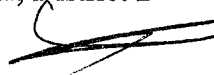


CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION – 12-001

TO: Marc Sarnoff, Commissioner, District 2
FROM: Julie O. Bru, City Attorney 
DATE: January 25, 2012
RE: Sexual predators analysis of State, County and City
residency regulations

You have asked for a legal opinion on the following:

***WHETHER THE CITY OF MIAMI HAS THE AUTHORITY TO
RELOCATE SEXUAL OFFENDERS AND SEXUAL PREDATORS WHO
RESIDE WITHIN 1000 FEET OF A PUBLIC PARK IN THE CITY OF
MIAMI AND FOR A DESCRIPTION OF THE VARIOUS STATE,
COUNTY AND CITY REGULATIONS RELATING TO SEXUAL
OFFENDERS AND SEXUAL PREDATORS?***

The City does not have the authority to relocate sexual offenders or sexual predators who reside within 1000 feet of a public park in the City. A summary of the various state and county regulations relating to the residency of sexual predators and sexual offenders is provided below. For the reasons discussed below, *newly* released sexual offenders and sexual predators can be prohibited from establishing a residence within 1000 feet of a park.

Summary of Applicable Regulations

Both the State of Florida and Miami-Dade County have promulgated regulations relating to where sexual predators and sexual offenders may reside. Currently, the residency of sexual offenders and predators in Miami-Dade County is governed by two levels of laws: state statutes, which prohibit sexual offenders from living within 1,000 feet of schools, daycares, parks, or playgrounds, and a county ordinance, which prohibits sexual offenders from living within 2,500 feet of schools only. There are currently no City of Miami regulations, notwithstanding the fact that a version of Miami-Dade County's "Laurens Law" is found in the City of Miami, Florida Code of Ordinances.

The City's regulations were repealed by the adoption of the Miami-Dade County "Lauren Book Child Safety Ordinance," on January 21, 2010 (see attached).

Section 21-279(b) of the County Code provides that the county ordinance

"shall be applicable in all municipalities in Miami-Dade County on 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Miami-Dade County establishing sexual offender or predator residency restrictions are hereby preempted and shall stand repealed."

The consequence of the county ordinance is that Section 37-7 of the City Code stands repealed and the City is preempted from drafting any new regulations relating to sexual predators and offenders.

State Law Regulations

Many regulations exist in the Florida Statutes¹ relating to sexual predators and sexual offenders. This opinion is focused on those regulations that impact where a sexual predator or offender may lawfully reside. The regulations relating to the residency of sexual predators and offenders are primarily found in sec. § 775.215 Fla. Stat. entitled “Residency restriction for persons convicted of certain sex offenses.” The statute prohibits a person who has been convicted of certain statutory provisions², when the victim was under the age of sixteen, from residing within 1,000 feet of any school, child care facility, park or playground. The term "Park" is defined to mean “all public and private property specifically designated as being used for recreational purposes and where children regularly congregate.”³

The statute prohibits sexual offenders or sexual predators from moving or establishing a residence within 1,000 feet of any school, child care facility, park or playground. However, the statute further provides that a “person does not violate this subsection and may not be forced to relocate if he or she is living in a residence that meets the requirements of this subsection and a school, child care facility, park, or playground is subsequently established within 1,000 feet of his or her residence.” In simpler terms, sexual predators and offenders are grandfathered in their existing residences if schools, child care facilities, parks or playground are subsequently established within 1,000 feet of their residences.

Miami-Dade County Ordinance

The current Miami-Dade County ordinance is codified as sections 21-277 through 21-285 in the Miami-Dade County Code. At the time of adoption of the ordinance the Board of County Commissioners of Miami-Dade County found: “in Miami-Dade County, the problem of balancing the interests of people impacted by residency restrictions has become a regional

¹ For example, the Florida Sexual Predators Act is codified in sec. 775.21 which sets forth supervision, registration and public notice requirements; Sec. 775.24 provides the duty of the court to uphold laws governing sexual predators and sexual offenders; Sec. 775.25 provides for the prosecution of sexual predators and sexual offenders for acts or omissions of the Act; Sec. 943.0435 provides for the registration of sexual offenders with FDLE; Secs. 944.605 through 944.607 provides for the notification of the release of certain inmates; Sec. 947.1405, the Conditional Release Program Act, provides requirements for the conditional release of certain inmates including sexual predators.

² The applicable statutes are:

- § 794.011, Fla. Stat., Sexual Battery;
- § 800.04, Fla. Stat., Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- § 827.071, Fla. Stat., Sexual performance by a child; penalties;
- § 847.0135 Fla. Stat., Computer pornography; traveling to meet minor; penalties; and
- § 847.0145 Fla. Stat., Selling or buying of minors; penalties.

² Sec. 775.215 (1)(b), Fla. Stat. 2011

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.”

The County sought to eliminate a so-called patchwork of at least 24 separate municipal ordinances, which generally prohibited sexual offenders from living within 2,500 feet of schools, daycares, parks, playgrounds and some other points, such as bus stops and other locations where children congregate. The County’s stated intention was to 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 could find housing.

