

ORDINANCE 2007 - 26

AN ORDINANCE RELATING TO SEXUAL OFFENDERS AND SEXUAL PREDATORS AND THEIR RESIDENCY; DEFINING CERTAIN PROTECTED PUBLIC FACILITIES, PROHIBITING RESIDENCY TO CERTAIN SEXUAL OFFENDERS AND SEXUAL PREDATORS WITHIN A CERTAIN DISTANCE OF CERTAIN PUBLIC FACILITIES; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR EXCEPTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, there is a direct correlation between the proximity of residence of a sexual offender or sexual predator and the incidental contact of such an individual with children, resulting in an increase in danger to these potential victims of sexual predation. As a result, Federal and State law provide for the registration and monitoring of the locations of certain sexual offenders and sexual predators. Further Florida Statutes, Sections 794.065 and 947.1405, provide for a residency limitation, based upon a specific proximity and specified locations, for certain sexual offenders. This is consistent with acceptable legislative practices, which prohibit certain activities within certain distances of certain locations. Examples of this legitimate legislative practice include the prohibition of certain adult entertainment venues within a certain proximity of schools (F.S. §847.0134), and the prohibition of the sale of alcoholic beverages within certain distances of places of worship; and

WHEREAS, facilities, as defined herein, may attract potential innocent victims of sexual predation, and may provide increased opportunities for harm to the victims of sexual predation. Reduction of incidental contact between children and certain convicted sexual offenders and convicted sexual predators will decrease the opportunity for the commission of new sexual offenses against such innocent children. The health, safety, and welfare of the children of the County require a protected area or zone around specified locations where children regularly congregate in concentrated numbers; such areas or zones wherein sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence; and to provide the means to limit their access, after notice, to certain public parks and recreational facilities when children are actually present; and

WHEREAS, the regulation of housing locations and opportunities for sexual predators is in the public interest of the safety of citizens of this community; and

WHEREAS, the Board desires to establish a policy defining and regulating where sexual offenders and sexual predators may not live. This prohibition is made in an effort to protect the children of our community from exposure to sexual abuse by convicted sexual offenders and convicted sexual predators.

NOW, THEREFORE, BE IT ORDAINED this 27th day of August, 2007, by the Board of County Commissioners of Nassau County, Florida, as follows:

1. **DEFINITIONS:** for the purposes of this Ordinance, the following definitions of the following words, terms, or phrases shall apply unless the context clearly requires to the contrary:

a. **Facility:** "Facility", as defined herein, are those areas of real property for which a zone or area of protection is established. They are defined areas and locations devoted to use, and which possess a character and usage, which makes them places where children regularly congregate in, concentrated numbers. They are further described as: Places of public amusement or attraction such as auditoriums, arenas, bowling alleys, exposition and fairgrounds, waterslides, miniature golf courses, theaters and stages or other facilities for film or the visual and performing arts, and the like; State, County, Municipal, and privately owned community centers, youth centers, parks, playgrounds, and recreation centers; athletic and recreational facilities and venues, including baseball fields, basketball courts, football fields, parks, pools, public or private golf courses, racquetball courts, soccer fields, tennis courts, volleyball courts, and skate parks; bathhouses and public restroom facilities; boat ramps, docks, fishing piers, marinas, public beach access and dune walk-overs; camps, family day-care homes, nurseries, and child care facilities, whether public, religious, or private, including, but not limited to, those licensed by the Department of Children and Families; churches, temples, and places of worship, which have child-care, youth centers, and/or regular religious instruction and programs for youth; private, religious, or State, County, and municipal buildings, which have day-care facilities, and/or schools and institutions of learning, (but specifically excluding jails and places of adult or juvenile detention). "Schools" shall also include public or private school designated bus stops; facilities devoted to health care needs of children, including the clinics, offices, and medical facilities of doctors, dentists, orthodontists, optometrists, and other health-care providers, clinics, and the like which are devoted to the health-care needs of children.

b. **Sexual Predators/Sexual Offenders:** "Sexual Predators" shall be defined as Repeat Sexual Offenders, Sexual Predators, and Sexual Violent Predators, all as defined in Florida Statutes, including F.S. §775.21. "Sexual Offender" shall have the meaning found at FS. §943.0435.

c. **Sexual Offense:** "Sexual Offense" means a violation of F.S. §794.011, 800.04, or 847.0145, or a similar law of another jurisdiction in which the victim of the sexual offense was less than sixteen (16) years of age.

