

LEE COUNTY ORDINANCE NO. 09-19

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA TO BE KNOWN AS THE CHILD SAFETY ZONE ORDINANCE; PROVIDING FINDINGS RELATED TO SEXUAL PREDATORS AND SEXUAL OFFENDERS AND STATING LEGISLATIVE INTENT; PROVIDING DEFINITIONS; PROHIBITING SEXUAL PREDATORS AND OFFENDERS FROM BEING PRESENT, LOITERING OR PROWLING WITHIN 300 FEET OF SPECIFIED LOCATIONS THAT ARE PRIMARILY DESIGNED FOR USE BY, OR ARE PRIMARILY USED BY CHILDREN, OR ARE LOCATIONS WHERE CHILDREN CONGREGATE; PROVIDING FOR APPLICABILITY; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR PENALTIES; PROVIDING FOR SEPARATE VIOLATIONS; PROVIDING FOR OTHER REMEDIES; PROVIDING FOR PREEMPTION AND SUNSET; AND PROVIDING SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS AND FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, the Board of County Commissioners of Lee County, Florida is the governing body in and for Lee County, Florida; and

WHEREAS, the Lee County Board of County Commissioners is concerned about the numerous occurrences in the State of Florida and the United States, where sexual predators or sexual offenders have been released from custody and repeat the unlawful acts for which they had originally been sentenced; and

WHEREAS, the state has recognized the importance of regulating sexual predators and sexual offenders and has enacted laws governing the conduct of such individuals including the Jessica Lunsford Act, the Jimmy Ryce Sexually Violent Predator Act, and Florida Statutes Section 794.065 titled "Unlawful Place of Residence for Persons Convicted of Certain Sex Offenses", to control the threat of child victimization; and

WHEREAS, the Florida Department of Law Enforcement maintains and provides access to a database containing public record information on offenders classified as sexual predators and sexual offenders under Florida law because of a conviction for a sex-related crime and/or a specified crime against children, which information is made available to interested citizens to help them educate themselves about the possible presence of such predators and offenders in their local communities; and

WHEREAS, the Florida Department of Law Enforcement has noted that “the theme of the 1997 National Institute of Justice (NIJ) Conference on Criminal Justice Research and Evaluation, *Crime and Place*, reflects an emerging trend among criminal justice researchers and practitioners to shift the focus of crime prevention and suppression efforts from people (potential offenders) to places”; and

WHEREAS, the Colorado Bureau of Investigation has assembled the following relevant statistics:

- (1) There were approximately 637,000 registered sex offenders in the United States (National Center for Missing and Exploited Children, 2008) with Florida's population at 46,929.
- (2) Most sex offenders (80-95%) assault people they know (Greenfield, 1997; Bureau of Justice Statistics, 1997 and 2000).
- (3) At least half of convicted child molesters report that they also have sexually assaulted an adult.
- (4) Over 80% of convicted adult rapists report that they have molested children.
- (5) Approximately one-third of sex offenders report assaulting both males and females. Research shows that most convicted sex offenders have committed many assaults before they are caught.
- (6) Over two-thirds of offenders who reported committing incest also said they assaulted victims outside the family.
- (7) Studies of victims have found that less than 30% of sex crimes are reported to law enforcement.
- (8) Young victims who know or are related to the perpetrator are least likely to report the crime to authorities.
- (9) Most offenders commit multiple crimes against multiple types of victims with whom they have varying types of relationships (adults, children, male, female, known, and unknown).
- (10) Sex offenders rarely commit just one type of offense. Many offenders have no official prior criminal record or sex crime history of any kind.
- (11) There is no such thing as a “typical” sex offender; however, all tend to be manipulative, deceptive, and secretive. Sex offenders come from all backgrounds, ages, income levels, and professions.

