders Released from Prison in 1994, U.S. Department of Justice dated November 2003 at page 24.

** See Homelessness Among California's Registered Sex Offenders, California Sex Offender Management Board dated September 2011 at page 10.

*** See *People v. Nguyen*, 222 Cal. App. 4th 1168 (Cal. App. 4th Dist. 2014) and *People v. Godínez*, Case No. G047657, Cal. Court of Appeals, January 10, 2014 (unpublished)].

222 Cal. App. 4th 1168, *; 166 Cal. Rptr. 3d 590, **;
2014 Cal. App. LEXIS 18, ***

THE PEOPLE, Plaintiff and Appellant, v. JEANPIERRE CUONG NGUYEN, Defendant and Respondent.

G048228

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

222 Cal. App. 4th 1168; 166 Cal. Rptr. 3d 590; 2014 Cal. App. LEXIS 18

January 10, 2014, Opinion Filed

SUBSEQUENT HISTORY: Review denied by People v. Jeanpierre Cuong Nguyen, 2014 Cal. LEXIS 3030 (Cal., Apr. 23, 2014)

PRIOR HISTORY: [*1]**

Appeal from a judgment of the Superior Court of Orange County, Nos. 12HM12229 & 30-2012-00621002, Everett W. Dickey, Judge. (Retired judge of the Orange Super. Ct., assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.).

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: The People appealed a judgment of the Superior Court of Orange County (California) sustaining defendant's demurrer to a misdemeanor complaint that charged him with violating Irvine Mun. Code, § 4-14-803, which prohibited registered sex offenders from entering city parks and recreational facilities without written permission from the city's police chief.

OVERVIEW: The court held that the state statutory scheme imposing restrictions on a sex offender's daily life fully occupied the field and therefore, pursuant to Cal. Const., art. XI, § 7, preempted the city's efforts to restrict sex offenders from visiting city parks and recreational facilities. Moreover, state law preempted the ordinance's requirement that sex offenders obtain written permission from the city's police chief before entering a city park and recreational facility because that regulation was a de facto registration requirement. State law had long occupied the area of sex offender registration to the exclusion of local regulation, and the city ordinance's written permission requirement amounted to an additional registration requirement imposed on sex offenders who wished to enter city parks. The court declined to sever the written permission requirement from the city ordinance because to do so would result in an outright ban on sex offenders entering city parks and recreational facilities and would substantially alter the meaning of the city ordinance as originally enacted.

OUTCOME: The court affirmed the judgment.

CORE TERMS: sex offender's, state laws, ordinance, preemption, preempt, sex offenders, district attorney, preempted, local ordinance, regulating, recreational facility, offender, registration, occupy, statutory scheme, written permission, subject matter, daily life, invalid, separable, regularly, register, fully occupied, impliedly, gather, registered, law enforcement, local government, legislative intent, registration requirement

LEXISNEXIS(R) HEADNOTES

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

HN1 Under Cal. Const., art. XI, § 7, a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general state laws. If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

HN2 The state impliedly preempts a field when (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality. If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a municipal affair. The legislature's intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme. The test for field preemption or occupation does not focus on the number of statutes involved, but on whether the nature and extent of the coverage of a field is such that it could be said to display a patterned approach to the subject.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > Fact & Law Issues

Evidence > Procedural Considerations > Burdens of Proof > Allocation

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

HN3 The facts and circumstances of each case determine whether the legislature established a comprehensive statutory scheme that impliedly preempts all local regulation on the subject. The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption. Whether state law preempts a local ordinance is a question of law that is subject to de novo review.

Governments > State & Territorial Governments > Relations With Governments

HN4 A preempted field cannot properly consist of statutes unified by a single common noun, but rather requires closely related statutes that regulate an area in a manner that reveals a legislative intent to occupy the field.

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

HN5 The relevant preemption inquiry is whether state law has occupied the field to the exclusion of local regulation, and a court therefore looks to state law to define the field it purportedly occupies. The court looks to the local ordinance's subject matter to determine whether it falls within the state law field, not to define the field.

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > General Overview

HN6 See Pen. Code, § 290.03.

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > General Overview

Governments > State & Territorial Governments > Relations With Governments

HN7 The legislature established a complete system for regulating a sex offender's daily life and manifested a legislative intent to fully occupy the field to the exclusion of Irvine Mun. Code, § 4-14-803, and other local regulations. Considered as a whole, these statutes, including Pen. Code, §§ 290-290.024, 290.4, 290.45, 290.46, 3000.07, 3004, subd. (b), 3053.8, subd. (a), 3003.5, 626.81, 653b, 653c, 290.95, subds. (a), (b), & (c), and 290.02, regulate much more than the geographic restrictions imposed on a sex offender. They regulate numerous aspects of a sex offender's life so that both law enforcement and the public can monitor the sex offender on a daily basis. They also restrict the places a sex offender may visit and the people with whom he or she may interact. These penal code sections regulate a sex offender's duty to inform law enforcement where he or she resides, law enforcement's ability to track a sex offender's movement through a global positioning device, where and with whom a sex offender may reside, what sort of jobs or volunteer positions a sex offender may accept, and the public and private places a sex offender may visit.

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

HN8 Preemption by implication of legislative intent may not be found when the legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations. These rules apply when the state expressly authorizes or acknowledges local regulation on the subject.

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

HN9 California courts will presume a local regulation is not preempted by state law when the local regulation is in an area over which local government traditionally has exercised control, but the mere exercise of a local government's police power is not sufficient to invoke the presumption against preemption. There is no presumption against preemption when a local ordinance regulates in an area historically dominated by state regulation. Moreover, when there is a doubt as to whether an attempted regulation relates to a municipal or to a state matter, or if it be the mixed concern of both, the doubt must be resolved in favor of the legislative authority of the state.

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > General Overview

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

HN10 The provisions of California's Sex Offender Registration Act, Pen. Code, §§ 290 to 290.024, are so extensive in their scope that they clearly show an intention by the legislature to adopt a general scheme for the regulation of sex offender registration. Accordingly, state law impliedly preempts Irvine Mun. Code, § 4-14-803, based on the implicit registration requirement it imposes on sex offenders who wish to enter a city park and recreational facility.

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

HN11 When part of a local ordinance is preempted or otherwise invalid, local officials may enforce the remainder of the ordinance if the preempted or invalid part can be severed. A preempted or invalid part of an ordinance can be severed if, and

only if, it is grammatically, functionally, and volitionally separable. If the ordinance is not severable, then the void part taints the remainder and the whole becomes a nullity. The invalid part is grammatically separable if it is distinct and separate and, hence, can be removed as a whole without affecting the wording of any of the measure's other provisions. To be grammatically separable, the valid and invalid parts of the statute can be separated by paragraph, sentence, clause, phrase, or even single words.

Governments > Local Governments > Ordinances & Regulations

HN12 To be functionally separable, the remainder of a local ordinance after separation of the invalid part must be complete in itself and capable of independent application. An invalid portion of an ordinance is functionally separable if it is not necessary to the measure's operation and purpose.

Governments > Local Governments > Ordinances & Regulations

HN13 To be volitionally separable, the final determination depends on whether the remainder of the local ordinance is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the ordinance or whether it constitutes a completely operative expression of the legislative intent. An invalid portion of an ordinance is volitionally separable if it was not of critical importance to the measure's enactment.

Governments > Local Governments > Ordinances & Regulations

HN14 A reviewing court has no power to rewrite an ordinance to make it conform to a presumed intention that its terms do not express.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court sustained defendant's demurrer to a misdemeanor complaint that charged him with violating Irvine Mun. Code, § 4-14-803, which prohibits registered sex offenders from entering city parks and recreational facilities without written permission from the city's police chief. (Superior Court of Orange County, Nos. 12HM12229 and 30-2012-00621002, Everett W. Dickey, Judge.*)

* Retired judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The Court of Appeal affirmed the judgment. The court held that the state statutory scheme imposing restrictions on a sex offender's daily life fully occupies the field and therefore preempts the city's efforts to restrict sex offenders from visiting city parks and recreational facilities. Moreover, state law preempts the ordinance's requirement that sex offenders obtain written permission from the city's police chief before entering a city park and recreational facility, because this regulation is a de facto registration requirement. State law has long occupied the area of sex offender registration to the exclusion of local regulation, and the city ordinance's written permission requirement amounts to an additional registration requirement imposed on sex offenders who wish to enter city parks. The court declined to sever the written permission requirement from the city ordinance. To do so would result in an outright ban on sex offenders entering city parks and recreational facilities. Taking such a step would substantially alter the meaning of the city ordinance as originally enacted because nothing in the language of the ordinance or its history suggests the city intended to bar sex offenders under all circumstances from city parks and

recreational facilities. (Opinion by Aronson, Acting P. J., with Fybel and Thompson, JJ., concurring. Concurring opinion by Fybel, J. (see p. 1194).)

HEADNOTES

[*1169]

CALIFORNIA OFFICIAL REPORTS HEADNOTES

^{CA(1)} **¶(1) Municipalities § 55—Ordinances—Validity—Preemption—Express or Implied.**

—Under Cal. Const., art. XI, § 7, a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general state laws. If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.

