

ORDINANCE NO. 2022- 20

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 74, ARTICLE VI OF THE BREVARD COUNTY CODE OF ORDINANCES, "SEXUAL OFFENDERS AND SEXUAL PREDATORS"; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; AMENDING THE DEFINITION OF "PARK" IN SECTION 74-101 OF THE CODE OF ORDINANCES; CREATING A NEW SECTION, "SECTION 74-102.5 – BUSINESS SELF-CERTIFICATION REGISTRY"; ESTABLISHING A VOLUNTARY REGISTRY OF BUSINESSES WHICH HAVE A PRIMARY PURPOSE OF RECREATION AND WHERE CHILDREN REGULARLY CONGREGATE, TO WHICH A 1,000 FOOT BUFFER ZONE RESTRICTION WILL BE APPLIED TO CONVICTED SEXUAL OFFENDERS AND SEXUAL PREDATORS; PROVIDING ADDITIONAL EXCEPTIONS; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR AN AREA ENCOMPASSED.

WHEREAS, the Board of County Commissioners understands that there have been numerous occurrences within the State of Florida and the United States as a whole where convicted sexual offenders and sexual predators are released from custody and thereafter commit similar crimes; and

WHEREAS, the Legislature has determined with the adoption of The Florida Sexual Predators Act that 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 public safety [Section 775.21(3)(a), Florida Statutes]; and

WHEREAS, 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 [Section 775.21(3)(a), Florida Statutes]; and

WHEREAS, sexual predators pose such a high threat level to public safety and cause significant long-term effects on their victims that the Board of County Commissioners finds that a voluntary Business Self-Certification Registry Regarding Sexual Offenders and Sexual Predators, also known as the "Business Self-Certification Registry," should be established to better ensure public health, safety, and welfare is protected from those who commit certain sexual offenses; and

WHEREAS, pursuant to Section 944.606(2), Florida Statutes, the Legislature found that "sexual offenders, especially those who have committed their offenses
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against minors, often pose a high risk of engaging in sexual offenses even after being released from incarceration or commitment and that protection of the public from sexual offenders is a paramount governmental interest;" and

WHEREAS, the Legislature has found that the government has a "compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity" [Section 775.21(3)(c), Florida Statutes]; and

WHEREAS, the court's order ultimately dictates what crimes the offender has been found to have committed and, therefore, what designation and resultant restrictions apply; and

WHEREAS, the Florida Legislature has in place residency restrictions for persons convicted of certain sex offenses prohibiting such individuals from residing within 1,000 feet of any school, day care facility, park, or playground, with limited exceptions [Section 775.215(2)(a); 948.30(1)]; and

WHEREAS, the purpose of this ordinance is neither to sentence nor punish any individual who is subject to it, but simply a status resulting from the conviction of certain crimes and it allows certain businesses in the County to identify themselves as a "park" as found in Section 74-101; and

WHEREAS, Brevard County has a substantial and compelling interest in maintaining the quality of life and protecting the health, safety, and welfare of citizens at schools, day care facilities, parks, and playgrounds to engage in positive educational, economic, and social activities; and

WHEREAS, Brevard County has a substantial and compelling interest in allowing the citizens to gainfully and productively use and enjoy the facilities in these areas and communities without victimization at the hands of a sexual predator or a sexual offender; and

WHEREAS, individuals have a significant interest in being able to travel and associate freely in all areas of Brevard County, except during times of a public safety emergency, such as natural or manmade disasters; and

WHEREAS, it is in the public interest to exclude certain sexual offenders and sexual predators from certain areas surrounding schools, daycare centers, parks, and playgrounds; and

WHEREAS, in order to mirror State law, the County's definition of parks is being updated; and

WHEREAS, Brevard County desires to ensure that the citizens of the County are protected from criminal activity of all kinds to the maximum extent afforded by controlling law in order to advance the public health, safety, and welfare; and

WHEREAS, it is also in the public interest to allow all citizens access to government buildings and public meetings in order to engage in official business and to participate in public meetings; and

WHEREAS, it is in the public interest to ensure that safeguards are in place which allow all individuals to have access to government buildings and public meetings while also ensuring the safety of all citizens during times when registered sexual offenders and sexual predators are accessing government buildings and attending public meetings; and

WHEREAS, the County is not prohibited from acting on the subject matter of this Ordinance as the provisions of this Ordinance are not preempted by State law and do not conflict with provisions of State law; and

WHEREAS, this Ordinance is enacted under the general home rule and law enforcement powers of Brevard County pursuant to Chapter 125, Florida Statutes, and is not a zoning ordinance or a land development regulation.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1. Legislative Findings. The above recitals represent the legislative findings of the Board supporting the need for this Ordinance.

Section 2. Definition of Park. The term "Park" found in Section 74-101 is hereby amended to read as follows:

Park means all publicly owned or operated property and private property specifically designated as being used for recreational purposes and where children regularly congregate. ~~a publicly owned or operated area used or available for the public's use as a recreational facility, including, by way of example and not limitation, linear parks and the state, county and municipal recreational trails systems.~~

Section 3. Creation of Section 74-102.5 of the Brevard County Code of Ordinances. Section 74-102.5 entitled Business Self-Certification Registry is hereby created as follows:

Section 74-102.5. Business Self-Certification Registry.