- (12) Sex offenders usually do not commit their crimes impulsively. They usually carefully plan their crimes; and

WHEREAS, Lee County is a family oriented county which highly values its children and is a place that families with young children find highly desirable; and

WHEREAS, the Lee County Board of County Commissioners desires to ensure that the citizens of Lee County are protected from sexual predators and sexual offenders, to the maximum extent afforded by controlling law, in order to advance the public health, safety, and welfare and to benefit the citizens of Lee County; and

WHEREAS, the purpose of this ordinance is to reduce the potential risk of harm to children of the community by limiting the opportunity for sexual predators and sexual offenders to be in contact with unsuspecting children in locations that are primarily designed for use by children, are primarily used by children, or are customary gathering places for children, namely the grounds of public or private schools for children, centers or facilities that provide day care or children's facilities, video arcades, public or private playgrounds and play facilities, YMCA and YWCA facilities, Boys and Girls Club facilities, libraries, parks, youth sports facilities, skate parks, public swimming pools, amusement parks, carnivals, zoos, and public beaches; and

WHEREAS, the Lee County Board of County Commissioners finds that establishment of "Child Safety Zones" around areas frequented by children is in the best interests of the citizens of Lee County, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: TITLE

This Ordinance shall be known and may be cited as the "Lee County Child Safety Zone Ordinance".

SECTION TWO: LEGISLATIVE FINDINGS AND INTENT

(a) The Board of County Commissioners adopts the findings set forth in the Recitals to this Ordinance as the Legislative findings and conclusions to support adoption of this Ordinance. Those recitals are incorporated herein as if fully set forth in this section.

(b) The Board of County Commissioners of Lee County, Florida, hereby finds and determines that sexual predators and sexual offenders present an extreme threat to the public health, safety, and welfare. Sexual predators and sexual offenders are extremely likely to use physical violence and repeat their offenses, and most 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 predator and sexual

offender victimization to society at large, while incalculable, clearly exorbitant and a drain on the resources of society.

(c) It is the intent of this Ordinance to reduce the potential risk of harm to children of the community by limiting the opportunity for sexual predators and sexual offenders to be in contact with unsuspecting children in locations that are primarily designed for use by children, are primarily used by children, or are customary gathering places for children. This ordinance is not intended to interfere with a sexual predator's or sexual offender's ability to participate in his or her own children's activities occurring at school and at other recreational type facilities, and is also not intended to interfere with a sexual predator's or sexual offender's ability to attend religious services, conduct business with the government, or attend school if a minor.

SECTION THREE: DEFINITIONS

The following terms are defined as follows for the purposes of this Ordinance:

(a) *Business or transient facilities* includes but is not limited to day care centers or children's facilities, video arcades, transient carnivals, transient zoos, school bus stops while any child or children are present, or other similar type places where children congregate.

(b) *Child, children, or minor* means individuals whose chronological age is under eighteen (18) years.

(c) *Day care center* means any child care arrangement which is either required to be licensed by, or which is exempt from licensure in accordance with state or local law, including but not limited to, any family child care home, large family child care home, child care facility, school age child care center, specialized child care facility for the care of mildly-ill children, and after school programs and child care facilities of a church or parochial school.

(d) *Loitering and prowling* shall have the same meaning as Florida Statutes Section 856.021 as it may be amended, renumbered, or replaced.

(e) *Park* means and includes all public and private property specifically designated as being utilized for park and recreational purposes, including designated public beaches, regardless of ownership.

(f) *Permanent or stationary facilities* means any public or private schools, public libraries, public or private playgrounds and/or play facilities, YMCA and YWCA facilities, Boys and Girls Club facilities, youth camp grounds, parks, youth sports facilities, skate parks, public zoos, public swimming pools, and other similar places where children regularly congregate.

(g) *Public Beach* means any beach located within the territorial boundaries of Lee County which:

- (1) Is below the mean high-water lines; or
- (2) Is owned by Lee County; or
- (3) Has arisen upon it a right of customary use by the public; or
- (4) Has arisen upon it a public easement, prescriptive or otherwise; or
- (5) Is the foreshore of tidal navigable waters, that is the land between the high and low water marks, and is owned by the State of Florida.

(h) *Safety Zone* shall mean on or within three hundred (300) feet of the specified location.

(i) *School* means any public or private school as defined in Florida Statutes Sections 1000.04(1) and 1002.01, excluding facilities dedicated to the education of adults.

(j) *Sexual Predator* shall have the meaning as Florida Statutes Section 775.21 as it may be amended, renumbered, or replaced.