^{CA(2)} **¶(2) Municipalities § 56—Ordinances—Validity—Preemption—By**

Implication—Test.—The state impliedly preempts a field when (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality. If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a municipal affair. The Legislature's intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme. The test for field preemption or occupation does not focus on the number of statutes involved, but on whether the nature and extent of the coverage of a field is such that it could be said to display a patterned approach to the subject.

^{CA(3)} **¶(3) Municipalities § 56—Ordinances—Validity—Preemption—Implied—Facts and Circumstances—Burden of Proof.**—The facts and circumstances of each case determine whether the Legislature established a comprehensive statutory scheme that impliedly preempts all local regulation on the subject. The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption.

^{CA(4)} **¶(4) Municipalities § 56—Ordinances—Validity—Preemption—Field Occupied by State Law—Intent.**—A preempted field cannot properly consist of statutes unified by a single common noun, but rather requires closely related statutes that regulate an area in a manner that reveals a legislative intent to occupy the field. [*1170]

^{CA(5)} **¶(5) Municipalities § 56—Ordinances—Validity—Preemption—Field Occupied by State Law.**—The relevant preemption inquiry is whether state law has occupied the field to the exclusion of local regulation, and a court therefore looks to state law to define the field it purportedly occupies. The court looks to the local ordinance's subject matter to determine whether it falls within the state law field, not to define the field.

^{CA(6)} **¶(6) Municipalities § 55—Ordinances—Validity—Preemption—Field Occupied by State Law—Regulation of Sex Offender's Daily Life.**—The Legislature established a complete system for regulating a sex offender's daily life and manifested a legislative intent to fully occupy the field to the exclusion of Irvine Mun. Code, § 4-14-803, and other local

regulations. Considered as a whole, these statutes, including Pen. Code, §§ 290-290.024, 290.4, 290.45, 290.46, 3000.07, 3004, subd. (b), 3053.8, subd. (a), 3003.5, 626.81, 653b, 653c, 290.95, subds. (a), (b), & (c), and 290.02, regulate much more than the geographic restrictions imposed on a sex offender. They regulate numerous aspects of a sex offender's life so that both law enforcement and the public can monitor the sex offender on a daily basis. They also restrict the places a sex offender may visit and the people with whom he or she may interact. These Penal Code sections regulate a sex offender's duty to inform law enforcement where he or she resides, law enforcement's ability to track a sex offender's movement through a global positioning device, where and with whom a sex offender may reside, what sort of jobs or volunteer positions a sex offender may accept, and the public and private places a sex offender may visit.

CA(7) ¶(7) Municipalities § 56—Ordinances—Validity—Preemption—Implied—Legislative Intent.—Preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations. These rules apply when the state expressly authorizes or acknowledges local regulation on the subject.

CA(8) ¶(8) Municipalities § 56—Ordinances—Validity—Preemption—Traditional Exercise of Control by Local Government.—California courts will presume a local regulation is not preempted by state law when the local regulation is in an area over which local government traditionally has exercised control, but the mere exercise of a local government's police power is not sufficient to invoke the presumption against preemption. There is no presumption against preemption when a local ordinance regulates in an area historically dominated by state regulation. When there is a doubt as to whether an attempted regulation relates to a [*1171] municipal or to a state matter, or if it be the mixed concern of both, the doubt must be resolved in favor of the legislative authority of the state.

CA(9) ¶(9) Municipalities § 56—Ordinances—Validity—Preemption—Implied—Regulation of Sex Offender Registration.—The provisions of California's Sex Offender Registration Act (Pen. Code, §§ 290-290.024) are so extensive in their scope that they clearly show an intention by the Legislature to adopt a general scheme for the regulation of sex offender registration. Accordingly, state law impliedly preempts Irvine Mun. Code, § 4-14-803, based on the implicit registration requirement it imposes on sex offenders who wish to enter a city park and recreational facility, and defendant's demurrer to a misdemeanor complaint that charged him with violating § 4-14-803 was properly sustained.

[Cal. Forms of Pleading and Practice (2013) ch. 126A, Constitutional Law, § 126A.24.]

CA(10) ¶(10) Municipalities § 55—Ordinances—Partial Preemption or Invalidity—Severability of Remainder.—When part of a local ordinance is preempted or otherwise invalid, local officials may enforce the remainder of the ordinance if the preempted or invalid part can be severed. A preempted or invalid part of an ordinance can be severed if, and only if, it is grammatically, functionally, and volitionally separable. If the ordinance is not severable, then the void part taints the remainder and the whole becomes a nullity.

CA(11) ¶(11) Municipalities § 57—Ordinances—Validity—Grammatical Separability.—The invalid part of a local ordinance is grammatically separable if it is distinct and separate and, hence, can be removed as a whole without affecting the wording of any of the measure's other provisions. To be grammatically separable, the valid and invalid parts of the statute can be separated by paragraph, sentence, clause, phrase, or even single words.

CA(12) ¶(12) Municipalities § 57—Ordinances—Validity—Functional Separability.—To be functionally separable, the remainder of a local ordinance after separation of the invalid part must be complete in itself and capable of independent application. An invalid portion of an ordinance is functionally separable if it is not necessary to the measure's operation and

purpose.

CA(13) §(13) Municipalities § 57—Ordinances—Validity—Volitional Separability.—To be volitionally separable, the final determination depends on whether the remainder of the local ordinance is complete in itself and [*1172] would have been adopted by the legislative body had the latter foreseen the partial invalidation of the ordinance or whether it constitutes a completely operative expression of the legislative intent. An invalid portion of an ordinance is volitionally separable if it was not of critical importance to the measure's enactment.

CA(14) §(14) Municipalities § 49—Ordinances—Construction.—The court has no power to rewrite an ordinance to make it conform to a presumed intention that its terms do not express.

COUNSEL: Tony Rackaukas, District Attorney, and Brian F. Fitzpatrick, Deputy District Attorney, for Plaintiff and Appellant.

Frank Ospino, Public Defender, Mark S. Brown, Assistant Public Defender, and Scott Van Camp, Deputy Public Defender, for Defendant and Respondent.

JUDGES: Opinion by Aronson, Acting P. J., with Fybel and Thompson, JJ., concurring. Concurring opinion by Fybel, J.

OPINION BY: Aronson, Acting P. J.

OPINION

[593] ARONSON, Acting P. J.**—The district attorney appeals from a judgment sustaining defendant JeanPierre Cuong Nguyen's demurrer to a misdemeanor complaint that charged him with violating a local ordinance that prohibits registered sex offenders from entering city parks and recreational facilities without written permission from the city's police chief. The trial court concluded state law preempted prosecution under the local ordinance because the Legislature has enacted a comprehensive statutory scheme regulating the daily life of sex offenders to reduce the risk of an [***2] offender committing a new offense. We agree. As explained below, we conclude the state statutory scheme imposing restrictions on a sex offender's daily life fully occupies the field and therefore preempts the city's efforts to restrict sex offenders from visiting city parks and recreational facilities.

We also conclude state law preempts the ordinance's requirement that sex offenders obtain written permission from the city's police chief before entering a city park and recreational facility. This regulation is simply a de facto registration requirement. But state law has long occupied the area of sex offender registration to the exclusion of local regulation and the city ordinance's written permission requirement amounts to an additional registration requirement imposed on sex offenders who wish to enter city parks. We decline to sever the written permission requirement from the city ordinance. To do so would result in an outright ban on sex offenders entering city parks [*1173] and recreational facilities. But taking this step would substantially alter the meaning of the city ordinance as originally enacted because nothing in the language of the ordinance or its history suggests the city intended [***3] to bar sex offenders under all circumstances from city parks and recreational facilities.

I

FACTS AND PROCEDURAL HISTORY

Nguyen is a sex offender required to register with local law enforcement under Penal Code section 290.¹ In September 2012, he entered a public park in the City of Irvine without first obtaining written permission from the Irvine Police Chief. After learning of Nguyen's park visit,

the district attorney filed a misdemeanor complaint charging him with violating section 4-14-803 of the City of Irvine Municipal Code (Irvine section 4-14-803). That section states, "Any person who is required to **[**594]** register pursuant to California Penal Code section 290 et seq., where such registration is required by reason of an offense for which the person was convicted and in which a minor was the victim, and who enters upon or into any City park and recreational facility where children regularly gather without written permission from the Director of Public Safety/Chief of Police or his designee is guilty of a misdemeanor." (§ 4-14-803.) The ordinance broadly defines "City park and recreational facility" as "community parks, neighborhood parks, the Orange County Great Park, open space preserves, **[***4]** trails, including structures thereon, and all other lands and facilities under the ownership, operation or maintenance of the City that are utilized for public park or recreational purposes, whether passive or active." (Irvine Mun. Code, § 4-14-802.)

FOOTNOTES

1 All statutory references are to the Penal Code unless otherwise stated.

Nguyen demurred to the complaint, arguing Irvine section 4-14-803 was invalid because (1) California's comprehensive statutory scheme governing the registration and regulation of sex offenders occupied the field and therefore preempted local ordinances imposing similar requirements; (2) the ordinance was unconstitutionally vague; and (3) the ordinance infringed on Nguyen's fundamental constitutional rights to intrastate travel, free speech, and freedom of association and assembly. The trial court sustained Nguyen's demurrer, finding state law preempted section 4-14-803 and the ordinance was unconstitutionally vague and overbroad.

