MEMORANDUM Agenda Item No. 7(A)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: January 21, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Ordinance relating to sexual offenders and predators; creating section 21-285 of the Code; creating child safety zones and prohibiting loitering and prowling in child safety zones; amending Chapter 21 of the Code relating to residency restrictions; applying County sexual offender and predator residency restrictions throughout incorporated and unincorporated Miami-Dade county; preempting municipal sexual offender and predator residency restrictions

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At the Health, Public Safety & Intergovernmental Committee on December 10, 2009, Commissioner Diaz proposed an amendment to the ordinance. The amendment to the item made at committee eliminates the following language from section 21-282 (1) (a) of the Miami-Dade Code "and registered said residence pursuant to Sections 775.21, 943.0435, or 944.607, Florida." This amendment will mean that a person is exempted from the requirements of the ordinance if he or she established a residence before the ordinance was enacted.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Vice-Chairman Jose "Pepe" Diaz.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: January 21, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ordinance amending Section 21-285 of the Code; relating to Sexual Offenders and Predators

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The proposed amendment relating to sexual offenders and predators, preempting all municipal ordinances relating to residency restrictions, and establishing a "child safety zone", will not result in a fiscal impact to Miami-Dade County. Although this ordinance establishes new fines, at this time, it is difficult to estimate any additional revenue that may be generated by this provision.

Assistant County Manager

fls01910

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: January 21, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 7(A)

Please note any items checked.

_____ "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

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

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(A)
1-21-10

ORDINANCE NO. _____

ORDINANCE RELATING TO SEXUAL OFFENDERS AND PREDATORS; CREATING SECTION 21-285 OF THE CODE OF MIAMI-DADE COUNTY; CREATING CHILD SAFETY ZONES AND PROHIBITING LOITERING AND PROWLING IN CHILD SAFETY ZONES; AMENDING ARTICLE XVII OF CHAPTER 21 OF THE CODE RELATING TO RESIDENCY RESTRICTIONS; APPLYING MIAMI-DADE COUNTY SEXUAL OFFENDER AND PREDATOR RESIDENCY RESTRICTIONS THROUGHOUT INCORPORATED AND UNINCORPORATED MIAMI-DADE COUNTY; PREEMPTING MUNICIPAL SEXUAL OFFENDER AND PREDATOR RESIDENCY RESTRICTIONS; ADDING A QUALIFYING OFFENSE TO CONFORM TO STATE STATUTES; AND PROVIDING FOR PENALTIES, SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the goal of protecting children from sexual offenders and predators is of utmost importance to Miami-Dade County; and

WHEREAS, this vital goal cannot be accomplish by a single law, but instead depends upon a cohesive and functional system of federal, state, and local laws, which must be adjusted and adapted from time to time to address new threats and circumstances as they arise; and

WHEREAS, circumstances have arisen in Miami-Dade County indicating that the paramount purpose of protecting children would be better served by Miami-Dade County preempting municipal residency restriction ordinances for the reasons set forth below; and

WHEREAS, currently the residency of sexual offenders and predators in Miami-Dade County is governed by three levels of laws, namely: state statutes, which prohibit sexual offenders from living within 1,000 feet of schools, daycares, parks, or playgrounds; a county ordinance, which prohibits sexual offenders from living within 2,500 feet of schools only; and a

patchwork of at least 24 separate municipal ordinances, which generally prohibit sexual offenders from living within 2,500 feet of schools, daycares, parks, playgrounds and sometimes other points such as bus stops and other locations where children congregate; and

WHEREAS, the County's residency restrictions strike a proper balance between protecting children around the crucial and vulnerable areas of schools while still leaving available residential units in which sexual offenders can find housing; and

WHEREAS, in contrast, almost all of the municipal ordinances enacted to date tend to create zones in which sexual offenders are almost completely excluded from available housing, because nearly all residential units in a developed area are within 2,500 feet of schools, daycares, parks, playgrounds, bus stops, or one of the other points on which the municipal buffer zones are based; and

WHEREAS, these municipal ordinances have had the unintended effect of shifting the only available housing for sexual offenders to the unincorporated areas of the County and to those cities that have not yet enacted sexual offender residency ordinances; and

WHEREAS, in Broward County, a similar trend has created a situation in which a disproportionate number of sexual offenders are concentrated in a few neighborhoods in the unincorporated area, detrimentally impacting living conditions and housing values in those areas, and unreasonably increasing the risk to children in those areas; and

WHEREAS, in Miami-Dade County, the problem of balancing the interests of people impacted by residency restrictions has become a regional problem that should be addressed at a regional level by preempting municipal ordinances and thereby limiting the unintended consequence of clustering the sexual offenders in a few, disfavored neighborhoods while still providing protections over and above the protections provided by State law; and

WHEREAS, the creation of child safety zones where it is prohibited for a convicted sexual offender or predator to loiter would be a useful addition to the County's laws designed to protect children from sexual offenders and 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. Article XVII of Chapter 21 of the Code of Miami-Dade County ("the Code") is hereby amended to read as follows:[1]

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. 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.

