

ORDINANCE NO. O-2007-21

AN ORDINANCE OF THE CITY OF HOLLYWOOD, FLORIDA, CREATING CHAPTER 135 OF THE CODE OF ORDINANCES ENTITLED "SEXUAL OFFENDER/DESIGNATED PREDATOR RESIDENCE RESTRICTIONS" TO PROVIDE FOR PROHIBITION FOR SEXUAL OFFENDERS AND SEXUAL PREDATORS CONVICTED OF CERTAIN CRIMES FROM LIVING WITHIN 1000 FEET OF SPECIFIED LOCATIONS WITHIN THE CITY OF HOLLYWOOD; FURTHER PROHIBITING OWNERS OF REAL PROPERTY FROM RENTING OR LEASING ANY PLACE, STRUCTURE, OR PART THEREOF, TRAILER OR OTHER CONVEYANCE LOCATED WITHIN 1000 FEET OF SPECIFIED LOCATIONS WITHIN THE CITY TO SEXUAL OFFENDERS AND/OR SEXUAL PREDATORS CONVICTED OF CERTAIN CRIMES; AND PROVIDING FOR A REPEALER PROVISION, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Hollywood, Florida, is concerned about the numerous recent occurrences in the State of Florida and throughout the United States, where convicted sexual offenders and/or sexual predators who have been released from custody and repeat the unlawful acts for which they had originally been convicted; and

WHEREAS, the City Commission finds from the available evidence that the recidivism rate for released sexual offenders is alarmingly high, especially for those who commit their crimes on children; and

WHEREAS, the City of Hollywood is a very family oriented place which highly values its children and is a place that families with young children find highly desirable; and

WHEREAS during the 2005 Legislative Session, the Florida Legislature passed House Bill 1877, which is commonly known as the "Jessica Lunsford Act", and the Governor approved this Act on May 2, 2005 which has been codified as Chapter 2005-28, Laws of Florida; and

(Coding: Words in ~~struck-through~~ type are deletions from existing law; words underscored are additions.

WHEREAS the “Jessica Lunsford Act” will likely increase the number of offenders who will be designated as sexual offenders and will require electronic monitoring of certain offenders and will otherwise strengthen the State’s effort to control the threat of child sexual victimization; and

WHEREAS, the Florida Department of Law Enforcement provides 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 offenders in their local communities; and

WHEREAS, the City Commission desires to ensure that the citizens of the City of Hollywood, Florida are protected from criminal activity to the maximum extent afforded by controlling law in order to advance the public health, safety, and welfare and is in the best interest of the citizens of Hollywood; and

WHEREAS, the City has the authority, pursuant to Article VIII, Section 2(b) of the Florida Constitution, and Section 166.021, Florida Statutes, to adopt such provisions in order to protect the health, safety, and welfare of its residents; and

WHEREAS, the City Commission has determined that limiting the frequency of contact between sexual offenders, sexual predators and areas where children are located is likely to reduce the risk of an offense against children by sexual offenders and predators; and

WHEREAS, the United States 8th Circuit Court of Appeals recently issued an opinion in the case of Doe v. Miller, 405 F. 3d 700 (8th Cir. 2005), in which the Court upheld similar residency restrictions contained in the State of Iowa Statutes, and found the restrictions to be constitutional; and

WHEREAS, the City Commission finds that the creation of a Sexual Offender and Sexual Predator Residency Prohibition ordinance to prohibit sexual offenders and/or sexual predators convicted of crimes under certain Florida Statutes from living within 1000 feet of specified locations within the City of Hollywood is in the best interests of the citizens of Hollywood;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That Chapter 135 of the Code of Ordinances entitled "Sexual Offender/Designate Predator Residence Restrictions" is hereby created as follows:

TITLE XIII: GENERAL OFFENSES

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CHAPTER 135. SEXUAL OFFENDER/DESIGNATED PREDATOR RESIDENCE RESTRICTIONS

§135.01 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) It is the intent of this ordinance to serve and protect the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.

§135.02 DEFINITIONS.

