

DEDICATED CHILDREN'S PLAY AREA ORDINANCE PROPOSAL

by Sandy Gade Algra

Rationale for Proposed Ordinance

Play areas are intended to provide age-appropriate recreational play equipment and open space to accommodate the needs and play behavior of minor children in the city who are supervised by parents, guardians, caretakers, or other appropriate adults. The ordinance is intended to **maximize play area equipment available for children and minors for whom the city's play equipment and play areas are specifically designed.**¹

Draft of Proposed Ordinance

Designated Children's Play Areas: It shall be unlawful for any adult to enter and remain in a designated Play Area, where signage is posted, unless the adult is supervising and/or accompanying child(ren) who is/are then visiting the Play Area. The ordinance defines an "adult" as anyone over 18 and "children" as persons age 12 or younger. "Play Areas" are defined as any portion of an area within a city park that contains playground equipment for use by children, and has been posted with signs identifying the designated area as a children's play area.²

Proposed Signage for Proposed Ordinance

Designated Children's Play Area — Adults allowed in this area only when accompanied by a child of 12 years of age or younger. Violators subject to enforcement. [Alternative text: Violators subject to enforcement pursuant to [Ordinance Number]. The offender, upon conviction, to a fine not to exceed [dollar amount], or imprisonment for a period not to exceed [time limit], or by both such fine and imprisonment.]³

Common Sense Support for Proposed Ordinance

Los Angeles attempted a similar ordinance in 2016 under the premise of, in the words of council member Mitch O'Farrell, to keep parks "free of creepy activity."⁴ It failed to pass. This is not "fear-based policy making at its worst⁵," as the *Los Angeles Times* Editorial Board proclaimed on December 27, 2016,

¹ Adapted from rationale from Hollywood, Florida (<https://www.nrpa.org/parks-recreation-magazine/2015/march/park-playground-ban-on-adults-unaccompanied-by-children/>) (accessed 10/18/18)

² Adapted from Section 103.04 Code of Ordinances, Hollywood, Florida

³ Adapted from Section 103.04 Code of Ordinances, Hollywood, Florida

⁴

http://www.slate.com/blogs/xx_factor/2016/12/29/los_angeles_proposed_ban_on_childless_adults_in_playgrounds_is_a_bad_idea.html (accessed 10/18/18)

⁵ <http://www.latimes.com/opinion/editorials/la-ed-playground-ban-20161227-story.html> (accessed 10/18/18)

nor is it about ticketing someone enjoying a doughnut at the park, as the ordinance was unfortunately enforced in New York City, NY.

In San Diego, where the homeless population has been increasing drastically, this is about **keeping play equipment for the sole use of children** under the supervision of adults. Documented examples of adults unaccompanied by children and yet using children's play areas for their own purposes include: Adults using the Morley Field Nature Exploration Area "tree table" as a place for their camp stove cooking and having breakfast (documented in writing to Senior Park Ranger John Anderson on Monday, January 15, 2018. A couple living/sleeping on a play structure intended for toddlers at Dusty Rhodes playground (reported to non-emergency police by Sandy Algra on October 15, 2018 around 10:30am). This ordinance is not in response to fears or incidents of child abduction, child abuse, or other crimes committed by adults against children at playgrounds. Instead, this is proposed to protect areas designed for children for use by children and their caregivers only.

Furthermore, this ordinance is in line with other restricted uses of public land, such as areas designated as "Passive Park Areas" whereby "Cleats and/or organized sports are prohibited."

Financial Support for Proposed Ordinance

Community parks represent an annual budget expenditure (operating and capital) of almost \$70M⁶

Constitutional Support for Proposed Ordinance

According to James C. Kozlowski, J.D., Ph.D.,

while the Due Process Clause of the 14th Amendment guarantees the right to enter certain public places, including city parks, this right is not absolute. There is no constitutional right to use public parks under all conditions and at all times. Instead, the individual's constitutional right to use parks made available to the general public is subject to reasonable time, place, and manner restrictions. Further, these restrictions must be narrowly tailored to advance a compelling governmental interest.

Accordingly, from a constitutional law perspective, the issue is whether the creation of such exclusive-use areas for playgrounds is a reasonable time, place, and manner restriction based upon a rational governmental objective. Since the exclusion of unaccompanied adults does not involve a suspect class (i.e., a classification based on race, creed, color or natural origin), the courts will generally uphold such a rule given a reasonable connection between the regulation and a legitimate governmental objective. In constitutional law, this standard of judicial review for governmental actions is referred to as the rational-basis test.⁷

⁶ <https://sandiegoca.opengov.com/transparency#/7716> (accessed 10/18/18) AND <https://sandiegoca.opengov.com/transparency#/7714> (accessed 10/18/18)

⁷ <https://www.nrpa.org/parks-recreation-magazine/2015/march/park-playground-ban-on-adults-unaccompanied-by-children/> (accessed 10/27/18)