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[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

(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 and child care facilities.

Sec. 21-279. Applicability.

(a) This Article shall be applicable to >>the<< incorporated and unincorporated areas of Miami-Dade County>>.<< [[~~and shall constitute minimum requirements in all municipalities in the County, except as provided in section 21-279 (b), regarding sexual offender and sexual predator residence proscriptions, renting or leasing to sexual offenders or sexual predators and restricting sexual offenders' and sexual predators' access to parks and child care facilities. Municipalities may adopt more restrictive requirements than the requirements contained herein. To the extent a municipality has requirements in effect that are less restrictive than the requirements required by this Article, the requirements of this Article shall supersede the requirements of that particular municipality.~~]]

(b) >>This<<[[~~The requirements of this~~]] Article shall be applicable in all municipalities in Miami-Dade County >>on<< [[~~ninety (90) days after~~]] the effective date of this ordinance. >>All municipal ordinances in Miami-Dade County establishing sexual offender or predator residency restrictions are hereby preempted and shall stand repealed.<< [[~~Notwithstanding any provision to the contrary in the Code, the requirements of this Article shall not apply to any municipality in Miami-Dade County that has, within ninety (90) days after the effective date of this ordinance, adopted a resolution providing that the County's Sexual Offender and Sexual Offender Ordinance shall not apply in that municipality. Any municipality that opts out of the requirements of the County's Sexual Offender and Sexual Predator Ordinance shall provide the Clerk of the Board of County Commissioners with a copy of the resolution.~~]]

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(s) 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) "Child safety zone" means an area three hundred (300) feet extending from schools, child care facilities, parks, and school bus stops measured in a manner similar to the measurement of the residency restriction area provided in this ordinance.<<

[[~~(3)~~]]>>(4)<<"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)~~]]>>(5)<< "Legal guardian" or "guardian" shall mean biological or adoptive parent of a child registered at a child care facility or a person who is responsible for the care and maintenance of said child pursuant to Florida Statutes or similar laws of another jurisdiction.

[[~~(5)~~]]>>(6)<< "Park" means a County or municipal park excluding a park that includes a shooting range.

[[~~(6)~~]]>>(7)<< "Permanent residence" means a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

[[~~(7)~~]]>>(8)<< "Reside" or "residence" means to have a place of permanent residence or temporary residence.

[[~~(8)~~]]>>(9)<< "School" means a public or private kindergarten, elementary, middle or secondary (high) school.

[[~~(9)~~]]>>(10)<<"Sexual offender" shall have the meaning ascribed to such term in Section 943.0435, Florida Statutes.

[[~~(10)~~]]>>(11)<<"Sexual offense" means a conviction under Sections 794.011, 800.04, 827.071>>, 847.0135(5)<< or 847.0145, Florida Statutes, or a similar law of another jurisdiction in which the victim >>or apparent victim<< of the sexual offense was less than sixteen (16) years of age, excluding Section 794.011(10), Florida Statutes.

[[~~(11)~~]]>>(12)<<"Sexual predator" shall have the meaning ascribed to such term in Section 775.21, Florida Statutes.

[[~~(12)~~]]>>(13)<<"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)>>, 847.0135 (5) (sexual acts transmitted over computer)<< 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 >>or apparent victim<< of the offense was less than sixteen (16) years of age, to reside within 2,500 feet of any school.

(b) The 2,500 foot distance shall be measured in a straight line from the outer boundary of the real property that comprises a sexual offender's or sexual predator's residence to the nearest boundary line of the real property that comprises a school. 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 does not commit a violation of this section if any of the following apply:

(a) The sexual offender or sexual predator established a residence [[~~and registered said residence pursuant to Sections 775.21, 943.0435 or 944.607, Florida Statutes,~~]][2] prior to the effective date of this ordinance. The sexual offender or sexual predator shall not be deemed to have established a residence or registered said residence for purposes of this section, if the residence is an illegal multi-family apartment unit within a neighborhood zoned for single family residential use.