For the purpose of this Chapter, the following definition(s) shall apply unless the context clearly indicates or requires a different meaning.

Permanent residence means a place where a sexual offender/designated predator abides, lodges, or resides for a period of five (5) or more consecutive days.

Temporary residence means a place where a sexual offender/designated predator abides, lodges, or resides for a period of five (5) or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

Public Park means and includes all property owned or acquired by any governmental entity and specifically designated as being acquired for park and recreational purposes.

§ 135.03 Sexual Offender/Designated Predator Residence Prohibition; Penalties; Exceptions.

(A) It is unlawful for any person who has been convicted of a violation of §§ 794.011, 800.04, 827.071, or 847.0145, Florida Statutes, or convicted of a similar felony sexual offense in any other state, Federal Court or military tribunal in the United States, regardless of whether adjudication has been withheld, in which the victim of the offense was less than sixteen (16) years of age, to establish a Permanent residence or Temporary residence within one thousand feet (1000') of any school, designated public school bus stop, day care center, park, playground, or other private or public recreational facility where children regularly congregate.

(B) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the Permanent residence or Temporary residence to the nearest outer property line of a school, designated public school bus stop, day care center, park, playground, or other private or public recreational facility where children regularly congregate.

(C) Penalties. A person who violates this section shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment.

(D) Exceptions. A person residing within one thousand feet (1000') of any school, designated public school bus stop, day care center, park, playground, or other private or public recreational facility where children regularly congregate does not commit a violation of this section if any of the following apply:

- (1) The person established the Permanent residence prior to the effective date of this ordinance.
- (2) The person was a minor when he/she committed the offense and was not convicted as an adult.
- (3) The person is a minor.

- (4) The school, designated public school bus stop, day care center, park, playground or other private or public recreational facility where children regularly congregate within 1000 feet of the person's Permanent residence was opened after the person established the Permanent residence.

§ 135.04 **Property Owners Prohibited from Renting Real Property to Certain Sexual Offenders/Designated Predators; Penalties**

(A) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a Permanent residence or Temporary residence by any person prohibited from establishing such Permanent residence or Temporary residence pursuant to this Chapter, if such place, structure, or part thereof, trailer or other conveyance, is located within 1000 feet of any school, designated public school bus stop, day care center, park, playground, or other private or public recreational facility where children regularly congregate unless the landlord or owner can establish that, prior to entry of a lease, he or she used reasonable due diligence and was unable to determine that the tenant is a Sexual Offender.

(B) A property owner's failure to comply with provisions of this Section shall constitute a violation of this Section, and subject the property owner to the code enforcement provisions set forth in Chapter 36 of the Hollywood Code of Ordinances, including the provisions that allow the City to seek relief as otherwise provided by law. Each day the property is in violation shall constitute a separate offense.

(C) The provisions of this Section shall not be applied to persons residing at a prohibited location on the effective date of this Ordinance such that it is not the intent of this Ordinance to impair valid, existing and bona fide contract rights; provided, however, that the provisions of this Ordinance shall apply upon termination of any leasehold relationship arising from a landlord tenant relationship or the expiration of a lease. When a person who is the subject of this Ordinance changes residences, this Ordinance shall fully apply to such persons.

Section 2: That it is the intention of the City Commission and it is hereby ordained that the provisions of this section shall be made a part of the Code of Ordinances of the City of Hollywood, Florida, and the sections of this Code may be renumbered to accomplish such intention.

CHAPTER 135 Sexual Offenders and Sexual Predators Residence Prohibition

Section 3: That if any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

Section 4: That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5: That this Ordinance shall be in full force and effect immediately upon its passage and adoption.

Advertised June 22, 2007.

PASSED on first reading this 16 day of May, 2007.

PASSED AND ADOPTED on second reading this 3 day of July, 2007.


MARA GIULIANTI, MAYOR

ATTEST:


PATRICIA A. CERNY, MMC, CITY CLERK

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the
City of Hollywood, Florida, only.


ALAN FALLIK, INTERIM CITY ATTORNEY

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