(k) *Sexual Offender* shall have the meaning as Florida Statutes Section 943.0435 as it may be amended, renumbered, or replaced.

SECTION FOUR: PROHIBITED PRESENCE, LOITERING OR PROWLING AT CERTAIN LOCATIONS

(a) It is prohibited for a sexual predator or sexual offender to be on or within a safety zone for the following specified locations or to loiter or prowl upon locations adjacent to a safety zone.

- (1) Permanent facilities which may include, but are not limited to, the grounds of any public or private school for children during such times as the location is being used by children for school activities, latchkey or organized youth sports or during such time when children otherwise congregate at the facility, except while the sexual predator or sexual offender is in the process of dropping off or picking up his or her own children or a friend or relative's children (with the permission of the child's parent or legal guardian) from the school, or while attending a school activity with his or her own child or a friend or relative's child (with the permission of the child's parent or legal guardian) or while on the school grounds for a school-related activity with the permission of the school; and

- (2) Permanent facilities which may include, but are not limited to, public or private playgrounds and play facilities, YMCA and YWCA facilities and Boys and Girls Club facilities, libraries, parks, youth sports facilities, youth campgrounds, skating parks and rinks, public swimming pools, amusement parks, and public zoos during such times as the location is being used by children or during such times when children congregate at the facility, except while in the process of dropping off or picking up his or her own child or a friend or relative's child (with the permission of the child's parent or legal guardian) from one of these facilities or locations or while attending an activity with his or her own child or a friend or relative's child (with the permission of the child's parent or legal guardian) or while in the presence of his or her own child or a friend or relative's child (with the permission of the child's parent or legal guardian) at one of these facilities or locations or when attending an adults only function.
- (3) For the purposes of determining the minimum distance separation requirement, *distance shall be measured by following a straight line* from the outer property line of the facility primarily designed for use by, or that is primarily used by children.
- (4) This prohibition does not apply to single trips while traveling past a location specified in this section while enroute to another destination.
- (5) This prohibition does not apply to traveling to or from or attendance at religious services.
- (6) This prohibition does not apply to traveling to or from or being at a government building for the purpose of conducting official business.
- (7) This prohibition does not apply to the sexual predator's or sexual offender's place of residence when regulated by state law such as Florida Statutes Section 794.065, as it may be amended or replaced.
- (8) This prohibition does not apply to a sexual predator or sexual offender who is at a permanent facility when the facility is a voting or voter registration location and the predator or offender is present for the purposes of voting or registering during the hours designated for the voting or registration process, but only for the time required to complete the voting or registration process.

- (9) This prohibition does not apply to a minor sexual predator or sexual offender who is enrolled in a Lee County public or private school in grades one through twelve when present at the school during normal school hours or for after or before school activities with the permission of the school.

(b) It is prohibited for a sexual predator or sexual offender to be on or within a safety zone for the following specified locations or to loiter or prowl upon locations adjacent to a safety zone for those locations:

- (1) Business or transient facilities which may include, but are not limited to, day care centers except while the sexual predator or sexual offender is in the process of dropping off or picking up his or her own child or a friend or relative's child (with the permission of the child's parent or legal guardian) from the facility, or while attending an activity in the facility with his or her own child or a friend or relative's child (with the permission of the child's parent or legal guardian) or while on the facility grounds for a facility related activity with the permission of the facility.
- (2) Business or transient facilities which may include, but are not limited to, video arcades, transient carnivals, transient zoos, or school bus stops while any child or children are present. This includes the parking areas designated for use in connection with the business or transient facilities.
- (3) For the purposes of determining the minimum distance separation requirement, distance shall be measured by following a straight line from the outer property line of the facility primarily designed for use by, or are primarily used by children.
- (4) This prohibition does not apply to single trips while traveling past a location specified in this section while enroute to another destination.
- (5) This prohibition does not apply to traveling to or from or attendance at religious services.
- (6) This prohibition does not apply to traveling to or from or being at a government building for the purpose of conducting official business.
- (7) This prohibition does not apply to the sexual predator's or sexual offender's place of residence when regulated by state law such as Florida State Statutes Section 794.065, as it may be amended or replaced.