The district attorney appealed to the superior court appellate division and requested it certify the appeal for immediate transfer to this court under California Rules of Court, rule 8.1005. The appellate division granted the request, explaining it **[***5]** "has determined that transfer is necessary to secure **[*1174]** uniformity of decision, in that another case pertaining to the same or a closely related issue, *People v. Godinez*, 30-2011-530069, G47657, is currently pending before Division Three of the Fourth District Court of Appeal. Like *Godinez*, this matter presents the issue of whether local ordinances restricting the movements of registered sex offenders are void on grounds of State preemption." Upon receiving the appellate division's certification order, we ordered the appeal transferred to this court.

II

DISCUSSION

A. Governing Preemption Principles

HN1 **CA(1)** **(1)** "Under article XI, section 7 of the California Constitution, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general [state] laws." [¶] "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." [Citations.] [¶] "A conflict exists if the local legislation "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." [Citations.] [Citations.]" (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 [63 Cal. Rptr. 3d 67, 162 P.3d 583], **[***6]** original italics (*O'Connell*).)

CA(2) **(2)** Nguyen does not argue Irvine section 4-14-803 either duplicates or contradicts state law nor does he argue state law expressly preempts section 4-14-803. Instead, Nguyen's primary challenge is that state law impliedly preempts section 4-14-803 by fully occupying the field it regulates. **HN2** The state impliedly preempts a field when "(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become

exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such **[**595]** terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the "locality [citations].' [Citation.]" (*American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252 [23 Cal. Rptr. 3d 453, 104 P.3d 813] (*American Financial*).)

"If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary **[***7]** or complementary local legislation, even if the subject were otherwise one properly characterized as a 'municipal affair.' [Citations.]" (*Lancaster v. Municipal Court* (1972) 6 Cal.3d **[*1175]** 805, 808 [100 Cal. Rptr. 609, 494 P.2d 681]; see *American Financial, supra*, 34 Cal.4th at p. 1253 ["Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned."].) The Legislature's "intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme." [Citations.]" (*American Financial*, at p. 1252.) The test for field preemption or occupation does not focus on the number of statutes involved, but on "whether the nature and extent of the coverage of a field is such that it could be said to display a patterned approach to the subject." (*Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 182 [36 Cal. Rptr. 2d 886] (*Baldwin*); see *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 708 [209 Cal. Rptr. 682, 693 P.2d 261] (*Fisher*).)

For example, in *O'Connell*, the Supreme Court considered **[***8]** whether state law impliedly preempted a local ordinance requiring an offender to forfeit any vehicle used "to acquire or attempt to acquire any controlled substance." (*O'Connell, supra*, 41 Cal.4th at p. 1066, italics omitted.) To answer the question, the *O'Connell* court analyzed the California Uniform Controlled Substances Act (Health & Saf. Code, § 11000 et seq.; UCSA) as a whole, including its detailed provisions regulating the lawful use and distribution of controlled substances, defining criminal offenses involving the unlawful possession, distribution, and sale of controlled substances, and the penalties for those offenses. The UCSA imposed the penalty of vehicle forfeiture for the sale and distribution of large quantities of controlled substances, but unlike the local ordinance it did not impose vehicle forfeiture as a penalty for purchasing or attempting to purchase small quantities of a controlled substance. (*O'Connell*, at pp. 1069-1071.)

Based on its review of the entire UCSA, the *O'Connell* court concluded state law impliedly preempted the local ordinance because the UCSA fully occupied the field of penalizing crimes involving controlled substances: "The comprehensive nature **[***9]** of the UCSA in defining drug crimes and specifying penalties (including forfeiture) is so thorough and detailed as to manifest the Legislature's intent to preclude local regulation." (*O'Connell, supra*, 41 Cal.4th at p. 1071.) The Legislature's decision to omit vehicle forfeiture as a penalty for possessing drugs below a specified amount prevented local authorities from imposing the omitted penalty on those same offenses **[**596]** because the Legislature's comprehensive statutory scheme "manifest[ed] a clear intent to reserve that severe penalty for very serious drug crimes involving the manufacture, sale, or possession for sale of specified amounts of certain controlled substances." (*Id.* at p. 1072; see *In re Lane* (1962) 58 Cal.2d 99, 103-104 [22 Cal. Rptr. 857, 372 P.2d 897] (*Lane*) [extensive state statutory **[*1176]** scheme regulating criminal aspects of sexual activity preempted local ordinance outlawing fornication and adultery even though the state statutes did not outlaw those specific acts; "[i]t is therefore clear that the Legislature has determined by implication that such conduct shall not be criminal in this state".])

In finding the ordinance preempted, the *O'Connell* court criticized an earlier appellate decision that found the UCSA **[***10]** did not preempt a similar ordinance requiring vehicle forfeiture. That earlier decision upheld the local ordinance because the UCSA was "silent with regard to vehicles used by drug buyers" and therefore the "ordinance covered an area of law 'untouched

by statewide legislation" (O'Connell, *supra*, 41 Cal.4th at p. 1072, italics omitted, quoting and disapproving *Horton v. City of Oakland* (2000) 82 Cal.App.4th 580, 586 [98 Cal. Rptr. 2d 371].) The Supreme Court explained this earlier appellate decision erred by "focusing solely on the UCSA's forfeiture provisions ... [without] consider[ing] the UCSA's comprehensive scheme of drug crime penalties, which include forfeiture of various items of property, including vehicles, when used in specified serious drug offenses." (O'Connell, at p. 1072.)

In *American Financial*, the Supreme Court likewise examined the state's entire statutory scheme regarding predatory lending practices in the home mortgage industry to determine whether state law impliedly preempted a local ordinance that imposed higher standards and covered more mortgage loans than the state scheme. (*American Financial, supra*, 34 Cal.4th at pp. 1246-1251.) The *American Financial* court found the state [***11] statutes defining what mortgages were covered, what lending acts were prohibited, who could be held liable for statutory violations, the available enforcement mechanisms, and the defenses to any purported violations were "so extensive in their scope that they clearly show[ed] an intention by the Legislature to adopt a general scheme for the regulation of predatory lending tactics in home mortgages. [Citation.]" (*Id.* at pp. 1254-1255.) By purporting to augment the state statutes, the local ordinance "revisit[ed]" an area fully occupied by state law and "undermine[d] the considered judgments and choices of the Legislature" in adopting the statutes. (*Id.* at p. 1257.) Accordingly, state law preempted the local ordinance, including mortgages the state's statutory scheme did not cover. (*Id.* at p. 1258.)

In contrast, the Supreme Court's recent decision in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729 [156 Cal. Rptr. 3d 409, 300 P.3d 494] (*City of Riverside*) concluded state law did not preempt a local land use ordinance banning medical marijuana dispensaries because state law did not establish a comprehensive scheme regulating medical marijuana. The state law on the subject [***12] merely "adopted [*1177] limited exceptions to the sanctions of this state's criminal and nuisance laws in cases where marijuana is possessed, cultivated, distributed, and transported for medical purposes." (*Id.* at p. 739.) According to the Supreme [**597] Court, the state "statutory terms describe[d] no comprehensive scheme or system for authorizing, controlling, or regulating the processing and distribution of marijuana for medical purposes ..." (*id.* at p. 755), but rather represented "careful and limited forays into the subject of medical marijuana, aimed at striking a delicate balance in an area that remains controversial, and involves sensitivity in federal-state relations" (*id.* at p. 762).

The *City of Riverside* court emphasized land use regulation is an area over which local government traditionally has exercised control and therefore "... California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." [Citations.]" (*City of Riverside, supra*, 56 Cal.4th at p. 743, original italics.) The Supreme Court concluded the narrow and limited nature of the state medical marijuana law did not provide a clear indication [***13] the Legislature intended to preempt local land use regulation affecting medical marijuana dispensaries. Nothing in the state law required local governments to accommodate medical marijuana.

CA(3) (3) As these cases demonstrate, HN3 the facts and circumstances of each case determine whether the Legislature established a comprehensive statutory scheme that impliedly preempts all local regulation on the subject. (*In re Hubbard* (1964) 62 Cal.2d 119, 128 [41 Cal. Rptr. 393, 396 P.2d 809], overruled on another point in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63 [81 Cal. Rptr. 465, 460 P.2d 137]; *Gregory v. City of San Juan Capistrano* (1983) 142 Cal.App.3d 72, 82 [191 Cal. Rptr. 47] (*Gregory*).) "The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 [45 Cal. Rptr. 3d 21, 136 P.3d 821] (*Big Creek Lumber*).) "Whether state law preempts a local ordinance is a question of law that is subject to de novo review." [Citation.]" (*Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 752 [90 Cal. Rptr. 3d 181].)

