



MEMORANDUM

Office of the City Attorney

Legistar No.: 050115

Phone: 334-5011/Fax 334-2229
Box 46

FIRST READING

TO: Mayor and Commissioners

DATE: November 14, 2005

FROM: Marion J. Radson, City Attorney

SUBJECT: **ORDINANCE NO.: 0-05-96**

An ordinance of the City of Gainesville relating to sexual offenders and sexual predators; creating and adding a new Article III to Chapter 17 to be titled Sexual Offenders and Sexual Predators; providing definitions; establishing residency requirements, restrictions and penalties; prohibiting certain sexual offenders and sexual predators from residing within a specified distance of schools, daycare centers or parks, as more specifically defined in this ordinance; establishing requirements, responsibility and penalties for property owners and agents that let or rent to certain sexual offenders and sexual predators; providing for sexual offenders and sexual predators to acknowledge responsibilities; amending section 2-339, of the Gainesville Code of ordinances relating to applicable codes and ordinances subject to civil citation; providing directions to the codifier; providing a severability clause; providing a repealing clause and providing an immediate effective date.

RECOMMENDATION: The City Commission adopt the proposed ordinance.

The Public Safety Committee discussed this June 13, 2005 City Commission referral to review the laws related to sexual offenders and predators. The proposed ordinance would restrict the areas where convicted sexual offenders and predators could live within the City of Gainesville. The ordinance, based in part on a constitutionally upheld Iowa State model, proposes restricting their residences within 2500 feet of any public school, private school, day care or city park. The ordinance would also restrict a landlord from renting to offenders meeting certain criteria if the rental property is within that restricted zone. Additionally, the ordinance requires the offender to sign the Florida Department of Law Enforcement "Offender Notice of Responsibilities" form, acknowledging receipt and understanding of the responsibilities of a sexual offender or sexual predator.

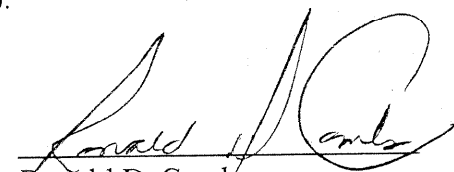
The Gainesville Police Department supports this initiative as an enhanced tool in better tracking of sexual offenders, by limiting their options and discouraging them from frequently moving. There are currently 207 registered Sexual Offenders and/or Predators living within the City. Numerous municipalities in the State of Florida have already enacted similar restrictions. The Public Safety Committee believes that the proposed ordinance will establish a policy that

provides for the best possible protection of the lives and safety of Gainesville residents, and especially children.

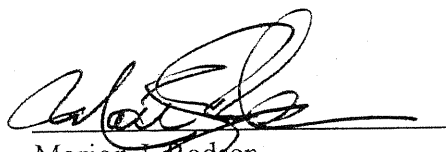
On September 26, 2005, the City Commission authorized the City Attorney to draft, and the Clerk of the Commission to advertise an ordinance that would restrict the areas where convicted sexual offenders and predators could live within the City of Gainesville.

This office would note that a bill (HB) has been filed in the Florida legislature affecting this subject. If enacted into law as written, the bill would require that any local ordinance provisions be consistent with the requirements of the state law. There are differences that would require an amendment of the ordinance. However, the house bill, if passed, would not become effective until October 1, 2006.

Prepared by:


Ronald D. Combs
Sr. Assistant City Attorney

Approved and
Submitted by:


Marion J. Radson
City Attorney

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10/27/05

Ordinance _____
0-05-96

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4 and sexual predators; creating and adding a new Article III to
5 Chapter 17 to be titled Sexual Offenders and Sexual Predators;
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10 this ordinance; establishing requirements, responsibility and
11 penalties for property owners and agents that let or rent to certain
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17 providing a repealing clause and providing an immediate effective
18 date.
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20 **WHEREAS**, the city commission is concerned about the numerous recent occurrences in
21 our state and elsewhere, whereby convicted sex offenders who have been released from custody
22 repeat the unlawful acts or acts similar to that of which they were originally convicted; and

