

ORDINANCE # _____

**AN ORDINANCE OF THE KANNAPOLIS CITY COUNCIL PROHIBITING
THE PRESENCE OF REGISTERED SEX OFFENDERS IN CITY PARKS AND
RECREATION FACILITIES**

WHEREAS, the City of Kannapolis owns and maintains its park system and recreation facilities in a manner that is meant for the peaceful enjoyment of children and other citizens; and

WHEREAS, currently there are at least 187 registered sex offenders residing in Cabarrus County, and at least 191 registered sex offenders whom reside in Rowan County according to the data provided by the Kannapolis Police Department, via the North Carolina Sex Offender and Public protection Registry database; and

WHEREAS, there is a substantial rate of recidivism amongst sexual offenders; and

WHEREAS, the City of Kannapolis park system consists of public spaces wherein sexual predators may attempt to find victims; and

WHEREAS, sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment, and protection of the public from sex offenders is of paramount governmental interest; and

WHEREAS, it is in the interest of promoting general welfare and safety of the residents of the City of Kannapolis to reduce opportunities for sexual predators to make use of public spaces for criminal intent; and

WHEREAS, this ordinance prohibiting registered sex offenders from entering Parks and Recreation Facilities is rationally related to the legitimate government interest of protecting Parks and Recreation Facilities visitors from becoming victims of sexual crimes; and

WHEREAS, the City of Kannapolis has a legitimate government interest in desiring to decrease and eliminate sexual crimes in its Parks and Recreation Facilities, and prohibiting those most likely to commit criminal sexual acts – persons previously convicted of such conduct and meeting the definition of a Registered Sex Offender– from entering the City’s Parks and Recreation Facilities is a rational method of furthering that goal; and

WHEREAS, the Kannapolis City Council finds it in the best interest of the residents and visitors of Kannapolis to prohibit and ban registered sex offenders from its Parks and Recreation Facilities; and

WHEREAS, North Carolina General Statute § 153A-169 provides that the city council shall supervise the use of all city property and may adopt by ordinance regulations concerning the use of city property;

NOW THEREFORE, BE IT ORDAINED BY THE KANNAPOLIS CITY COUNCIL THAT THE FOLLOWING ORDINANCE BE AND HEREBY IS ADOPTED:

ORDINANCE PROHIBITING THE PRESENCE OF REGISTERED SEX OFFENDERS IN CITY PARKS AND RECREATION FACILITIES

Definitions

Section 1: Definitions. Whenever used in this Ordinance, the following terms, unless otherwise therein expressly defined, shall mean and include each of the meanings herein set forth:

§1.1 - “City” means City of Kannapolis.

§1.2 - “Department” means the Kannapolis Parks and Recreation Department.

§1.3 - “Park” means all parks, playgrounds, recreation facilities, greenways, water areas, wildlife refuges, nature preserves or other recreation areas, including any adjacent public parking area as well as the driveway, entrance way or pedestrian walkway used by the public to access the Park or Recreation Facility, developed or undeveloped, and structures thereon, owned, operated, leased or managed by the City.

§1.4 - “Official Meeting” means a meeting that is required to be open to the public by the Open Meetings Law, Article 33C of Chapter 143 of the North Carolina General Statutes.

§1.5 - “Recreation Facility” means any publicly owned, leased, operated or maintained property that is designated or used as a Recreation Facility by the City, including any adjacent public parking area as well as the driveway, entrance way or pedestrian walkway used by the public to access the recreation facility.

§1.6 - “Registered Sex Offender” means any individual who is required to register or is registered with the North Carolina Sex Offender and Public Protection Registry (established under Article 27A of Chapter 14 of the North Carolina General Statutes) or, the Dru Sjodin National Sex Offender Public Registry (maintained by the United States Department of Justice), or any other official state or federal registered sex offender listing maintained by either the United States Department of Justice or any of the several states. For purposes of determining if an individual is registered or is required to register with any one of the official registries, law enforcement officers may rely upon the official website of any state or federal registry of sex offenders and the descriptions published and available from such registry.

Prohibition

Section 2: Prohibition. No Registered Offender Registry shall enter into or upon any Park or Recreation Facility owned, operated or maintained by the City except as permitted by Section 3 of this Ordinance.