B. *The Legislature's Comprehensive and Standardized Scheme Regulating Sex Offenders Preempts Irvine's Ordinance*

CA(4) ¶(4) Nguyen contends state law impliedly preempts Irvine section 4-14-803

[***14] because the ordinance regulates an area the state has fully occupied by enacting a comprehensive statutory scheme regulating sex offenders. To evaluate this challenge we must first identify the subject section 4-14-803 regulates and the specific field Nguyen claims is occupied by state law. [*1178] (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 904 [16 Cal. Rptr. 2d 215, 844 P.2d 534] (*Sherwin-Williams*); *Gregory, supra*, 142 Cal.App.3d at p. 84.) Next, we must examine the nature and scope of those state statutes to determine whether they are logically related and establish a "patterned approach" to regulating an area that includes the subject matter covered by section 4-14-803. (*Fisher, supra*, 37 Cal.3d at p. 708; see *Baldwin, supra*, 31 Cal.App.4th at p. 182.) HN4 ¶A preempted field "cannot properly consist of statutes unified by a single common noun," but rather requires closely related statutes that regulate an area in a manner that reveals a legislative intent to occupy the field. (*Galvan v. Superior Court* (1969) 70 Cal.2d 851, 862 [76 Cal. Rptr. 642, 452 P.2d 930] (*Galvan*).)

[**598] 1. *The Relevant State Law Field Includes All Restrictions Imposed on a Sex Offender's Dally Life*

The parties agree Irvine section 4-14-803 regulates a sex offender's ability to visit [***15] a particular type of public place by prohibiting the offender from entering a "... City park and recreational facility where children regularly gather" without the police chief's written permission. (§ 4-14-803.) The ordinance's stated purpose is "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 who were convicted of offenses in which a minor was the victim to be in contact with children." (Irvine Mun. Code, § 4-14-801.)

The district attorney contends we must define the relevant state law field based on Irvine section 4-14-803's subject matter, which regulates "where sex offenders can go." In contrast, Nguyen contends we must define the field based on the state laws regulating sex offenders because those are the provisions that have occupied the field and therefore preempt the local ordinance. We agree we must look to state law to define the relevant field when determining whether the Legislature has fully occupied the area by enacting a comprehensive statutory scheme. (*Fisher, supra*, 37 Cal.3d at p. 708; *Galvan, supra*, 70 Cal.2d at p. 862; [***16] *Baldwin, supra*, 31 Cal.App.4th at p. 182.)

CA(5) ¶(5) The district attorney's test for defining the state law field by looking to the local ordinance's subject matter would turn the preemption analysis on its head and allow local government to define the scope of state law. HNS ¶ The relevant preemption inquiry is whether state law has occupied the field to the exclusion of local regulation, and therefore we look to state law to define the field it purportedly occupies. (*O'Connell, supra*, 41 Cal.4th at p. 1072 [earlier decision erred in narrowly defining field based on subject of local ordinance without considering entire field regulated by the state's comprehensive statutory scheme].) We look to the local ordinance's subject matter to [*1179] determine whether it falls within the state law field, not to define the field. (*Fisher, supra*, 37 Cal.3d at p. 708; *Galvan, supra*, 70 Cal.2d at p. 862.)

Defining the relevant state law field as the district attorney suggests—the regulation of where sex offenders can go—would require us to ignore other state laws designed to achieve the same purpose as Irvine section 4-14-803: protecting children from registered sex offenders by restricting access to locations where children [***17] regularly gather. (Irvine Mun. Code, § 4-14-801.) For example, limiting the relevant field to the geographical restriction of sex offenders would preclude us from considering state laws that restrict sex offenders from living near schools and parks. (§ 3003.5.) The district attorney's analysis similarly would require a

reviewing court to ignore state laws that allow law enforcement officials to monitor certain sex offenders with global positioning devices. (§§ 3000.07, 3004, subd. (b).) It also would eliminate from the analysis state laws that limit or in some cases prohibit registered sex offenders from accepting a job or volunteer position involving direct and unaccompanied contact with minor children. (§ 290.95.) "Where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be **[**599]** measured alone by the language used but by the whole purpose and scope of the legislative scheme.' [Citations.]" (*American Financial, supra*, 34 Cal.4th at p. 1252; see *Lane, supra*, 58 Cal.2d at pp. 102-103.) Defining the field as the district attorney suggests would require us to ignore **[***18]** a significant portion of the purpose and scope of the state's legislative scheme.

Accordingly, we define the relevant field as the restrictions imposed on a sex offender's daily life to reduce the risk he or she will commit another similar offense. As explained below, the Legislature has not only adopted numerous statutes placing geographical restrictions on sex offenders, but also has adopted other regulations governing other aspects of an offender's life to protect the public from future harm. We must consider all of those statutes together to determine whether they establish a "patterned approach" to regulating a sex offender's daily life and manifest a legislative intent to fully occupy the field to the exclusion of all local regulation. (*Fisher, supra*, 37 Cal.3d at p. 708; see *Galvan, supra*, 70 Cal.2d at p. 862; *Baldwin, supra*, 31 Cal.App.4th at p. 182.)

2. The Legislature Enacted a Comprehensive Statutory Scheme That Fully Occupies the Field

The restrictions the Penal Code imposes on a sex offender's daily life include (1) a lifetime duty to register with local law enforcement for each city or county in which the offender resides and to update that registration **[*1180]** annually or upon any **[***19]** relevant change (§§ 290-290.024); (2) a state-maintained Web site that discloses information about the offender to the public (§§ 290.4, 290.45, 290.46); (3) a sex offender's duty to submit to monitoring with a global positioning device while on parole and potentially for the remainder of the offender's life if the underlying sex offense was one of several identified felonies (§§ 3000.07, 3004, subd. (b)); (4) a prohibition against the offender "enter[ing] any park where children regularly gather without the express permission of his or her parole agent" if the victim of the underlying sex offense was under 14 years of age (§ 3053.8, subd. (a)); (5) a prohibition against the offender residing with another sex offender while on parole and within 2,000 feet of a school or park for the rest of the offender's life (§ 3003.5); (6) a prohibition against the offender entering any school without "lawful business" and written permission from the school (§ 626.81); (7) enhanced penalties for the offender remaining at or returning to "any school or public place at or near which children attend or normally congregate" after a school or law enforcement official has asked the offender to leave (§ 653b, **[***20]** italics added); (8) a prohibition against the offender entering a daycare or residential facility for elders or dependent adults without registering with the facility if the victim of the underlying sex offense was an elder or dependent adult (§ 653c); (9) a duty to disclose the offender's status as a sex offender when applying for or accepting a job or volunteer position involving direct and unaccompanied contact with minor children (§ 290.95, subds. (a) & (b)); (10) a prohibition against the offender working or volunteering with children if the victim of the underlying sex offense was under 16 years of age (§ 290.95, subd. (c)); and (11) a prohibition against the offender receiving publicly funded prescription drugs or other therapies to treat erectile dysfunction (§ 290.02).

Considered individually, the language in each of these statutes does not reflect a legislative intent to fully occupy the field of **[**600]** regulating a sex offender's daily life; each statute simply regulates a specific aspect of a sex offender's life. Considered collectively, however, a different picture emerges. The Legislature expressly declared its intent to establish a comprehensive and standardized system for regulating **[***21]** sex offenders when it passed the Sex Offender Punishment, Control, and Containment Act of 2006 (Stats. 2006, ch. 337, p. 2583). That act contains more than 60 sections and made numerous changes to the statutes regulating sex offenders, including adding or amending several of the foregoing statutes.²

(*People v. Cornett* (2012) 53 Cal.4th [*1181] 1261, 1267 [139 Cal. Rptr. 3d 837, 274 P.3d 456].) Among its many provisions, the act created several new offenses, increased the penalties for certain existing offenses, modified the statutes governing parole and probation for sex offenders, and revised the sex offender registration requirements and the system for disseminating information regarding sex offenders to the public and law enforcement. (*Ibid.*)

FOOTNOTES

2 Of the 11 categories of sex offender regulations identified in the previous paragraph, six categories existed before the Legislature enacted the 2006 act (§§ 290, 290.02, 290.4, 290.45, 290.46, 290.95, subds. (a)–(c), 653b); the 2006 act amended or added the regulations in five categories (Stats. 2006, ch. 337, §§ 10, 11, 19.5, 25, 27, 28, pp. 2591, 2617, 2631, 2632, 2633 [adding or amending §§ 290, 290.46, 626.81, 653b, 653c]); a 2006 voter initiative added the regulations in two categories (Prop. 83, §§ 18, 21, 22, as approved [***22] by voters, Gen. Elec. (Nov. 7, 2006), eff. Nov. 8, 2006 [adding §§ 3000.07, 3003.5, subd. (b), 3004, subd. (b)]); and one category of regulations was added after the Legislature enacted the 2006 act (§ 3053.8, subd. (a)).

As part of the 2006 act, the Legislature enacted section 290.03, which states, ^{HN6}¶ The Legislature finds and declares that a *comprehensive system* of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities is necessary to enhance public safety and reduce the risk of recidivism posed by these offenders. ... [¶] ... [¶] ... In enacting the Sex Offender Punishment, Control, and Containment Act of 2006, the Legislature hereby creates a *standardized, statewide system* to identify, assess, monitor and contain known sex offenders for the purpose of reducing the risk of recidivism posed by these offenders, thereby protecting victims and potential victims from future harm." (§ 290.03, subds. (a) & (b), italics added.) A comprehensive system is one that "include[es] or deal[s] with all or nearly all elements or aspects of [that subject]." (See Oxford Online Dict. <<http://oxforddictionaries.com/definition/English/comprehensive>> [***23] [as of Jan. 10, 2014]; see also Merriam-Webster Online Dict. <<http://www.merriam-webster.com/dictionary/comprehensive> [as of Jan. 10, 2014] [defining comprehensive as "covering completely or broadly"].)