23 **WHEREAS**, the city commission finds from the evidence presented that the recidivism
24 rate for released sex offenders is alarmingly high, especially for those who commit crimes
25 against children; and

26 **WHEREAS**, the City of Gainesville has been, is, and wishes to remain an attractive
27 place of residence for its citizens and in particular its small children; and

28 **WHEREAS**, the city commission desires to establish policy which provides the
29 maximum protection for the lives of persons in the City of Gainesville and affords them a safer
30 place to live and play; and

D R A F T

10/27/05

1 **WHEREAS**, §§ 794.065 and 947.1405, Florida Statutes, provide for one-thousand foot
2 residence prohibitions from specified locations for sexual offenders and sexual predators; and

3 **WHEREAS**, Article VIII, Section 2(b), Florida Constitution and § 166.021, Florida
4 Statutes, provide the city commission with the authority to protect the health, safety and welfare
5 of the city's residents; and

6 **WHEREAS**, the United States Eighth Circuit Court of Appeals recently issued an
7 opinion in the case of *Doe v. Miller*, 405 F.3d 700 (8th Cir. April 29, 2005) in which the Court
8 upheld similar residency restrictions contained in the State of Iowa, and found the restrictions to
9 be constitutional; and

10 **WHEREAS**, the city commission finds that creating Chapter 17, Article III, entitled
11 "Sexual Offenders and Sexual Predators," is in the best interests of the citizens of the City of
12 Gainesville; and

13 **WHEREAS**, at least 10 days notice has been given once by publication in a newspaper
14 of general circulation notifying the public of this proposed ordinance and of a Public Hearing in
15 the City Commission Auditorium in City Hall, City of Gainesville; and

16 **WHEREAS**, a Public Hearing was held pursuant to the published notice described at
17 which hearing the parties in interest and all others had an opportunity to be and were, in fact,
18 heard;

19 **NOW THEREFORE**, BE IT ORDAINED BY THE CITY COMMISSION OF THE
20 CITY OF GAINESVILLE, FLORIDA;

D R A F T

10/27/05

1 **Section 1.** A new Article III consisting of Sections 17-30 through 17-35, inclusive, is
2 created and added to Chapter 17 of the Code of Ordinances of the City of Gainesville, to read as
3 follows:

4 ARTICLE III SEXUAL OFFENDERS AND SEXUAL PREDATORS

5 Sec. 17-30. Short title.

6 This article shall be referred to as the “City of Gainesville Sexual Offender and Sexual Predator
7 Ordinance.”

8 Sec. 17-31. Findings and Intent

9 (a) Repeat sexual offenders, sexual offenders who use physical violence, and sexual
10 offenders who prey on children are sexual predators who present an extreme
11 threat to the public safety. Sexual offenders are extremely likely to use physical
12 violence and to repeat their offenses, and most sexual offenders commit many
13 offenses, have many more victims than are ever reported and are prosecuted for
14 only a fraction of their crimes. This makes the cost of sexual offender
15 victimization to society at large, while incalculable, clearly exorbitant.

16 (b) It is the intent of this Article to serve the city’s compelling interest to promote,
17 protect and improve the health, safety and welfare of the citizens of the city by
18 creating areas around locations where children regularly congregate in
19 concentrated numbers wherein certain sexual offenders and sexual predators are
20 prohibited from establishing temporary or permanent residence.

1 Sec. 17-32. Definitions.

2 The following words, terms and phrases, when used in this article, shall have the meanings
3 ascribed to them in this article, except where the context clearly indicates a different meaning:

4 “Day Care Center” means a day care center as defined in section 30-23 of the Gainesville Code
5 of Ordinances.

6 “Park” means any park enumerated in section 18-18 of the Gainesville Code of Ordinances
7 unless otherwise excepted herein.

8 “Permanent residence” means a place where the person abides, lodges or resides for a period of
9 14 or more consecutive days.

10 “Property owner” means the owner of record of the property and, for purposes of this Article,
11 shall include any person, business or corporation with authority to let or rent the premises.

12 “School” means a public or private elementary school, middle school, or secondary school.