The present county ordinance prohibits sexual predators and sexual offenders, whose victims were under the age of 16, from residing within 2,500 feet of any school.⁴ The term ‘School’ is defined to mean “a public or private kindergarten, elementary, middle or secondary (high) school.”⁵ In addition, the County ordinance prohibits sexual predators and sexual offenders from being knowingly present in a County or municipal park, when a child less than 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.⁶

Analysis

You inquire whether the City can require relocation of a sexual predator from a residence if the predator is located within 1,000 feet of any school, child care facility, park or playground. The answer is no, because the statutes do not authorize the City or any other municipality to forcibly remove sexual offenders or sexual predators from their residences. The State of Florida Department of Corrections, on the other hand, can require the sexual offender or sexual predator to relocate from a residence once the State becomes aware of a violation. Additionally, sexual predators or sexual offenders can be arrested for committing either a felony of the third degree or a misdemeanor of the first degree depending on the level of the offense⁷ if they establish a residence within 1,000 feet of any established school, child care facility, park or playground. Thus, sexual offenders or sexual predators can be relocated from their residence by the Florida Department of Corrections or through an arrest and conviction for violating the residency requirements. However, as indicated above, a “person does not violate [the statute] and may not be forced to relocate if he or she is living in a residences that meets the requirements of this subsection and a school, child care facility, park, or playground is subsequently established within 1,000 feet of his or her residence.”

⁴ Sec. 21-281 Miami-Dade County Code.

⁵ Sec. 21-280 Miami-Dade County Code.

⁶ Sec. 21-284 Miami-Dade County Code.

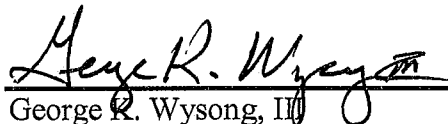
⁷ “A person who violates this subsection and whose conviction under s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 was classified as a felony of the first degree or higher commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this subsection and whose conviction under s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 was classified as a felony of the second or third degree commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.” *Sec. 775.215(2) (b), Fla. Stat.*

Conclusion

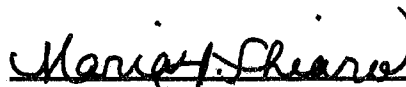
The residency of sexual offenders and sexual predators in Miami-Dade County is governed by two levels of laws, namely: state statutes, which prohibit sexual offenders from living within 1,000 feet of schools, daycares, parks, or playgrounds, and a county ordinance, which prohibits sexual offenders from living within 2,500 feet of schools only. The statutes do not authorize the City or any other municipality to forcibly remove a sexual offenders or sexual predators from their residence, but the State of Florida Department of Corrections can require the sexual offenders or sexual predators to relocate from a residence once the State becomes aware of the violation, so long as the sexual offenders or sexual predators residence has not been grand-fathered. To ensure compliance with the referenced statutes, the Florida Department of Corrections should be immediately notified whenever a new school, child care facility, park or playground is established in a neighborhood. Such notification will ensure that the Department of Corrections' personnel do not place newly released sexual offenders and sexual predators in residences within 1,000 feet of any school, child care facility, park or playground in the City.

PREPARED BY:

REVIEWED BY:



George R. Wysong, II
Assistant City Attorney



Maria J. Chiaro
Deputy City Attorney

cc: Honorable Mayor and Members of the City Commission
Johnny Martinez, P.E., City Manager
Priscilla Thompson, CMC, City Clerk

ARTICLE XVII. - THE LAUREN BOOK CHILD SAFETY ORDINANCE ^[230]

⁽²³⁰⁾ **Editor's note**— Section 2 of Ord. No. 10-67, adopted Oct. 5, 2010, retitled Art. XVII, The Miami-Dade County Sexual Offender and Sexual Predator Ordinance, to read as herein set out.

Sec. 21-277. - Title.

Sec. 21-278. - Findings and Intent.

Sec. 21-279. - Applicability.

Sec. 21-280. - Definitions.

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

Sec. 21-282. - Exceptions.

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

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

Sec. 21-285. - Loitering or prowling in child safety zone; penalties.

Sec. 21-277. - Title.

Article XVII shall be known and may be cited as "The Lauren Book Child Safety Ordinance."

(Ord. No. 05-206, § 2, 11-15-05; Ord. No. 10-67, § 2, 10-5-10)

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.

(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.

(Ord. No. 05-206, § 2, 11-15-05)

Sec. 21-279. - Applicability.

(a) This article shall be applicable to the incorporated and unincorporated areas of Miami-Dade County.

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(b) This article shall be applicable in all municipalities in Miami-Dade County on 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.

(Ord. No. 05-206, § 2, 11-15-05; Ord. No. 10-01, § 2, 1-21-10)

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.
- (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.
- (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.
- (6) "Park" means a County or municipal park excluding a park that includes a shooting range.
- (7) "Permanent residence" means a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.
- (8) "Reside" or "residence" means to have a place of permanent residence or temporary residence.
- (9) "School" means a public or private kindergarten, elementary, middle or secondary (high) school.
- (10) "Sexual offender" shall have the meaning ascribed to such term in Section 943.0435, Florida Statutes.
- (11) "Sexual offense" means a conviction under Section 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.

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

(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.

(Ord. No. 05-206, § 2, 11-15-05; Ord. No. 10-01, § 2, 1-21-10)

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 Section 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.

(Ord. No. 05-206, § 2, 11-15-05; Ord. No. 10-01, § 2, 1-21-10)

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 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 multifamily 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.

(Ord. No. 05-206, § 2, 11-15-05; Ord. No. 10-01, § 2, 1-21-10)

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 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 offense.

(Ord. No. 05-206, § 2, 11-15-05; Ord. No. 10-67, § 2, 10-5-10)

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, 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 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, to knowingly enter or remain in a child care facility ("facility") or on its premises unless the sexual offender or sexual predator:

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- (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.

(Ord. No. 05-206, § 2, 11-15-05; Ord. No. 10-67, § 2, 10-5-10)

Sec. 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 Section 21-280 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 Section 21-280 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 Section 21-280 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

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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, F.S. § 856.021.

(Ord. No. 10-01, § 3, 1-21-10; Ord. No. 10-67, § 2, 10-5-10)