^{CA(6)}¶(6) Considering the Legislature's declared intent coupled with the scope and nature of the restrictions the foregoing Penal Code sections imposed, we conclude ^{HN7}¶ the Legislature established a complete system for regulating a sex offender's daily life and manifested a legislative intent to fully occupy the field to the exclusion of Irvine section 4-14-803 and other local regulations. Considered as a whole, these statutes regulate much more than the geographic restrictions imposed on a sex offender. They regulate numerous aspects of a sex offender's life so that both law enforcement and the public can monitor the sex offender on a daily basis. They also restrict the places a sex offender may visit and the people with whom he or she may interact. These Penal Code sections regulate a sex offender's duty to inform law enforcement where he or she resides, law enforcement's ability to track a sex offender's movement through a global positioning device, where and with whom a sex offender may reside, what [***24] sort of jobs or volunteer positions a sex offender may accept, and, most importantly for this case, the public and private places a sex offender may visit. [*1182]

Although the Penal Code does not include a provision identical to the restrictions Irvine section 4-14-803 imposed on all sex offenders entering a public park where children regularly gather, it does include several sections prohibiting or limiting a sex offender's ability to visit many public and private places where children regularly gather. A sex offender on parole for an offense against a child under 14 years of age may not enter a park where children regularly gather without permission from his or her parole agent. (§ 3053.8, subd. (a).) A sex offender may not enter a school without "lawful business" and written permission from the school. (§ 626.81.) A sex offender who remains at or returns to a school or *any other public place* where children

regularly gather after a school or law enforcement official has asked the offender to leave is subject to heightened penalties. (§ 653b.) A sex offender who committed an offense against a child under 16 years of age may not volunteer or work where he or she would have direct and unaccompanied [***25] contact with minor children. (§ 290.95.) Finally, a sex offender may never reside within 2,000 feet of a school or park where children regularly gather. (§ 3003.5, subd. (b).) These restrictions are similar to section 4-14-803's prohibition; indeed, in some aspects they go beyond that prohibition.

Precisely how to restrict a sex offender's access to places where children regularly gather reflects the Legislature's considered judgment on how to protect children and other members of the public from the risk of a sex offender reoffending while also recognizing a sex offender's right to live, work, assemble, and move about the state. (See § 290.03; *American Financial, supra*, 34 Cal.4th at pp. 1258–1259.) The Legislature's enactment of a comprehensive statutory scheme that includes significant restrictions on a sex offender's access to places where children regularly gather, but excludes an outright ban on all sex offenders entering a park without written permission, manifests a legislative determination that such a ban is not warranted. (*O'Connell, supra*, 41 Cal.4th at p. 1072; *American Financial*, at p. 1258; *Lane, supra*, 58 Cal.2d at pp. 103–104.) "In revisiting this area fully occupied [***26] by state law, [Irvine section 4-14-803] undermines the considered judgments and choices of the Legislature, and is therefore preempted." (*American Financial*, at p. 1257.)

Indeed, we see no relevant distinction between the foregoing statutory scheme restricting a sex offender's daily life and other statutory schemes the Supreme Court has found to fully occupy a field even though the state scheme did not include a provision identical to the preempted local ordinance. (*O'Connell, supra*, 41 Cal.4th at pp. 1071–1072 [state law defining drug offenses and penalties for those offenses fully occupied field and preempted local ordinance imposing a penalty the state scheme excluded]; *American Financial, supra*, 34 Cal.4th at pp. 1254–1255 [**602] [state law regulating predatory lending practices in home mortgage industry fully occupied field and preempted local ordinance regulating predatory lending practices for [*1183] mortgages not covered by state law]; *Lane, supra*, 58 Cal.2d at pp. 103–104 [state law regulating criminal aspects of sexual activity fully occupied field and preempted local ordinance criminalizing specific acts state law did not prohibit]; *Abbott v. City of Los Angeles* (1960) 53 Cal.2d 674, 684–685 [3 Cal. Rptr. 158, 349 P.2d 974] (*Abbott*) [***27] [Pen. Code provisions requiring state to collect data on criminals fully occupied field and preempted local ordinance requiring criminals to register with local law enforcement].) Accordingly, we conclude state law preempts Irvine section 4-14-803 because it fully occupies the field section 4-14-803 regulates.³

FOOTNOTES

³ We base our conclusion on the legal standards governing state law preemption of local ordinances. We do not, and indeed may not, consider whether it is more prudent from a policy perspective to allow local government to supplement state legislation regulating sex offenders. (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (2005) 128 Cal.App.4th 307, 316 [26 Cal. Rptr. 3d 845] ["'Crafting statutes to conform with policy considerations is a job for the Legislature, not the courts; our role is to interpret statutes, not to write them.'"]; *Cadiz v. Agricultural Labor Relations Bd.* (1979) 92 Cal.App.3d 365, 372 [155 Cal. Rptr. 213] ["The court should not, of course, be concerned with considerations of legislative policy or wisdom. 'Courts do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature.'"])

The district attorney contends state law does not preempt [***28] Irvine section 4-14-803 because the two statutes Nguyen cites as geographical restrictions on a sex offender (§§ 626.81, 3053.8) are not enough to establish a comprehensive scheme that fully occupies the field.⁴ We do not find this argument persuasive. Adopting this overly narrow and constricted

definition of the relevant state law field would eviscerate the implied preemption doctrine. As explained above, the proper field encompasses the restrictions imposed on a sex offender's daily life to reduce the risk he or she will commit another offense. When all state laws from the relevant field are considered, it is evident the Legislature created a multitude of regulations patterned together to restrict a sex offender's daily life. Contrary to the district attorney's argument, the Legislature's intent to fully occupy a field is determined based on the nature and scope of the statutes the Legislature adopts. What counts is not the number of statutes covering a topic, but the substantive scope of the legislative scheme. (*Galvan, supra*, 70 Cal.2d at pp. 861-862; *Baldwin, supra*, 31 Cal.App.4th at p. 182.)

FOOTNOTES

4 Contrary to the district attorney's assertion, more than just two statutes place geographical [***29] restrictions on sex offenders. (§§ 626.81 [sex offenders entering schools], 653b [sex offenders loitering at schools or public places after being asked to leave], 653c [sex offenders entering daycare or residential facilities for elders and dependent adults], 3053.8 [sex offenders on parole entering parks].)

The district attorney also argues we should not employ a "preemption by volume" strategy because many of the statutes in this field only focus on sex offenders generally rather than the specific subject Irvine section 4-14-803 addresses: geographic restrictions on sex offenders. Although presented under [*1184] a different guise, this argument relies on the same improper definition of the relevant field. As discussed above, implied preemption may not be based solely on the number of statutes "unified by a single common noun." (*Galvan, supra*, 70 Cal.2d at pp. 861-862 ["To approach the issue of preemption as a quantitative problem provides no guidance in determining whether the Legislature intends that local units shall not legislate concerning a particular subject, and further confounds a meaningful solution [**603] to preemption problems by offering a superficially attractive rule of preemption that [***30] requires only a statutory nose count."].) Rather, implied preemption exists when the state statutes are logically related and establish a "patterned approach" to regulating an area that includes the local ordinance's subject matter. (*Id.* at p. 862; *Baldwin, supra*, 31 Cal.App.4th at p. 182; see *Fisher, supra*, 37 Cal.3d at p. 708.) Here, the Penal Code sections at issue are all closely related and establish a patterned approach for regulating a sex offender's daily life to reduce the risk the offender will commit another offense. Section 4-14-803 invokes the same purpose in imposing geographical restrictions and therefore it is preempted. This analysis is not based on a preemption by volume strategy, as the district attorney contends.

Next, the district attorney argues the Penal Code sections discussed above do not establish a legislative intent to preempt the field because some of them include a provision stating, "Nothing in this section shall preclude or prohibit prosecution under any other provision of law." (§§ 626.81, subd. (d); 653b, subd. (e); 653c, subd. (e).) According to the district attorney, this provision allows prosecution under local ordinances regarding the subject of these [***31] statutes (sex offenders entering schools, sex offenders loitering at schools or public places after being asked to leave, and sex offenders entering daycare or residential facilities for elders and dependent adults) and therefore shows the Legislature did not intend to preempt additional regulations of sex offenders. The district attorney is mistaken.