(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 school was opened after the sexual offender or sexual predator established the residence.

2. Section 21-282 (1)(a) and (1)(c) 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.

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[2] Committee amendments are indicated as follows: words double stricken through and/or [[double bracketed]] shall be deleted, words double underlined and/or »double arrowed« constitute the amendment proposed.

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. Knowingly renting to a sexual offender or predator shall include, but shall not be limited to, renting or leasing a residence after being notified that the prospective renter, lessee or adult resident is a sexual offender or predator as defined in this ordinance.

(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, and annually thereafter if a rental agreement is entered into, the owner or lessor shall obtain confirmation of a nationwide search from the Miami-Dade County Police Department or other law enforcement agency that the prospective renter, lessee or adult resident is not a registered sexual offender or sexual predator as a result of a conviction of a sexual offense as defined in section 21-280 (10) herein. A person may call the Miami-Dade County Answer Center (311) to obtain assistance or referrals to determine whether a prospective renter, lessee or adult resident is a sexual offender or predator and to determine whether a residence is 2,500 feet. from a particular school.

(c) *Penalties.*

(1) A person who violates section 21-283 (a) 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 (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.

(2) A person who violates section 21-283 (b) herein shall be punished by a civil penalty of five hundred dollars ($500.00) in the manner established by Chapter 8CC of this Code.

Each day of violation or noncompliance shall constitute a separate offence.

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

(a) It is unlawful for a sexual offender or sexual predator convicted of a sexual offense, as defined in section 21-280 (10), to knowingly be present in a County or municipal park, when a child under the age of sixteen (16) years is present, unless the sexual offender or sexual predator is the parent or legal guardian of a child present in the park.

(b) Signage at the entrance of County and municipal parks shall include notification that a person convicted of a sexual offense, as defined in section 21-280 (10) 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 a child present in the park.

(c) It is unlawful for a sexual offender or sexual predator convicted of a sexual offense, as defined in section 21-280 (10), to knowingly enter or remain in a child care facility ("facility") or on its premises unless the sexual offender or sexual predator:

(1) Is dropping off or picking up a child registered at the facility and is the parent or legal guardian of said child and

(2) Remains under the supervision of a facility supervisor or his or her designee while on the facility premises.

(d) *Penalties.* A person who violates section 21-284 (a) or (c) 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 by both such fine and imprisonment. A person who is convicted of a second or subsequent violation of section 21-284 (a) or (c) 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. Section 21-285 of the Code of Miami-Dade County is hereby created to read as follows:

>>**21-285. Loitering or prowling in child safety zone; Penalties.**

(a) It is unlawful for any sexual offender or sexual predator:

(1) to loiter or prowl with the intent to commit a sexual offense as listed in Sec. 21-280(11) of this Article;

(2) while knowingly within a child safety zone when children are present; and

(3) to engage in overt conduct that, under the circumstances, manifests an intent to commit a sexual offense as listed in Sec. 21-280(11) of this Article.

(b) Conduct which may, under the circumstances, be deemed adequate to manifest an intent to commit a sexual offense as listed in Sec. 21-280(11) of this Article includes, but is not limited to, conduct such as the following:

(1) making sexual conversation or sexual remarks to a child;

(2) making lewd or sexual gestures to a child, or exposing sexual organs to a child;

(3) giving gifts of candy, money, music, or other items to a child to which he or she is not related or acquainted.

(c) Unless flight by the sexual offender or sexual predator or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the sexual offender or predator an opportunity to explain his or her presence and conduct. No sexual offender or predator shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it is proven at trial that the explanation given by the sexual offender or predator is true, and that the sexual offender or predator had no intent to commit a sexual offense.

(d) As used in this section a sexual offender or predator is related to a child if he or she is the father, mother, step-father, step-mother, grandparent, sibling, cousin, aunt, uncle or resides with the child. As used in this section a sexual offender or predator is acquainted with a child if he or she has been introduced to the child in the presence of an adult with legal authority to supervise the child.

(e) Penalties. A person who violates section 21-285 (a) 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 by both fine and such imprisonment.

(f) This provision is not intended to limit or affect the applicability of any general loitering and prowling statutes to sexual offenders or predators, including but not limited to Fla. Stat. § 856.021.<<

Section 4. 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 5. 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 6. 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: TWL

Thomas W. Logue

Prime Sponsor: Vice-Chairman Jose "Pepe" Diaz