d. **Permanent Residence:** a permanent residence is any accommodation, apartment, boarding home, camper trailer, condominium, duplex, house, hotel, mobile home, motel, residential cooperative, townhouse, live-aboard boats, tents, or any other place of abode, where a person may abide, lodge, or reside for fourteen (14) or more consecutive days in any thirty (30) day period.

e. **Temporary Residence:** a temporary residence is any accommodation, apartment, boarding home, camper trailer, condominium, duplex, house, hotel, mobile home, motel, residential cooperative, townhouse, live-aboard boats, tents, or any other above, where a person may abide, lodge, or reside:

i. For thirteen (13) or less consecutive days in any thirty (30), or, in the alternative, for fourteen (14) or more days in the aggregate, in any calendar year; and

ii. Which is not the person's permanent address, or where a person permanently abides, lodges, or resides.

f. **Proscribed Distance:** a distance of two thousand five hundred (2,500) feet or less, measured on a straight line, from outer property line to outer property line.

g. **Child or Children:** means any person of less than sixteen (16) years of age.

h. **Conviction or Convicted** shall mean a determination of guilt, regardless of whether adjudication of guilt was imposed or withheld by a Court, which occurs as a result of trial or entry of a plea of guilt or *nolo contendere*, or other admission of record in Court, such as an admission to violation of probation. A conviction for a similar offense includes, but is not limited to, a conviction by any federal or military tribunal, including a court martial conducted by the Armed Forces of the United States, an admission or plea in any tribal court, and includes a conviction or entry of a plea of guilty or *nolo contendere* resulting in the imposition of any sanction in any state of the United States or other jurisdiction, including the military or any Indian tribe. A sanction includes, but is not limited to, any fine, imposition of court costs, probation, supervision, conditional release, community control, parole, controlled release, or incarceration in any jail, prison, correctional facility, or detention facility, be it federal, state, local, municipal, public, or private.

2. SEXUAL OFFENDER AND SEXUAL PREDATOR RESIDENCY PROHIBITION; PENALTIES; EXCEPTIONS.

a. It is unlawful for any person who has been convicted of a violation of Florida Statutes, Sections 794.011 (sexual battery), 800.04 (lewd and lascivious acts on/in the presence of persons under age 16), 827.071 (sexual performance by a child), or 847.0145 (selling or buying of minors for portrayal in sexually explicit conduct), as the same may be amended from time to time, or convicted of a similar law of another jurisdiction in which the victim of the offense was less than sixteen (16) years of age, and regardless of whether adjudication of guilt has been imposed or withheld, to establish permanent residence or temporary residence, or otherwise reside within two thousand five hundred (2,500) feet or less, of any facility as the same is defined herein.

b. For the purposes of determining the minimum distance of separation, the requirement shall be measured by following a straight line from the closest point on the outer property line of the piece, parcel, tract, or lot of land upon which the facility is located, to the closest point on the outer property line of the piece, parcel, tract, or lot of land whereon the permanent or temporary residence is located.

c. **Penalties:** Any person who violates this Ordinance shall be punished by a fine not to exceed one thousand and no/100 dollars (\$1,000.00), or by imprisonment for a term

not to exceed three hundred sixty-four (364) days in the County Jail, or by both such fine and imprisonment.

d. Exceptions: Any convicted sexual offender or sexual predator residing within the proscribed distance of any facility, as defined herein, does not commit a violation of this ordinance, if any of the following apply:

i. The person established the permanent residence and registered the residency pursuant to Florida Statutes, Sections 77.21, 943.0435, or 944.607, prior to the effective date of this Ordinance;

ii. The sexual offender or sexual predator was a minor when he/she committed the offense and was not convicted as an adult;

iii. The sexual offender or sexual predator is currently a minor, residing in a permanent residence with a parent or lawful guardian, and such permanent residence was established and registered as may be required by law prior to the effective date of this Ordinance;

iv. The facility, located within the proscribed distance, was created, designated, or established after the person established and registered the permanent residence as required by law;

v. The sexual offender or sexual predator is convicted of a subsequent sexual offense, as an adult after lawfully residing at a registered residence with the proscribed distance of a facility under any of the above exceptions.