HNS CA(7) (7) "[P]reemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." [Citation.] (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1157; see *Abbott, supra*, 53 Cal.2d at p. 683.) These rules apply when the state expressly authorizes or acknowledges local regulation on the subject. For example, in *Big Creek Lumber*, the Supreme Court found state law regarding timber harvesting did not preempt local zoning ordinances establishing the permissible location for timber operations because state law expressly authorized and deferred to local zoning authority concerning the location of

timber production zones. (*Big Creek Lumber*, at pp. 1153, 1157.) Similarly, in *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853 [118 Cal. Rptr. 2d 746, 44 P.3d 120], **[***32]** the Supreme Court found state law regulating gun shows did not impliedly preempt a local ordinance banning shows on **[*1185]** county-owned property because the state law expressly required gun show operations to comply with all local laws and regulations. (*Id.* at pp. 864–866; see *Sherwin-Williams, supra*, 4 Cal.4th at pp. 904–905.) Here, the Penal Code sections on which the district attorney relies neither authorize nor acknowledge local regulation of sex offenders.⁵

FOOTNOTES

⁵ We note one of the foregoing Penal Code sections expressly authorizes local regulation. Specifically, section 3003.5, subdivision (c) states, "Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290." The district attorney, however, does not argue this language establishes a legislative intent to allow local regulation on any topic other than a sex offender's residency, nor does the district attorney argue this language prevents a finding state law impliedly preempts Irvine section 4-14-803. Instead, the district attorney acknowledges this subdivision was adopted by the voters through the **[***33]** initiative process, and therefore reflects the voters' intent, not the Legislature's intent. (Prop. 83, § 21, as approved by voters, Gen. Elec. (Nov. 7, 2006), eff. Nov. 8, 2006.) Accordingly, we view this subdivision as a voter-created exception to the comprehensive statutory scheme regulating a sex offender's daily life that in no way undermines the Legislature's intent to fully occupy the field. If anything, the initiative implicitly recognizes the statutory scheme preempts local regulation unless the voters carve out an exception.

[604]** The district attorney next argues the Legislature's declaration of intent in section 290.03 does not establish an intent to preempt the field of regulating sex offenders because the Legislature did not expressly state it intended to occupy the field to the exclusion of local regulation. According to the district attorney, the Legislature knew how to state its intent to preempt the field when it intended to do so (see Gov. Code, § 53071.5, subd. (a) ["By the enactment of this section, the Legislature occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms ... and that subdivision shall preempt and be exclusive of all **[***34]** regulations relating to the manufacture, sale, or possession of imitation firearms"]), and the mere declaration of a state interest in a subject matter is not sufficient to fully occupy a field (see *Baldwin, supra*, 31 Cal.App.4th at p. 175 ["[P]reemption cannot be accomplished by a statute which merely declares that a field is preempted. The Legislature may not preempt the exercise of the police power negatively, merely by forbidding its exercise."]).

This argument, however, fails to recognize that preemption may be either express or implied. (*American Financial, supra*, 34 Cal.4th at p. 1261 ["Of course, by definition, the Legislature's implicit full occupation of a field occurs only when there is no express intent in the state law."].) Moreover, section 290.03 does more than just express a state interest in regulating sex offenders. The Legislature in section 290.03 declared the need for "a *comprehensive system* of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities" and therefore created "a *standardized, statewide system* to identify, assess, monitor and contain known sex offenders." (§ 290.03, subds. (a) & (b), italics **[***35]** added.) **[*1186]** Contrary to the district attorney's contention, the Legislature did not declare an intent to occupy the field but then fail to enact statutes occupying the field. (See *Baldwin, supra*, 31 Cal.App.4th at p. 175.) As explained above, the Legislature enacted numerous statutes to occupy the field and its declared intent in section 290.03 underscores that intent.

The district attorney also argues the Legislature's express intent in section 290.03 to create a standardized statewide monitoring system for known sex offenders does not establish a legislative intent to fully occupy the field because the Sex Offender Punishment, Control, and Containment Act of 2006 that enacted section 290.03 only added or amended one code section placing geographical restrictions on sex offenders. According to the district attorney, we must focus on what the Legislature did—not what it said—and enacting one code section regulating where sex offenders may go does not establish an intent to fully occupy the field. Again, the district attorney reaches this conclusion by viewing the Legislature's statutory **【**605】** scheme through the narrow prism of the local regulation, thereby ignoring the scope and purpose of section 290.03. **【***36】** As explained above, the relevant state law field for our preemption analysis is the regulation of a sex offender's daily life. When the 2006 act is reviewed with that field in mind, the act amended or added more than just one code section. (Stats. 2006, ch. 337, §§ 10, 11, 13–17, 19, 25, 27, 28, 47, pp. 2591, 2606–2610, 2611, 2631, 2632, 2633, 2657.) The district attorney's argument ignores the many other code sections regulating a sex offender's daily life that already existed in 2006 and additional regulations that have been added since that time. The 2006 act cannot be viewed in isolation when considering the Legislature's declared intent to create a comprehensive, statewide system regulating sex offenders.

CA(8) ¶(8) Next, the district attorney argues we should presume Irvine section 4-14-803 is valid because it falls within the scope of local government's traditional police power. The district attorney, however, fails to acknowledge when a presumption against preemption properly arises and fails to show that presumption applies in this case. ^{HNS} California courts will presume a local regulation is not preempted by state law when the local regulation is in an "area" over which local government traditionally has exercised control, but the mere exercise **【***37】** of a local government's police power is not sufficient to invoke the presumption against preemption. (See *City of Riverside, supra*, 56 Cal.4th at pp. 742–743; *Big Creek Lumber, supra*, 38 Cal.4th at pp. 1149, 1151.) Land use regulation is the classic example of an area in which a local regulation is entitled to a presumption against preemption. (*City of Riverside, supra*, at pp. 742–743; *Big Creek Lumber, supra*, at pp. 1149, 1151.) **【*1187】**

There is no presumption against preemption when a local ordinance regulates in an area historically dominated by state regulation. (*American Financial, supra*, 34 Cal.4th at p. 1255; cf. *Hood v. Santa Barbara Bank & Trust* (2006) 143 Cal.App.4th 526, 537 [49 Cal. Rptr. 3d 369] ["There is a general presumption against preemption *unless* the state regulates in an area where there has been a 'significant federal presence.' " (italics added)].) Moreover, "[w]hen there is a doubt as to whether an attempted regulation relates to a municipal or to a state matter, or if it be the mixed concern of both, the doubt must be resolved in favor of the legislative authority of the state." [Citations.]" (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 582 [143 Cal. Rptr. 3d 529, 279 P.3d 1022].)

Sex offender **【***38】** registration is an area the state has traditionally regulated. The Penal Code has included a "comprehensive scheme" regarding sex offender registration since 1947, when the Legislature first enacted section 290 to require sex offenders to register with local law enforcement by providing a written statement, fingerprints, and a photograph. (*Wright v. Superior Court* (1997) 15 Cal.4th 521, 526 [63 Cal. Rptr. 2d 322, 936 P.2d 101]; see Stats. 1947, ch. 1124, § 1, pp. 2562–2563; *Abbott, supra*, 53 Cal.2d at pp. 676, 684 [1960 Supreme Court decision holding state law fully occupies the field of criminal registration for all types of offenses, not just sex offenses].) Since at least 1982, the Penal Code also has included limitations on a sex offender's ability to visit certain places. (See Stats. 1982, ch. 1308, § 1, p. 4818 [prohibiting a sex offender from entering a school unless **【**606】** he or she is a parent of a student or has written permission].) As explained above, the Legislature also has enacted many other restrictions on a sex offender's daily life in the ensuing years. The district attorney, however, fails to cite any local efforts to regulate sex offenders other than Irvine section 4-14-803 and similar ordinances several cities **【***39】** and the County of Orange have adopted since late 2010.⁶ Accordingly, the presumption against state law preemption does not apply to

section 4-14-803.

FOOTNOTES

⁶ Since 2010, the following 15 Orange County cities plus the County of Orange (Orange County Code, §3-18-3) have adopted ordinances similar to Irvine section 4-14-803 and still maintain these ordinances: Anaheim (Anaheim Mun. Code, § 7.60.020); Costa Mesa (Costa Mesa Mun. Code, § 11-203); Fullerton (Fullerton Mun. Code, § 7.150.050); Huntington Beach (Huntington Beach Mun. Code, § 9.22.030); La Habra (La Habra Mun. Code, § 9.66.030); Laguna Hills (Laguna Hills Mun. Code, § 6-40.030); Los Alamitos (Los Alamitos Mun. Code, § 9.14.030); Mission Viejo (Mission Viejo Mun. Code, § 11.23.030); Orange (Orange Mun. Code, § 9.10.030); Rancho Santa Margarita (Rancho Santa Margarita Mun. Code, § 6.13.030); Santa Ana (Santa Ana Mun. Code, § 10-702); Seal Beach (Seal Beach Mun. Code, § 7.70.020); Tustin (Tustin Mun. Code, § 5953); Westminster (Westminster Mun. Code, § 9.71.030); and Yorba Linda (Yorba Linda Mun. Code, § 9.28.030).

Finally, the district attorney argues the regulation of parks is an area local governments traditionally have controlled and therefore **[***40]** we should presume **[*1188]** state law does not preempt Irvine section 4-14-803. Section 4-14-803, however, does not regulate parks; it regulates sex offenders. Indeed, section 4-14-803's declared purpose and intent is "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 chapter." (Irvine Mun. Code, § 4-14-801.) Accordingly, section 4-14-803 attempts to supplement state law regulations on sex offenders. But the district attorney fails to cite any authority showing regulation of sex offenders is an area local governments traditionally have controlled.

