MEMORANDUM

Alternate
Agenda Item No. 4(F)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: June 21, 2005

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Ordinance pertaining to Chapter 21 of the Code; creating Article XVII with regard to sexual offenders and sexual predators

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The accompanying ordinance was prepared and placed on the agenda at the request of Chairman Joe A. Martinez, Commissioner Carlos A. Gimenez and Senator Javier D. Souto.

The alternate differs from the original proposal in that the alternate only applies to the unincorporated areas of Miami-Dade County.

Robert A. Ginsburg
County Attorney

RAG/bw

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

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Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

✓ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Alternate
Agenda Item No. 4(F)
6-21-05

ORDINANCE NO. _____

ORDINANCE PERTAINING TO CHAPTER 21 OF THE CODE OF MIAMI-DADE COUNTY ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS"; CREATING ARTICLE XVII; PROHIBITING SEXUAL OFFENDERS AND SEXUAL PREDATORS CONVICTED OF CERTAIN CRIMES FROM LIVING WITHIN 2,500 FEET OF SPECIFIED LOCATIONS WITHIN MIAMI-DADE COUNTY; PROHIBITING THE RENTAL OR LEASE OF ANY PLACE, STRUCTURE OR PART THEREOF, OR TRAILER OR OTHER CONVEYANCE LOCATED WITHIN 2,500 FEET OF SPECIFIED LOCATIONS WITHIN THE COUNTY TO SEXUAL OFFENDERS OR SEXUAL PREDATORS; REQUIRING CONFIRMATION THAT PROSPECTIVE RENTER OR LESSEE IS NOT A REGISTERED SEXUAL OFFENDER OR SEXUAL PREDATOR; RESTRICTING SEXUAL OFFENDERS' AND SEXUAL PREDATORS' ACCESS TO PARKS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR APPLICABILITY TO UNINCORPORATED AREAS OF THE COUNTY; PROVIDING FOR PENALTIES, SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the Board of County Commissioners, (the "Board"), is concerned about convicted sexual offenders and sexual predators who are released from custody and repeat the unlawful acts for which they had originally been convicted; and

WHEREAS, the Board finds that the recidivism rate for released sexual offenders is alarmingly high, especially for those who commit crimes against children; and

WHEREAS, Miami-Dade County, (the "County"), has a compelling interest in protecting children from predatory sexual activity; and

WHEREAS, prohibiting sexual offenders and sexual predators from living within 2,500 feet of schools, designated public school bus stops, child care facilities or parks will reduce the

amount of incidental contact sexual offenders and sexual predators have with children; and

WHEREAS, reducing the amount of incidental contact sexual offenders and sexual predators have with children will decrease the opportunity for sexual offenders or sexual predators to commit new sexual offenses against children; and

WHEREAS, Sections 794.065, 947.1405 and 948.30, Florida Statutes, provide for one thousand (1,000) foot residence prohibitions from specified locations for certain sexual offenders and sexual predators in an effort to protect children and other victims; and

WHEREAS, Section 847.0134, Florida Statutes, provides that certain adult entertainment venues may not be located within two thousand five hundred (2,500) feet of the real property that comprises a public or private elementary, middle, or secondary school; and

WHEREAS, in an effort to further protect children, Title 42, Sections 14071 and 3756, of the United States Code demonstrate a federal policy to register and monitor the location of certain sexual offenders and sexual predators; and

WHEREAS, the Board desires to establish a policy regulating where sexual offenders and sexual predators live in an effort to protect children of the County from sexual abuse by sexual offenders and sexual predators,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. That the above recitals of legislative intent and findings are fully incorporated herein as part of this Ordinance.

Section 2. Ordinance creating Article XVII of Chapter 21 of the Code of Miami-Dade County ("the Code"):

ARTICLE XVII. THE MIAMI-DADE COUNTY SEXUAL OFFENDER AND SEXUAL PREDATOR ORDINANCE

Sec. 21-277. Title.

Article XVII shall be known and may be cited as "The Miami-Dade County Sexual Offender and Sexual Predator Ordinance."

Sec. 21-278. Findings and Intent.

(a) Repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The intent of this Article is to serve the County's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the County, particularly children, by prohibiting sexual offenders and sexual predators from establishing temporary or permanent residence in certain areas where children are known to regularly congregate, to prohibit renting or leasing certain property to sexual offenders or sexual predators if such property is located where children are known to regularly congregate and to restrict sexual offenders' and sexual predators' access to parks.

Sec. 21-279. Applicability.

This Article shall only be applicable to the unincorporated areas of Miami-Dade County.

Sec. 21-280. Definitions.

The following terms and phrases when used in this article shall have the meanings ascribed to them in this section unless the context otherwise requires:

(1) "Child" or "children" means any person less than sixteen (16) years of age.

(2) "Child care facility" means day nurseries, and family day care homes, licensed by the Department of Children and Families, and as defined in Section 33-151.11 of the Code.

(3) "Convicted" or "conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to: a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

(4) "Designated public school bus stop" means a school bus stop approved by the Miami-Dade County School Board.

(5) "Park" means a County park.