13 “Temporary residence” means a place where the person abides, lodges or resides for a period of
14 14 or more days in the aggregate during any calendar year and which is not the person’s
15 permanent address, or a place where the person routinely abides, lodges or resides for a period of
16 four or more consecutive or nonconsecutive days in any month and which is not the person’s
17 permanent residence.

18 Sec. 17-33. Sexual offender and sexual predator residence prohibitions; Penalties;

19 Exceptions.

- 20 (a) It is unlawful for any person who has been found guilty of, or plead guilty, or no
21 contest to, a violation of §§ 794.011, 800.04, 827.071 or 847.0145, Florida Statutes,
22 or any equivalent violation from another jurisdiction that would be a felony if

D R A F T

10/27/05

1 committed in this state, in which the victim of the offense was less than 16 years of
2 age regardless of whether adjudication has been withheld, to establish a permanent
3 residence or temporary residence within 2,500 feet of any school, day care center, or
4 park.

5 (b) For purposes of determining the minimum distance separation, the requirement shall
6 be measured by following a straight line from the outer property line of the permanent
7 residence or temporary residence to the nearest outer property line of a school, day
8 care center, or park.

9 (c) Exceptions. A person who maintains a permanent or temporary residence within
10 2,500 feet of any school, day care center, or park, does not commit a violation of this
11 section if any of the following apply:

12 (i) The person established continuous permanent residence prior to November 28,
13 2005.

14 (ii) The school or day care center located within 2,500 feet of the person's
15 permanent residence was first licensed to operate after the person established
16 the continuous permanent residence.

17 (iii) The person was a minor when the specified offense was committed and was
18 not convicted as an adult for that offense.

19 (iv) The person is a minor.

20 Any person who qualifies for an exception pursuant to sections (c)(i) or (c)(ii) above,
21 becomes fully subject to this ordinance upon any change of address.

1 (d) Penalties. A person who violates this section shall be punished as provided in
2 Section 1-9 of this code.

3 **Sec. 17-34. Property owners prohibited from renting real property to certain sexual**
4 **offenders and sexual predators; Penalties.**

5 (a) It is unlawful for a property owner to let or rent any place, structure, or part
6 thereof, trailer or other conveyance, with the knowledge that it will be used as a
7 permanent residence or temporary residence by any person prohibited from establishing
8 such permanent residence or temporary residence pursuant to section 17-33 of this Code,
9 if such place, structure, or part thereof, trailer or other conveyance, is located within
10 2,500 feet of any school, day care center, or park, unless the property owner can establish
11 that, prior to rental or lease, he or she used reasonable due diligence and was unable to
12 determine that the prospective tenant was subject to the restrictions described in Section
13 17-33 of this Code.

14 (b) A property owner's failure to comply with provisions of this section shall
15 constitute a violation of this section and shall subject the property owner to civil citation
16 as provided in section 2-339 of the Gainesville Code of Ordinances.

17 **Sec. 17-35. Sexual Offender Notice of Responsibilities; Failure to Execute.**

18 A sexual offender or sexual predator who resides in the City of Gainesville shall, upon
19 presentment by a law enforcement officer, sign an acknowledgement that he/she has received
20 and understands the responsibilities of a sexual offender or sexual predator as those
21 responsibilities are stated on the form. If the sexual offender or sexual predator refuses to sign

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10/27/05

1 the acknowledgement, the officer presenting such document shall document that the form was
2 given to the sexual offender or sexual predator and note the refusal to sign the acknowledgement.

3 **Section 2.** Section 2-339 of the Code of Ordinances of the City of Gainesville, is
4 amended to read as follows:

5 **Sec. 2-339. Applicable codes and ordinances.**

6 The following ordinances are enforceable by the procedures described in this
7 division:
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Section	Description	Class	Penalty
2-67(b)	Declaration of water emergency imposing water use restrictions	I	\$50.00
Chapter 5 except as provided below	Animal control	I	\$50.00
5-2(c)	Animal molesting or biting pedestrian or bicyclist	IV	\$200.00
6-3	104.1.1 of adopted Standard Building Code, as amended Building, electrical, plumbing, gas, and/or mechanical work within a required permit	II	\$75.00
6-183(1)	False advertising	III	\$125.00
6-185	Acting as a contractor without a valid contractor certificate	IV	\$200.00
6-186(b)(2)	No journeyman or certified craftsman on the job site	II	\$75.00
Article IX of Chapter 6	Downtown minimum property standards	I	\$50.00
Chapter 10	All adopted fire prevention & protection codes, except NFPA 101 Chapters 5, 6, 7 and SFPC Chapters 6, 8, 31 and 42	II	\$75.00