C. State Law Impliedly Preempts Irvine Section 4-14-803 Based on Its Implicit Registration Requirement

In addition to its prohibition against a sex offender entering city parks and recreational facilities without written permission, Irvine section 4-14-803 also regulates a sex offender's duty to register with local law enforcement. Implicit in the ordinance's written permission requirement is the obligation to apply to the Irvine Police Chief if a sex offender wishes to visit a city park and recreational facility. Section 4-14-803 **[***41]** does not establish a procedure for a sex offender to obtain the required permission, but presumably the offender at least must provide identification and contact information to the police chief, explain why he or she wants to enter a specific city park and recreational facility, and identify the sex offense for which he or she was convicted.⁷ That is a de facto registration requirement that goes beyond the Penal Code's standardized registration requirements for sex offenders and therefore constitutes an independent ground for finding state law preempts section 4-14-803.

FOOTNOTES

⁷ The complete absence of any provisions regarding how a registered sex offender may obtain permission to enter a city park and recreational facility or what standards the Irvine Police Chief must apply in deciding whether to grant permission raise questions about the validity of the ordinance. We need not delve into this issue, however, because the parties did not raise the matter.

As explained above, sex offender registration is an area the state has traditionally regulated since 1947, when the Legislature **[**607]** placed in the Penal Code a "comprehensive scheme" regarding sex offender registration. (*Wright, supra*, 15 Cal.4th at p. 526; **[***42]** see Stats. 1947, ch. 1124, § 1, pp. 2562-2563.) Other than Irvine section 4-14-803

and similar ordinances recently adopted by the County of Orange and several local cities, the district attorney fails to cite any examples of local governments legislating in the sex offender registration domain. (See *American Financial, supra*, 34 Cal.4th at p. 1255 [in determining whether Legislature intended to impliedly preempt field, courts must consider whether the subject matter was historically controlled by state regulation].) [*1189]

More than 50 years ago, the California Supreme Court held state law fully occupied the field of criminal registration for all types of offenses, not just sex offenders. (*Abbott, supra*, 53 Cal.2d at pp. 676, 684.) In *Abbott*, the City of Los Angeles enacted an ordinance that made it unlawful for any person convicted of a felony or certain identified misdemeanors to remain in the city for more than five days without registering with the police chief. (*Id.* at p. 676 & fn. 1.) Although section 290 was the only Penal Code section that required a person convicted of any type of crime to register with local law enforcement, the *Abbott* court found section 290, combined with other Penal Code [***43] sections, fully occupied the entire field of criminal registration. Those other Penal Code sections required the state to maintain files and identifying information about offenders who committed certain crimes, which allowed the state to monitor them in the same way as the registration requirements section 290 imposed. (*Abbott*, at pp. 684–687.) Accordingly, the Supreme Court concluded, "An examination of the Penal Code ... indicates that the state Legislature has preempted the very field of registration as a means of apprehension of criminals. This it has done by expressly requiring registration in some instances and by inferentially rejecting it in others. Thus, in this basic respect the state statutes and the local ordinance are in conflict [and the state statutes therefore preempt the local ordinance requiring criminal registration]." (*Id.* at p. 685.)

In its current form, California's Sex Offender Registration Act (§§ 290–290.024) establishes a more detailed and comprehensive statutory scheme than section 290 established when the Supreme Court decided *Abbott*. The current act defines a sex offender's lifetime duty to register with local law enforcement for each city or county [***44] in which he or she regularly resides (§§ 290, subd. (b), 290.010); who must register as a sex offender (§§ 290, subd. (c), 290.001–290.009); the information law enforcement personnel must provide to a sex offender regarding his or her duty to register (§ 290.017); the information a sex offender must provide when registering (§§ 290.015, 290.016); a sex offender's duty to update his or her registration annually and also within five working days of any change in his or her residence or name (§§ 290.012–290.014); how and with whom a transient sex offender must register (§ 290.011); and misdemeanor and felony punishment for a sex offender who fails to properly register (§ 290.018). Other Penal Code sections also require a sex offender to register with campus police when he or she enrolls or works at any college or university regardless of where the sex offender resides (§ 290.01) and require the state to maintain a Web site and otherwise publicly disclose certain information regarding all [**608] registered sex offenders (§§ 290.4, 290.45, 290.46). [*1190]

HN10 CA(9) (9) These provisions "are so extensive in their scope that they clearly show an intention by the Legislature to adopt a general scheme for the regulation [***45] of " sex offender registration. (*American Financial, supra*, 34 Cal.4th at pp. 1254–1255; see *Lane, supra*, 58 Cal.2d at pp. 103–104; see also *O'Connell, supra*, 41 Cal.4th at pp. 1071–1072; *Abbott, supra*, 53 Cal.2d at pp. 684–685.) Accordingly, we conclude state law impliedly preempts Irvine section 4-14-803 based on the implicit registration requirement it imposes on sex offenders who wish to enter a city park and recreational facility.

The district attorney contends the Penal Code provisions on sex offender registration do not preempt Irvine section 4-14-803 because the ordinance does not include an implicit registration requirement analogous to the Penal Code's registration requirement. According to the district attorney, the Penal Code provisions require all sex offenders to register with local law enforcement based solely on a disability suffered in the past—a conviction for one or more enumerated sex offenses. In contrast, the district attorney contends section 4-14-803 is merely a prospective licensing or permit provision that allows sex offenders to obtain permission to voluntarily engage in a specific activity in which they otherwise would not be allowed to

engage—entering a city park and recreational [***46] facility where children regularly gather.

The district attorney relies on *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277 [219 Cal. Rptr. 467, 707 P.2d 840] (*Cohen*). There, a city ordinance required anyone who wanted to operate an escort service to obtain a permit by applying to the city, paying a fee, and providing certain identifying and background information. (*Id.* at pp. 284–285.) A taxpayer challenged the ordinance on preemption grounds, arguing the ordinance “impermissibly seeks to regulate the criminal aspects of sexual conduct, an area of legislation preempted by state law through our Penal Code.” (*Id.* at p. 290.) The Supreme Court rejected this challenge because it viewed the ordinance as merely a business regulation requiring escort services to obtain a permit before conducting business within the city, not an attempt to regulate the criminal aspects of sexual activity. Because no state law provision regulated escort services or their licensing, the *Cohen* court found the ordinance was a valid exercise of the city’s licensing power and was not preempted by state law. (*Id.* at pp. 295–296.)

Cohen is readily distinguishable. Irvine section 4-14-803 is not a licensing or permit regulation like the ordinance in *Cohen*; [***47] it is a sex offender regulation. The ordinance in *Cohen* applied to anyone who wanted to operate [*1191] an escort service, but section 4-14-803 only applies to sex offenders. No one who wants to enter a city park and recreational facility is required to apply to the Irvine Police Chief for permission other than sex offenders. As explained above, section 4-14-803’s declared intent is “to provide additional restrictions beyond those provided for in state law by restricting sex offenders from certain limited locations.” (Irvine Mun. Code, § 4-14-801.)

Moreover, *Cohen* found the city’s ordinance was not preempted because state law did not include a provision regulating escort services or requiring them to obtain a license or permit. Here, the Penal Code [**609] includes numerous provisions that require sex offenders to register with law enforcement in the city where they reside. Irvine section 4-14-803 effectively includes an additional registration requirement because it requires any sex offender who wants to visit a city park and recreational facility to apply to the Irvine Police Chief, provide identification and contact information, explain why he or she wants to enter a specific park, and provide information [***48] regarding the sex offense for which he or she was convicted. This requirement effectively requires sex offenders who want to enter a city park and recreational facility to register with a law enforcement agency in addition to the police department for the city in which they reside by providing much of the same information. Accordingly, we conclude the written permission requirement is a de facto or implicit registration requirement preempted by Penal Code registration requirements.

Finally, the district attorney argues we need not invalidate Irvine section 4-14-803 in its entirety if we conclude state law preempts the written permission requirement in the ordinance. According to the district attorney, we may sever the written permission requirement and allow the remainder of section 4-14-803 to remain as an outright ban on all sex offenders entering a city park and recreational facility where children regularly gather. We decline to do so.

HN11 CA(10) (10) When part of a local ordinance is preempted or otherwise invalid, local officials may enforce the remainder of the ordinance if the preempted or invalid part can be severed. (*Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 613 [88 Cal. Rptr. 2d 56, 981 P.2d 990] [***49] (*Hotel Employees*).) A preempted or invalid part of an ordinance “can be severed if, and only if, it is ‘grammatically, functionally and volitionally separable.’ [Citation.]” (*Ibid.*) If the ordinance “is not severable, then the void part taints the remainder and the whole becomes a nullity.” (*Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315, 330 [118 Cal. Rptr. 637, 530 P.2d 605]; see *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 747 [53 Cal. Rptr. 3d 203].) [*1192]

CA(11) (11) The invalid part “is ‘grammatically’ separable if it is ‘distinct’ and ‘separate’ and, hence, ‘can be removed as a whole without affecting the wording of any’ of the measure’s ‘other provisions.’ [Citation.] ...’ [Citation.]” (*Jevne v. Superior Court* (2005) 35 Cal.4th 935,

960-961 [28 Cal. Rptr. 3d 685, 111 P.3d 954] (*Jevne*); *Hotel Employees, supra*, 21 Cal.4th at p. 613.) "To be grammatically separable, the valid and invalid parts of the statute can be separated by paragraph, sentence, clause, phrase, or even single words." (*Abbott Laboratories v. Franchise Tax Bd.* (2009) 175 Cal.App.4th 1346, 1358 [96 Cal. Rptr. 3d 864] (*Abbott Laboratories*)). Here, Irvine section 4-14-803's preempted written permission requirement is grammatically separable because the clause "without written permission from the Director of Public Safety/Chief [***50] of Police or his designee" can be removed and section 4-14-803 would then be an outright ban that reads as follows: "Any person who is required to register pursuant to California Penal Code section 290 et seq., where such registration is required by reason of an offense for which the person was convicted and in which a minor was the victim, and who enters upon or into any City park and recreational facility where children regularly gather ... is guilty of a misdemeanor." (§ 4-14-803.)