For the purposes of these exceptions, the registration of the residence of the Sexual Predator with the appropriate law enforcement agency or as otherwise required by Statute shall be the effective date of determination of the date of establishment of the permanent residency. The date for creation or establishment of a facility, for the purposes of any exception, is the date of the public announcement of the location of such facility by the public entity having jurisdiction, if the facility is owned by any governmental entity. If it is owned by any private or religious entity or an individual, then it shall be the earliest of the date upon which a building permit is issued for the construction of such facility, or the issuance of a certificate of occupancy for such facility, or the issuance of a business license or certification by the appropriate governmental agency having regulatory authority. Such certificate or license shall be *prima facie* proof of such date. The date of actual opening of such facility shall not be relevant to the time period of exception.

3. SEXUAL OFFENDER/SEXUAL PREDATOR ACCESS TO PUBLIC PARKS; PROHIBITION; NOTICE REQUIREMENT; PENALTY; EXEMPTION:

a. PROHIBITION: It shall be unlawful for any sexual offender or sexual predator to be present in any public or private park or within two thousand five hundred (2,500) feet of any public beach access or dune walk-over, or upon or within any other recreational facility that is open to the public when:

i. A child under the age of sixteen (16) years is present in that park or within fifty (50) feet of such public beach access or dune walk-over, or within the boundaries of such other public recreational facility; and

ii. Specific notice, as provided in this Ordinance, is provided by posting the facility at its entrance or entrances, or, absent specific entrances, every one hundred (100) feet along the boundaries thereof.

b. **POSTING/NOTICE REQUIREMENT:** For a park, beach access, or other recreational facility to be protected under this Ordinance, signs shall be posted at the entrance or entrances of the park, public beach access, or public recreational facility, or every one hundred (100) feet along the boundaries thereof. Such signs must provide notice to any person who has been convicted of a sexual offense, that such person shall not be present within the proscribed distance when a child under the age of sixteen (16) years is present, unless the sexual offender is the parent or legal guardian of that child so present, under penalty of this Ordinance.

c. **PENALTIES:**

i. A person who violates this Section shall be punished by a fine not to exceed one thousand and no/100 dollars (\$1,000.00), or imprisonment in the Nassau County Jail for a term not to exceed three hundred sixty-four (364) days, or both, for each offense.

ii. Any person who willfully damages, defaces, destroys, or removes any signs provided by this Section shall be punished by a fine, not to exceed five hundred and no/100 dollars (\$500.00), or imprisonment in the Nassau County jail for a term not to exceed sixty (60) days, or both, for each offense.

d. **EXCEPTION:** If the sexual offender or sexual predator is the parent or legal guardian of such child present in the park, then such person shall be exempt from the provisions of this Section of the Ordinance.

4. COMMUNITY AND PUBLIC NOTIFICATION


a. Pursuant to Florida Statutes, Section 775.21, the Sheriff shall inform members of the public of a sexual predator's presence. The Board of County Commissioners will appropriate funds to facilitate the Sheriff's notification. The notification shall include publication of the statutorily required information in a newspaper of general circulation at least twice. Additional publication and/or notification shall be at the discretion of the Sheriff.

b. The Sheriff shall inform the public of the presence of sexual offenders in the same manner as set forth for sexual predators.

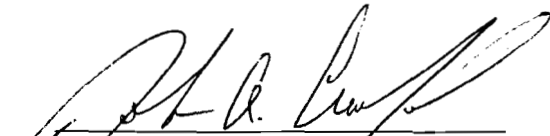
5. **SEVERABILITY:** If any section, sub-section, sentence, clause, definition, provision, or phrase of this ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

6. **EFFECTIVE DATE:** This Ordinance shall become effective upon its being filed in the Office of the Secretary of State.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA


JIM B. HIGGINBOTHAM
Its: Chairman

Attest as to Chairman's signature:


JOHN A. CRAWFORD
Its: Ex-Officio Clerk

APPROVED AS TO FORM BY THE
NASSAU COUNTY ATTORNEY:


DAVID A. HALLMAN

REVIEWED BY GENE KNAGA
DEPUTY CONTROLLER

 8/27/07

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*Effective date of
Sign and Print to Ordinance*



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

September 5, 2007

Mr. John A. Crawford
Ex-Officio Clerk
Nassau County
Post Office Box 1010
Fernandina Beach, Florida 32035-1010

Dear Mr. Crawford:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letters dated August 29, 2007 and certified copies of Nassau County Ordinance Nos. 2007-23, 2007-25 and 2007-26, which were filed in this office on September 4, 2007.

Sincerely,

Liz Cloud (AK)

Liz Cloud
Program Administrator

LC/lbh

DIRECTOR'S OFFICE

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