D R A F T

10/27/05

Chapter 10	NFPA 101 Chapters 5, 6, 7 SFPC Chapters 6, 8, 31 and 42	IV	\$200.00
11.5-1	Availability of potable water	I	\$50.00
Article III of Chapter 13	Commercial building code	II	\$75.00
13-171	Insects, storage, trash and yard maintenance	I	\$125.00
13-181	Hazardous conditions on residential property	I	\$125.00
Article II of Chapter 14.5	Merchandising of tobacco products	II	\$75.00
Article III of Chapter 14.5	Towing from certain private property	II	\$125.00
14.5-1	Not having landlord permit	II	\$125.00
Chapter 15	Noise violations	I	\$125.00
16-19	Dangerous buildings/hazardous lands	I	\$125.00
17-2	Fliers on utility poles or other fixtures	I	\$50.00
<u>17-34</u>	<u>Knowingly rent or let a residence to a sexual offender or sexual predator to use as a temporary or permanent residence contrary to the Sexual Predator Ordinance</u>	II	\$125.00
19-2	Violation of regulations for peddling in Downtown Plaza	I	\$50.00
19-34	Violation of permit requirements for commercial peddlers, solicitors, or canvassers	II	\$50.00
19-52	Unauthorized solicitation of alms or financial assistance	II	\$50.00
19-53	Unauthorized sale or transfer of goods and services; religious and charitable organizations soliciting for contributions without a permit	II	\$50.00

D R A F T

10/27/05

19-55	Violation of restrictions and requirements for permitted soliciting	I	\$50.00
19-96	Operation of mobile food cart in prohibited area	I	\$50.00
19-97	Violation of regulations on permitted mobile food cart	I	\$50.00
Chapter 5 except as provided below	Animal control	I	\$50.00
19-112	Unauthorized soliciting of funds	I	\$50.00
19-127	Violation of prohibition on throwing or distributing handbills upon property displaying a "No Handbills" sign	I	\$125.00
21-53(b)(6)	Non-permitted, revoked or suspended alarm system	IV	\$200.00
21-58(a)	Failure to register alarm monitoring company	II	\$125.00
21-58(c)	Failure to maintain records	II	\$125.00
21-59	Failure to make alarm verified call	II	\$125.00
21-60(a)	Failure to register--Alarm system contractors	II	\$125.00
21-60(b)	Maintenance, repair, alter or service of system for compensation by noncontractor	II	\$125.00
21-60(c)	Failure to issue ID	I	\$50.00
21-60(d)	Use of equipment or methods below minimum standards	II	\$125.00
21-60(e)	Activation/servicing non-permitted alarm	II	\$125.00
21-60(f)	Causing false alarm during servicing	II	\$125.00

D R A F T

10/27/05

21-60(g)	Failure to provide blank alarm permit application	I	\$50.00
21-61(a)	Operating automatic dialing device	II	\$125.00
21-61(b) 21-61(c)	Failure to remove non-permitted features	I	\$50.00
21-62	Operating alarm system without auxiliary power	II	\$125.00
Chapter 22	Secondhand Goods Secondhand Dealers	III	\$125.00
26-137	Abandoned vehicles	I	\$125.00
27-73	Solid waste violations except (4), (8) and (9)	I	\$125.00
27-76(b)(1)b	Improper use of cart	I	\$50.00
27-79(a) and (f)	Commercial franchise violations	IV	\$200.00
Chapter 28	Taxicab regulation	I	\$50.00
30-45	Prohibited use in zoning district	I	\$125.00
30-51(c)	Permitted uses in single family districts	II	\$125.00
30-56(b) and (c)	Residential parking	I	\$125.00
30-59(c)	Permitted uses in office districts	I	\$50.00
30-61(c)	Permitted uses in general business district	I	\$50.00
30-62(c)	Permitted uses in automotive oriented business district	I	\$50.00
30-63(c)	Permitted uses in tourist-oriented business district	I	\$50.00