- (8) This prohibition does not apply to a sexual predator or sexual offender that is at a permanent facility when the facility is a voting or voter registration location and the predator or offender is present for the purposes of voting or registering during the hours designated for voting or registration process, but only for the time required to complete voting or the registration process. voting or registration process.
- (9) This prohibition does not apply to a minor sexual predator or sexual offender enrolled in a Lee County public or private school in grades one through twelve when present at his or her designated bus stop for transport to the school where he or she is enrolled.

(c) For all activities involving the dropping off or picking up of a child or children as authorized above, or attending an activity involving a child or children as authorized above or traveling, attending services, or conducting official business, the sexual predator or sexual offender may not remain or loiter any longer than is reasonably necessary to accomplish the task.

SECTION FIVE: ASSISTANCE TO LAW ENFORCEMENT OFFICERS IN PROTECTING CHILDREN

School officials, park workers, library staff, YMCA and YWCA staff, Boys and Girls Club staff, day care operators, video arcade, amusement park and zoo workers and all others working at permanent or business facilities primarily designed for use by, or primarily used by children are encouraged to collaborate with and facilitate law enforcement in its efforts of protecting children.

SECTION SIX: CONFLICTS OF LAW

Unless there has been a municipal ordinance duly enacted to the contrary, the provisions of this county ordinance shall be uniformly enforced throughout Lee County by all state and local law enforcement agencies. If the requirements of this Ordinance conflict with the requirement or provisions of any other Ordinance, the more restrictive requirements shall apply.

SECTION SEVEN: PENALTIES

The County may pursue any enforcement action or legal remedy available under controlling State law and any legal remedy available to the County to include, but not limited to, a fine not exceeding \$500.00 or by imprisonment for a term not exceeding sixty (60) days or by both a fine and imprisonment, unless authorized by law.

SECTION EIGHT: SEPARATE VIOLATIONS

Each separate occurrence of any conduct prohibited by this Ordinance shall be a separate violation.

SECTION NINE: OTHER REMEDIES

The Board of County Commissioners of Lee County may adopt such resolutions as are necessary to effectively administer this Ordinance.

SECTION TEN: PREEMPTION AND SUNSET

In the event any state or federal law is enacted which is more restrictive in nature as to where a sexual predator or sexual offender may physically be located, those portions of this Ordinance which conflict with the state or federal law will cease to be in effect. In addition, this Ordinance shall automatically sunset upon the effective date of any state or federal law which preempts other regulations related to the subject matter and restrictions contained in this Ordinance.

SECTION ELEVEN: SEVERABILITY

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall become a separate provision and will not affect the validity of the remaining portions of this Ordinance. The Board of County Commissioners further declares its intent that this Ordinance would have been adopted if such unconstitutional provision was not included.

SECTION TWELVE: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

The Lee County Board of County Commissioners intends that this Ordinance will be made part of the Lee County Code; and that sections of this Ordinance can be renumbered or relettered, and the word "Ordinance" can be changed to "Section", "Article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or relettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

SECTION THIRTEEN: EFFECTIVE DATE

This Ordinance shall take effect upon its filing with the Office of the Secretary of Florida Department of State.

Commissioner Hall made a motion to adopt the foregoing ordinance, seconded by Commissioner Mann. The vote was as follows:

ROBERT JANES	<u>AYE</u>
BRIAN BIGELOW	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
TAMMARA HALL	<u>AYE</u>
FRANK MANN	<u>AYE</u>

DULY PASSED AND ADOPTED THIS 24th day of March, 2009.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Marcea Wilson
Deputy Clerk

BY: R. Hall
Chairman



APPROVED AS TO FORM:

BY: Gregory S. Steyer
Office of the County Attorney



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

March 27, 2009

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Ms. Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated March 25, 2009 and certified copies of Lee County Ordinance Nos. 09-19 through 09-20, which were filed in this office on March 27, 2009.

Sincerely,

Liz Cloud
Program Administrator

LC/srd

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DIRECTOR'S OFFICE

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COMMUNITY DEVELOPMENT
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STATE ARCHIVES OF FLORIDA
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LEGISLATIVE LIBRARY SERVICE
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