(a) The Brevard County Business Self-Certification Registry Regarding Sexual Offenders and Sexual Predators, also known as the "Business Self-Certification Registry," is hereby created. The Board of County Commissioners finds that such a registry is necessary and proper to ensure public health, safety, and welfare is protected from those who commit certain sex-related offenses. A private business that is:

1. used for recreational purposes; and
2. an area where children regularly congregate

may voluntarily self-certify that they fall within the County's definition of "park" for purposes of this Article. The private business shall send its written self-certification to the County's Parks and Recreation Department, Administration office, 2725 Judge Fran Jamieson Way, Viera, Florida 32940.

- (b) The Business Self-Certification Registry shall contain the address of the business, the purpose of the business, and a summary of what activities take place on the event which allow it to qualify as a park.
- (c) The Business Self-Certification Registry shall be maintained by the County; shall be listed on the County's official website, which may include, but is not limited to, reference to the Brevard County Sheriff's Office Sex Offender Registration & Tracking Unit; and may contain links to other sex offender and/or sexual predator registries to be used as informational resources by the general public.
- (d) The County will attempt to ensure that the information in the registry is accurate and complete. However, the County relies on other sources for the information. As a result, the County makes no express or implied guarantee concerning the accuracy or completeness of any information or data in the registry.
- (e) Businesses that register do so voluntarily in order to assist law enforcement, but it shall ultimately be law enforcement's responsibility to determine whether a private business meets the definition of "park."

Section 4. Chapter 74-Offenses and Miscellaneous Provisions-at Article VI. Sexual Offenders and Sexual Predators, is hereby amended at Section 74-102. Sexual Offenders and Predators, as follows:

Section 74-102. – Sexual offenders and sexual predators.

(a) [This subsection shall remain as previously adopted.]

(b) *Restriction of certain activities of sexual offenders and sexual predators.* No sexual offender or sexual predator shall enter into or remain within the 1,000-

foot buffer zone surrounding any school, daycare center, park or playground except to:

(1) Conduct official government business at a Brevard County government office or a local municipality government office. When a sexual offender or sexual predator enters upon Brevard County government property or local municipality government property pursuant to this subsection, the sexual offender or sexual predator shall promptly depart from the property without any undue delay or loitering on premises after completing official government business. For the purposes of this subsection, the terms "Brevard County government office" and "local municipality government office" do not include school property.

~~(1)~~(2) Attend a scheduled interview or meeting with a social service provider licensed by the state;

~~(2)~~(3) Comply with a request or court order from the judiciary, a correctional facility or a law enforcement entity;

~~(3)~~(4) Attend a scheduled meeting or interview with criminal justice personnel at a criminal justice facility;

~~(4)~~(5) Attend a bona fide educational institution as a registered student;

~~(5)~~(6) Attend a scheduled or emergency health care visit with a licensed physician;

~~(6)~~(7) As a result of fulfilling legally allowable duties imposed by gainful employment;

~~(7)~~(8) Transport children within their legal custody to and from school or daycare without any undue delay or loitering on premises;

~~(8)~~(9) Seek refuge in a public shelter that has been officially designated by the county or any municipality to house sexual offenders or sexual predators during times of impending natural disasters or acts of terrorism;

~~(9)~~(10) Attend a scheduled legal consultation meeting with an attorney who is recognized as a licensed member of the Bar of the state;

~~(10)~~(11) Attend a church service or function;

~~(11)~~(12) Vote at a designated polling place within his or her district, obtain a vote-by- mail ballot from the Supervisor of Elections, or deliver a vote-by-mail

ballot to a secure drop box of the Supervisor of Elections or office of the Supervisor of Elections;

~~(12)~~(13) If the sexual offender or sexual predator is the parent or guardian of a person under 18 years of age, provided the sexual offender or sexual predator has declared his or her status as a sexual offender or sexual predator prior to entering the school property, has either scheduled a set time period to enter upon the property with the principal or designee or immediately notifies the principal or designee upon entering the school property, and remains under direct supervision of a school official or designated chaperone when present in the vicinity of children:

- a. Attend a scheduled conference at school with school personnel to discuss the progress of his or her child academically or socially;
- b. Participate in scheduled child review conferences in which evaluation and placement decisions may be made or considered with respect to his or her child regarding special education services; or
- c. Attend scheduled conferences to discuss other student issues concerning his or her child such as retention and promotion.

As used in this section, the term "school official" means a principal, a school resource officer, a teacher or any other employee of the school, the superintendent of schools, a member of the school board, a child care facility owner, or a child care provider.

~~(13)~~(14) If the sexual offender or sexual predator lawfully resides within 1,000 feet of any school, day care center, park or playground, he or she may enter into or remain within 1,000 feet of such school, day care center, park or playground for the purposes of travel to and from his or her residence, and any other bona fide activity arising from the ordinary maintenance and activities associated with such residence.