(6) "Permanent residence" means a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

(7) "Reside" or "residence" means to have a place of permanent residence or temporary residence.

(8) "School" means a public or private preschool, elementary, middle or secondary (high) school.

(9) "Sexual offender" shall have the meaning ascribed to such term in Section 943.0435, Florida Statutes.

(10) "Sexual offense" means a violation of Sections 794.011, 800.04, 827.071 or 847.0145, Florida Statutes, or a similar law of another jurisdiction in which the victim of the sexual offense was less than sixteen (16) years of age.

(11) "Sexual predator" shall have the meaning ascribed to such term in Section 775.21, Florida Statutes.

(12) "Temporary residence" means a place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Sec. 21-281. Sexual Offender and Sexual Predator Residence Prohibition; Penalties.

(a) It is unlawful for any person who has been convicted of a violation of Sections 794.011 (sexual battery), 800.04 (lewd and lascivious acts on/in 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), Florida Statutes, or a similar law of another jurisdiction, in which the victim of the offense was less than sixteen (16) years of age, to reside within 2,500 feet of any school, designated public school bus stop, child care facility, or park.

(b) The 2,500 foot distance shall be measured in a straight line from the outer boundary of a sexual offender's or sexual predator's residence to the nearest boundary line of the school, designated public school bus stop, child care facility or park. The distance may not be measured by a pedestrian route or automobile route, but instead as the shortest straight line distance between the two points.

(c) ***Penalties***. A person who violates section 21-281 (a) herein shall be punished by a fine not to exceed $1.000.00 or imprisonment in the County jail for not more than 364 days, or by both such fine and imprisonment.

Sec. 21-282. Exceptions.

1. A sexual offender or sexual predator residing within 2,500 feet of any school, designated public school bus stop, child care facility, or park does not commit a violation of this section if any of the following apply:

(a) The sexual offender or sexual predator established residence and registered the residence pursuant to Sections 775.21, 943.0435 or 944.607, Florida Statutes, prior to November 1, 2005.

(b) The sexual offender or sexual predator was a minor when he or she committed the sexual offense and was not convicted as an adult.

(c) The sexual offender or sexual predator is a minor.

(d) The school, designated public school bus stop, child care facility or park, within 2,500 feet of the sexual offender's or sexual predator's residence, was opened or designated after the sexual offender or sexual predator established the residence.

2. Section 21-281(a) and (d) herein shall not apply to a sexual offender or sexual predator who is convicted of a subsequent sexual offense as an adult after residing at a registered residence within 2,500 feet of a school, designated public school bus stop, child care facility or park.

Sec. 21-283. Property Owners or Lessors Prohibited from Renting Real Property to Certain Sexual Offenders or Sexual Predators; Penalties.

(a) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with knowledge that it will be used as a permanent or temporary residence by any person prohibited from establishing such permanent or temporary residence pursuant to this Article of the Code, if such place, structure, or part thereof, trailer or other conveyance, is located within 2,500 feet of a school, designated public school bus stop, child care facility, or park.

(b) Prior to letting, renting or leasing any place,

structure, or part thereof, trailer or other conveyance for use as a permanent or temporary residence that is located within 2,500 feet of a school, designated public school bus stop, child care facility or park, the owner or lessor shall obtain written confirmation from the Florida Department of Law Enforcement ("FDLE"), the Miami-Dade County Police Department Sexual Predator's Unit, the Miami-Dade County Answer Center (311) or other law enforcement agency that the prospective renter or lessee is not a registered sexual offender or sexual predator. A copy of the herein referenced written confirmation shall be retained by the property owner or lessor for not less than two (2) years after the termination of the sexual offender' or sexual predator' residence on the property.

(c) ***Penalties***. A person who violates section 21-283 herein shall be punished by a fine not to exceed $500.00 or imprisonment in the County jail for not more than 60 days, or both such fine and imprisonment. A person who is convicted of a second or subsequent violation of section 21-283 herein shall be punished by a fine not to exceed $1.000.00 or imprisonment in the County jail for not more than 364 days, or by both such fine and imprisonment.

Sec. 21-284. Sexual Offender and Sexual Predator Access to Parks Restricted; Penalties.

(a) It is unlawful for a sexual offender or sexual predator to be present in a park, when a child under the age of sixteen (16) years is present, unless the sexual offender or sexual predator is the parent or guardian of the child present in the park.

(b) A sign shall be posted at the entrance of parks which provides that a person convicted of a sexual offense, as defined in section 21-280 herein, shall not be present in a park when a child under the age of sixteen (16) years is present, unless the sexual offender or sexual predator is the parent or guardian of the child present in the park.

(c) ***Penalties.*** A person who violates section 21-284 herein shall be punished by a fine not to exceed $1.000.00 or imprisonment in the County jail for not more than 364 days, or by both such fine and imprisonment.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance

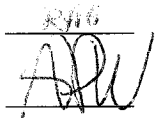
is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:

Abigail Price-Williams

Sponsored by Chairman Joe A. Martinez,
Commissioner Carlos A. Gimenez and
Senator Javier D. Souto