



City of Aurora

Law Department • 44 E. Downer Place • Aurora, Illinois 60507 • Phone: (630) 256-3060

Richard C. Irvin
Mayor

July 5, 2019

Ms. Adele D. Nicholas and Mr. Mark G. Weinberg
Law Office of Adele D. Nicholas
5707 W. Goodman Street
Chicago, Illinois 60630
via electronic mail: adele@civilrightschicago.com

Re: Your Letter of July 1, 2019 Regarding the Child Sex Offenders Residing at 215 E New York St. in Aurora

Dear Ms. Nicholas and Mr. Weinberg:

This letter is in response to your July 1, 2019, correspondence to Aurora Chief of Police Kristen Ziman regarding the notices the Aurora Police Department served on 19 registered child sex offenders currently residing at 215 E New York St. in Aurora (“child sex offenders”).

As your letter stated, the Aurora Police Department served a notice on your clients advising them that they are residing within 500’ of a playground in violation of Section 11-9.3 of the Criminal Code of 2012. 720 ILCS 5/11-9.3. Your letter acknowledges that this particular section of Illinois criminal law controls and that the matter essentially turns on an interpretation of the term “playground” and whether all or part of McCarty Park fits that definition. While I agree with this portion of your analysis, your characterization of McCarty Park as a general-purpose park with “two hobby horses on the East side of the park” fails to mention most significant and defining feature of the park: an approximately 87’-wide interactive children’s “splash pad” in the park’s center. The park’s sidewalks, which you mentioned in your letter, extend like spokes from the splash pad to each of the park’s six pedestrian gates. I have enclosed a photo depicting the splash pad, which has been there for approximately 10 years, and children playing in and around it.

I also disagree with your characterization of the notices as “order[s]” that contemplate “evicting the [child sex offenders] from their homes.” While some members of the public and press have referred colloquially (and inaccurately) to these notices as “eviction letters,” the notices your clients received are clearly not eviction letters and, to my knowledge, no officer or employee of the City has threatened to evict anyone from the premises. I am also unaware of any authority for the City to commence an eviction action based on a violation of Section 11-9.3 (or any other provision of law or local ordinance) without the consent of the property owner – consent that obviously is not available here.

The purpose of the notice is to make its recipients aware that their residing within 500’ of a playground may violate an Illinois law that carries felony penalties. The notice advises the

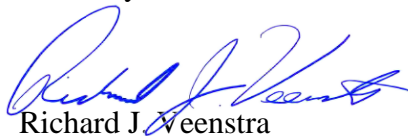
recipients of the possible consequences they face if they are, in fact, in violation of the law. In Illinois, felony prosecutions may only be initiated by information or by indictment. 725 ILCS 5/111-2. Both methods statutorily require a determination of probable cause, either by a judge or by a grand jury, respectively. Both methods also constructively require the approval and active participation of the State's Attorney who has the exclusive power under Illinois law to prosecute these types of felony offenses. 55 ILCS 5/3-9005(6). The Illinois Constitution prohibits the City from defining or providing for the prosecution of felony offenses. Ill. Const. 1970. art. VII., §6(d).

A State's Attorney is under no obligation to initiate or defer prosecution of an existing violation of Section 11-9.3 based on a letter issued by municipal authorities nor does he or she require the participation of a municipal police department to commence a prosecution. Ultimately, the Police Department will provide the State's Attorney with information regarding your clients' status as registered child sex offenders and McCarty Park, its uses, and its location in relation to where your clients reside in order to allow the State's Attorney to make appropriate charging decisions based on the facts and the law. I expect those charging decisions will involve an analysis of some of the issues you have raised on behalf of your clients.

In summary, the City does not consider the notices it served to be "orders" in any sense of the word. They do not authorize nor are they a prerequisite for the City to commence any legal action against their recipients, and in fact, the City is not contemplating initiating any action akin to an eviction against any of your clients. As noted previously, the City lacks the authority to evict your clients or prosecute them for felonies. The notices do however, accurately reflect the City's belief that McCarty Park constitutes a playground, that the real property where your clients reside is within 500' of that playground, and that so long as they continue to reside at that location, they may be subject to prosecution under Illinois law. For these reasons, the City will not be withdrawing the notices.

Finally, as Corporation Counsel, I represent the City and its officers and employees on this matter. To that end, I would ask that you please direct all further correspondence on the subject to me or to the attorneys I may subsequently inform you that I have designated to act on my behalf.

Sincerely,



Richard J. Veenstra
Corporation Counsel

Enclosure

McCarty Park Splash Pad