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10/27/05

30-64(e)	Permitted uses in mixed use low intensity district		\$50.00
30-65(c)	Permitted uses in mixed use medium intensity district		\$50.00
30-66(c)	Permitted uses in central city district		\$50.00
30-67(g)	Illegal outdoor storage and sales		\$50.00
30-68(c)	Permitted uses in warehousing and wholesaling district		\$50.00
30-69(c)	Permitted uses in limited industrial district		\$50.00
30-70(c)	Permitted uses in general industrial district		\$50.00
30-86	Use, parking, storage and keeping of recreational vehicles		\$50.00
30-315 et seq.	Violation of sign regulations		\$50.00
30-357	New business, expansion or change of use without zoning compliance permit		\$50.00

1
2 **Section 3.** It is the intention of the City Commission that Sections 1 and 2 of this ordinance
3 shall become and be made a part of the Gainesville Code of Ordinance, of the City of Gainesville,
4 Florida, and that the Sections and Paragraphs of this ordinance may be renumbered or relettered in
5 order to accomplish such intentions.

6 **Section 4.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or
7 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the
8 validity of the remaining portions of this ordinance.

9 **Section 5.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
10 such conflict hereby repealed.

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10/27/05

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Section 6. This ordinance shall become effective immediately on adoption

PASSED AND ADOPTED this ____ day of _____, 2005.

PEGEEN HANRAHAN
MAYOR

ATTEST

APPROVED AS TO FORM AND LEGALITY

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

This Ordinance passed on first reading this ____ day of _____, 2005.

This Ordinance passed on second reading this ____ day of _____, 2005.

**ADVERTISEMENT
NOTICE OF PROPOSED
ENACTMENT OF
ORDINANCE
BY CITY COMMISSION,
GAINESVILLE, FLORIDA**

Notice is hereby given that the proposed ordinance, whose title appears below will be considered for First Reading on the 14th day of November, 2005, at the City Commission meeting and if then adopted on First Reading will be considered for Second and Final Reading and adoption on the 28th day of November, 2005, at the City Commission meeting. The meetings begin at 6:00p.m. and the ordinances will be read as soon thereafter as may be heard. The meetings are held in the City Commission Auditorium, on the First Floor of City Hall, 200 East University Avenue, Gainesville, Florida. A copy of said ordinance may be inspected by any member of the public at the office of the Clerk of the Commission on the First Floor of City Hall during regular business hours located at 200 East University Avenue, Gainesville, Florida, and at the Public Library, Main Branch, located at 401 East University Avenue. On the dates mentioned above all interested parties may appear at the meeting and be heard with respect to the proposed ordinances. Persons with disabilities, who require assistance to participate in the meetings, are requested to notify the Equal Opportunity Office at 334-5051 or call the TDD phone line at least 2 business days in advance.

ORDINANCE TITLE

ORDINANCE NO. 050115
An ordinance of the City of Gainesville relating to sexual offenders and sexual predators; creating and adding a new Article III to Chapter 17 to be titled Sexual Offenders and Sexual Predators; providing definitions; establishing residency requirements, restrictions and penalties; prohibiting certain sexual offenders and sexual predators from residing within a specified distance of schools, daycare centers or parks, as more specifically defined in this ordinance; establishing requirements, responsibility and penalties for property owners and agents that let or rent to certain sexual offenders and sexual predators; providing for sexual offenders and sexual predators to acknowledge responsibilities; amending section 2-339, of the Gainesville Code of ordinances relating to applicable codes and ordinances subject to civil citation; providing directions to the codifier; providing a severability clause; providing a repealing clause and providing an immediate effective date.

Note: "All persons are advised that, if any person decides to appeal any decision made at any of these meetings, they will need a record of the proceedings and, for such purpose, they need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

November 3, 2005
Publish Date

Kurt M. Lannon
Clerk of the Commission

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#A000085651