(15) Attend a public meeting subject to Chapter 286, Florida Statutes, provided that no less than 24 hours prior to entering the property for the purpose of being present at a public meeting, the sexual offender or sexual predator has notified the Brevard County Sheriff's Office Sex Offender Registration and Tracking (SORT) Unit, indicating the sexual offender or sexual predator's intention to be present at the public meeting. The Brevard County Sheriff's Office will forward the notification to the County Manager or the local municipality as deemed appropriate. When a sexual offender or sexual predator enters upon government property pursuant to this subsection

the sexual offender or sexual predator shall, upon adjournment of the public meeting, promptly depart from the government property without any undue delay or loitering on premises. For purposes of this subsection, the terms "Brevard County government property" and "local municipality property" do not include school property.

(16) With respect to subsection (15) above, in the event a governmental agency holds an emergency public meeting and the 24-hour notice provision cannot be met, the sexual offender or sexual predator shall notify the Brevard County Sheriff's Office SORT Unit as soon as reasonably possible, but at a minimum, must notify law enforcement present upon entering the governmental building of his or her sexual offender or sexual predator status.

However, this section shall not be construed as prohibiting any person from traveling on those public roads located within the county when traveling through the buffer zone without intentional delay. A law enforcement officer shall, prior to any arrest for an offense under this section afford the person an opportunity to explain his or her presence in the area and the purpose thereof. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have authorized the person to be in the area pursuant to one of the exceptions listed above.

- (c) *Measurement of distance requirement for residence.* For purposes of measuring separation of a residence from a school, day care center, park or playground, all distances shall be measured from the outermost property line of the parcel upon which the residence is located running in a direct line to the outermost property line of the school, day care center, park or playground. For example, if the residence were located in a generally southwesterly direction from a park, then the measurement would be from the northeast corner of the residential parcel to the southwest corner of the park. For all other purposes, measurements shall run from the outermost property line of the school, day care center, park or playground.
- (d) *Measurement of distance requirement for sexual offender or sexual predator.* For purposes of measuring separation of a person designated as a sexual offender or sexual predator from a school, day care center, park or playground, all distances shall be measured from the closest observed location of the sexual offender or sexual predator to the outermost property line of the school, day care center, park or playground using a direct line measurement.
- (e) *Required declaration of status as a sexual offender or sexual predator.*

(1) During times of impending natural disasters or acts of terrorism, sexual offenders and sexual predators shall immediately identify themselves as a sexual offender or sexual predator, as the case may be, to the official in charge of any public shelter where they seek refuge. Sexual offenders or sexual predators will not be permitted to remain at general shelters not designated to house them. Sexual offenders and sexual predators will only be permitted housing at shelters specifically approved to house sexual offenders and sexual predators.

(2) A sexual offender or sexual predator attending any school or transporting children they have legal custody of to a school or day care center must declare his or her status as a sexual offender or sexual predator to the superintendent, principal or child care facility owner prior to entering the school or day care center property, and must also either schedule with the principal a set time period to enter upon the property or immediately notify the principal or designee upon entering school grounds or day care center property. In accordance with the provisions of Fla. Stat. § 856.022, the sexual offender or sexual predator must remain under direct supervision of a school official as defined in 74-102(b)(13) or a designated chaperone when present in the vicinity of children, unless the person is only dropping off or picking up his or her own children or grandchildren at the child care facility or school.

(3) All sexual offenders and sexual predators registered in the county shall carry their state driver's license or state identification card on their person at all times.

(f) *Prohibition on rentals and leaseholds.* It is unlawful for a property owner to knowingly let or rent any place, structure, or part thereof, to a sexual offender or sexual predator, with the knowledge that it will be used as a permanent or temporary residence, if such place, structure, or part thereof, is located within 1,000 feet of any school, day care center, park or playground. In any prosecution for a violation of this section there shall be the following rebuttable presumptions:

(1) That the property owner had knowledge that the person letting or renting the premises was a sexual offender or sexual predator, upon proof that the person was registered as same, either in the statewide or local registry; and

(2) That the place, structure or part thereof would be used as a permanent or temporary residence, upon proof that the property is located within a residential zoning classification.

(g) *Unlawful residency.* It is unlawful for a sexual offender or sexual predator to establish residency, whether through ownership, rental or lease after the effective date of this article, if such place, structure, or part thereof, is located within 1,000 feet of any school, day care center, park or playground.

Section 5. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter," "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. Conflict. In the case of a direct conflict between any provision of this Ordinance and a provision of County law, rule, or regulation, the more restrictive shall apply.

Section 7. Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 8. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. Unless specified otherwise, this Ordinance shall take effect upon adoption and filing as required by law.

Section 9. Area Encompassed. In accordance with Section 74-104, this Ordinance shall apply in both the incorporated and unincorporated areas of the County; provided that any provision of this Ordinance in conflict with a municipal ordinance shall not be effective within that municipality to the extent of such conflict.

DONE, ORDERED, AND ADOPTED in Regular Session, this 2nd day of August, 2022.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Rachel Sadoff, Clerk of Court

By: 

Kristine Zonka, Chair

(as approved by the Board on 8 / 2 / 22)