HN12 CA(12) (12) "To be functionally separable, the remainder after separation of the invalid part must be 'complete in itself' " [***610] and 'capable of independent application.' [Citation.]" (*Abbott Laboratories, supra*, 175 Cal.App.4th at p. 1358.) An invalid portion of an ordinance "is 'functionally' separable if it is not necessary to the measure's operation and purpose. [Citation.] ..." [Citation.]" (*Jevne, supra*, 35 Cal.4th at p. 961; see *Hotel Employees, supra*, 21 Cal.4th at p. 613.) Here, Irvine section 4-14-803 is complete in itself and capable of independent application after the written permission requirement is removed, but whether that requirement is necessary to section 4-14-803's operation and purpose is more problematic. [***51] As we explain below, nothing in section 4-14-803 suggests Irvine intended to adopt a complete ban on sex offenders entering a city park and recreational facility, but that is what section 4-14-803 would require if we sever the written permission requirement.

HN13 CA(13) (13) "To be volitionally separable, '[t]he final determination depends on whether 'the remainder ... is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute' ... or 'constitutes a completely operative expression of the legislative intent.'" [Citation.]" (*Abbott Laboratories, supra*, 175 Cal.App.4th at p. 1358.) An invalid portion of an ordinance "is 'volitionally' separable if it was not of critical importance to the measure's enactment. [Citation.]' [Citation.]" (*Jevne, supra*, 35 Cal.4th at p. 961; see *Hotel Employees, supra*, 21 Cal.4th at p. 613.)

We conclude Irvine section 4-14-803's written permission requirement is not volitionally separable because the district attorney fails to demonstrate, [***1193] either by the ordinance's express terms or its history, Irvine intended a complete and outright ban against sex offenders entering a city park or recreational facility, [***52] no matter the circumstances. An invalid portion of an ordinance is volitionally separable if the remainder of the ordinance reflects a substantial portion of the legislative body's purpose in passing the ordinance. (*Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 715 [25 Cal. Rptr. 2d 449, 863 P.2d 694].) Here, allowing the remainder of section 4-14-803 to stand as an outright ban on sex offenders entering a city park or recreational facility would go beyond Irvine's intent in passing section 4-14-803.

As adopted, Irvine section 4-14-803 allowed sex offenders to obtain permission to enter a city park and recreational facility. For example, section 4-14-803 would allow an offender to apply for and potentially obtain permission to view sporting events or other activities of his or her child at a city park or recreational facility. Nothing in the ordinance adopting section 4-14-803 suggests Irvine intended to entirely prohibit all sex offenders from entering city parks and recreational facilities even under these innocent circumstances.

To the contrary, the ordinance adopting Irvine section 4-14-803 includes a purpose and intent section that reveals Irvine sought to restrict the use of city parks and recreational facilities [***53] by sex offenders, but not impose an outright ban: "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 who were convicted of offenses in which a

minor was the victim to be in contact with children. It is further the intent of this chapter to provide additional *restrictions* beyond those provided for in **[**611]** state law by *restricting* sex offenders from certain limited locations" (Irvine Mun. Code, § 4-14-801, italics added.) To restrict is "to confine or keep within limits, as of space, action, choice, intensity, or quantity." (Dictionary.com <<http://dictionary.reference.com/browse/restrict>> [as of Jan. 10, 2014].) Restrict is not synonymous with either ban or prohibit.

^{CA(14)}¶(14) Accordingly, the express specific intent of the ordinance compels us to conclude Irvine did not intend to adopt an outright ban on sex offenders entering city parks and recreational facilities if the written permission requirement in Irvine section 4-14-803 was invalidated. ^{HN14}¶ This court has no power to rewrite **[***54]** the [ordinance] to make it conform to a presumed intention which its terms do not express." (*Abbott Laboratories, supra*, 175 Cal.App.4th at p. 1360.) **[*1194]**

III

DISPOSITION

The judgment is affirmed.

Fybel, J., and Thompson, J., concurred.

CONCUR BY: Fybel, J.

CONCUR

FYBEL, J., Concurring.—

I agree with the majority that a local ordinance regulating the conduct of Penal Code section 290 registrants is preempted by California state law on the same subject. I write separately to emphasize that legislative declarations and findings expressly creating a "*standardized, statewide system*" (Pen. Code, § 290.03, subd. (b), italics added) and a "comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities" (*id.*, § 290.03, subd. (a)) compel the conclusion these state statutes preempt the ordinance.

Penal Code section 290.03, subdivision (b), enacted by the state Legislature and signed by the Governor, contains this express finding and declaration: "In enacting the Sex Offender Punishment, Control, and Containment Act of 2006, the Legislature hereby creates a *standardized, statewide system* to identify, assess, *monitor and contain* known **[***55]** sex offenders for the purpose of reducing the risk of recidivism posed by these offenders, thereby protecting victims and potential victims from future harm." (Italics added.) Section 290.03, subdivision (a) provides that "[t]he Legislature finds and declares that a *comprehensive system* of risk assessment, supervision, *monitoring and containment* for registered sex offenders *residing in California communities* is necessary to enhance public safety and reduce the risk of recidivism posed by these offenders." (Italics added.)

In view of these express legislative declarations and findings—and the content of the statutes discussed in the majority opinion—the requirements for preemption established by the California Constitution and the California Supreme Court have been satisfied. The key legal authorities on state preemption begin with article XI, section 7 of the California Constitution: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

What does "in conflict with general laws" mean? On this subject, the California Supreme Court

has summarized the applicable principles: "Under article XI, section 7 of the California Constitution, [***56] "[a] county or city may [*1195] make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general [state] laws." [¶] "If otherwise valid local legislation conflicts [**612] with state law, it is preempted by such law and is void." [Citations.] [¶] "A conflict exists if the local legislation 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' " [Citations.]' [Citations.]" (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 [63 Cal. Rptr. 3d 67, 162 P.3d 583].)

JeanPierre Cuong Nguyen argues the state law impliedly preempts the ordinance by fully occupying the field. The Supreme Court in *O'Connell v. City of Stockton, supra*, 41 Cal.4th at page 1068, observed, "[w]here the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme." [Citation.] In adopting Penal Code section 290.03, the Legislature expressed its intent to occupy the field of regulating registered sex offenders on a standardized, [***57] statewide basis.

I also write to emphasize that whether the ordinance is wise, reasonable, or necessary is not an issue before us. The only issue before us is whether the state statute preempts the ordinance. Based on this analysis and the words of Penal Code section 290.03, it is clear to me the state intended to fully occupy the field of regulating registered sex offenders. The ordinance is therefore unconstitutional under article XI, section 7 of the California Constitution. If the Legislature wishes to do so, it can amend Section 290.03 to permit local ordinances.

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ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY,
CALIFORNIA, REPEALING TITLE 8, CHAPTER 8.24 OF
THE SUISUN CITY ORDINANCE REGULATING SEX OFFENDER'S
PROXIMITY TO CHILDREN'S FACILITIES

WHEREAS, the current Chapter 8.24 of the Suisun City Municipal Code prohibits a sex offender from being on or within one thousand feet of a facility frequented by children; and

WHEREAS, two State Appeals Courts recently found that similar ordinances in Orange County and the City of Irvine were void because they were preempted by the state law regulating sex offender; and

WHEREAS, several cities which have similar ordinances have received threats of litigation if they do not repeal their ordinances; and

WHEREAS, the cities of El Centro, Costa Mesa, Duarte, Lancaster, Palmdale, Lake Forest, El Dorado County and Redlands have repealed their ordinances relating to regulating sex offender's proximity to children's facilities; and

WHEREAS, subsequent to these two court decisions, the City was recently notified of a threat of litigation if the ordinance was not repealed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUISUN CITY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1.

Title 8, Chapter 8.24 of the Suisun City Code relating to the Sex Offender's Proximity to Children's Facilities is hereby amended as follows:

Sections

8.24.010 – Repealed

8.24.020 – Repealed

8.24.030 – Repealed

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PASSED, APPROVED, AND ADOPTED as an Ordinance at a regular meeting of the City Council of the City of Suisun City, California, on this ___th day of ___ 2014.

Pete Sanchez
Mayor

CERTIFICATION

I, Linda Hobson, City Clerk of the City of Suisun City, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on June 17, 2014, and passed, approved, and adopted by the City Council of the City of Suisun City at a regular meeting held on the ___th day of ___ 2014 by the following vote:

AYES: Councilmembers: _____
NOES: Councilmembers: _____
ABSENT: Councilmembers: _____
ABSTAIN: Councilmembers: _____

WITNESS my hand and the seal of said City this ___th day of ___ 2014.

Linda Hobson, CMC
City Clerk