Limited Exceptions

Section 3: Limited Exceptions.

§3.1 - Polling Place - When a Park or Recreation Facility is used as a polling place for an election, the Registered Sex Offender may enter for the limited purpose of voting if he has right to vote and qualifies to do so at that polling place.

§3.2 - Official Meetings - A Registered Sex Offender who has the right to be present at an Official Meeting shall have the limited privilege of entering on and into a Park or Recreation Facility for such time as is necessary to attend said meeting or function, but any form of loitering or lingering shall be a violation of this Ordinance.

The privilege shall only extend to those parts of the Park and/or Recreation Facility that are commonplace for meetings of that kind and any Registered Sex Offender found outside of those parts shall be punished as outlined in Section 7 below.

§3.3 - Consistency with the Jessica Lunsford Act After November 30, 2008, any action prohibited by this Ordinance that would also be a violation of N.C.G.S. § 14-208.18 (2008) shall no longer be considered a violation of this Ordinance.

For example, after November 30, 2008:

1. A Registered Sex Offender who enters a Park playground will no longer be in violation of this Ordinance because of the prohibition of the same conduct by N.C.G.S. § 14-208.18(a)(1) (2008);
2. A Registered Sex Offender who enters Park property that is held open to the general public that at the time in question is being used for a youth birthday party may not be deemed in violation of this Ordinance because of the prohibition of the same conduct by N.C.G.S. § 14-208.18(a)(2) (2008); and
3. A Registered Sex Offender will not be in violation of this Ordinance for being on Park property where minors have gathered for regularly scheduled recreational programs because of the prohibition of the same conduct by N.C.G.S. § 14-208.18(a)(3) (2008).

Scope

Section 4: Territorial Scope. This Ordinance shall be effective within and upon all City Parks and Recreation Facilities and shall regulate the use thereof by all persons.

Enforcement

Section 5: Enforcement

§ 5.1: Enforcement. Duly sworn law enforcement officers with jurisdiction within City of Kannapolis Parks and Recreation Facilities shall have the duty to enforce this Ordinance.

§5.2 Detaining a Subject. A law enforcement officer may detain a person within a Kannapolis Park or Recreation Facility Center under this Ordinance for a reasonable amount of time to inquire about that person's status as a Registered Sex Offender if the officer reasonably believes, or has probable cause to believe, that the person is a Registered Sex Offender who is in violation of this Ordinance or has committed a crime for which the person, if convicted, could be required to register as a sex offender. Nothing in this section shall limit a law enforcement officer from running any background check that is currently permissible under the law.

Construction of Ordinance

Section 6: Construction. In the interpretation of this Ordinance: (1) Any term in the singular shall include the plural; (2) Any term in the masculine shall include the feminine and the neuter; (3) any requirement or prohibition of any act shall, respectively, extend to and include the causing or procuring, directly or indirectly, of such act; (4) No provision hereof shall make unlawful any act necessarily performed by any officer or employee of the City or the Department in the line of duty or work as such, or by any person, his agents or employees, in the proper and necessary execution of the terms of any agreement of the City or the Department; (5) This Ordinance is in addition to and supplements State law.

Penalty

Section 7: Penalties. Violation of Section 2 of this Ordinance shall be a Class 3 Misdemeanor and shall be punishable by a fine of up to five hundred dollars (\$500.00) and or incarceration for a period of time as outlined in N.C.G.S. 15A-1340.20 et seq. Each and every entrance into a Park or Recreation Facility as defined herein, regardless of the time period between such entries, shall constitute a separate offense under this Ordinance and shall subject the Registered Sex Offender to a separate penalty.

Severability

Section 8: Severability. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portions of this Ordinance.

Signage Required

Section 9: Signage. Each public park or recreational facility shall be posted to the effect that Registered Sex Offenders are prohibited. A separate sign or posting indicating that Registered Sex Offenders are prohibited shall be sufficient. Having been posted as required hereunder, subsequent unauthorized removal of such notice, sign or posting, or the damage or destruction of such sign, notice or posting shall not excuse a violation of this Ordinance.

Effective

Section 10: Effective. This Ordinance shall become effective upon adoption.

Adopted the ____ day of _____, 2008.

Robert S. Misenheimer, Mayor

ATTEST:

Bridgette Bell, CMC
City Clerk