

Sexual Offender/Predator Ordinance Highlights

#050115 a

Defining a Predator and Offender:

A sexual offender is a person designated a sex offender by his or her conviction of certain sexual offenses or kidnapping.

The designation of sexual predator, under Florida law, requires the court to make a specific finding that an offender is a sexual predator.

Where are they?

Currently there a total of 330 known offenders/predators living in the county and city.

There are a total of 209 registered sexual offenders and 107 convicted child molesters living in the city.

Why this type of ordinance?

Sex offenders/predators have the highest rate of recidivism over all other criminals.

Offenders/predators are often very transient in where they live. Many move several times over a year.

By restricting where they live hopefully this will cut down the number of times they move enabling law enforcement a better opportunity to verify their addresses.

The draft ordinance follows the Iowa state model restricting where convicted molesters live.

Who does it affect?

It affects sex offenders/predators who have been convicted of molesting children under the age of 16.

It affects these offenders who are supervised by the Department of Corrections/Probation and Parole and those who have been released from probation/prison.

It affects those who knowingly rent either permanently or temporarily to child molesters.

How does it affect sex offenders/predators?

It restricts where these individuals may live in the city.

It does not require an offender/predator to move if they were living in their current residences prior to the ordinance being enacted. However, if they move from their current residence it will affect them.

It requires offenders/predators to sign a state form advising them of their individual responsibilities as an offender/predator.

What is currently being done to monitor these offenders/predators?

Address verifications are being performed by officers and one detective, assuring compliance with state laws.

Curfew checks in conjunction with Probation and Parole Officers assuring compliance.

Arrests are made for offenders not in compliance.

The Gainesville Police Department's Record Management System tracks the information.

State and National sweeps are being done with FDLE , State Probation and the US Marshals locating offenders who have absconded from supervision or who have warrants.

Community awareness and education is being done through neighborhood watch meetings, Black on Black Task Force, city organized events and the University of Florida.

Why a misdemeanor level penalty (\$500/60day) rather than a more serious felony level offense?

Municipalities are restricted in the penalties which may be applied to ordinance violations. § 162.22, F.S. provides as follows:

162.22 Designation of enforcement methods and penalties for violation of municipal ordinances.--The governing body of a municipality may designate the enforcement methods and penalties to be imposed for the violation of ordinances adopted by the municipality. These enforcement methods may include, but are not limited to, the issuance of a citation, a summons, or a notice to appear in county court or arrest for violation of municipal ordinances as provided for in chapter 901. *Unless otherwise specifically authorized and provided for by law, a person convicted of violating a municipal ordinance may be sentenced to pay a fine, not to exceed \$500, and may be sentenced to a definite term of imprisonment, not to exceed 60 days,* in a municipal detention facility or other facility as authorized by law.

Why "grandfather" in locations which may violate the ordinance once adopted?

The ex post facto prohibition forbids the Congress and the States to enact any law which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed.

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An ordinance of the City of Gainesville sexual offenders and sexual predators; creating and adding a new Article III to Chapter 17 to be titled Sexual Offenders and Sexual Predators; establishing residency requirements, restrictions and penalties; establishing requirements and responsibility of property owners that let or rent to certain offenders and sexual predators; and providing for sexual offenders and sexual predators acknowledge responsibilities; and provides penalty for refusal to sign the acknowledgement; providing directions to the codifier; providing a severability clause; providing a repealing clause and providing an immediate effective date.

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WHEREAS, the city commission is concerned about the numerous recent occurrences in our state and elsewhere, whereby convicted sex offenders who have been released from custody repeat the unlawful acts or similar acts for which they were originally convicted; and

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

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

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WHEREAS, the city commissions desires to establish policy which provides the maximum protection of the lives and persons in the City of Gainesville and afford them a safer place to live and play; and

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

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WHEREAS, § 847.0134, Florida Statutes, provides that certain adult entertainment venues may not be located within 2,500 feet of the real property that comprises a public or private elementary school, middle school or secondary school, and

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WHEREAS, Article VIII, Section 2(b), Florida Constitution and § 166.021, Florida Statutes, provides the city commission with the authority to protect the health, safety and welfare of its residents; and

1 **WHEREAS**, the United States Eighth Circuit Court of Appeals recently issued an
 2 opinion in the case of *Doe v. Miller*, 2005 WL 991635 (8th Cir. April 29, 2005) in which the
 3 Court upheld similar residency restrictions contained in the State of Iowa, and found the
 4 restrictions to be constitutional; and

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 6 **WHEREAS**, the city commission finds that creating Chapter 17, Article III, entitled
 7 “Sexual Offenders and Sexual Predators,” is in the best interests of the citizens of the City of
 8 Gainesville;

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 10 **NOW THEREFORE**, BE IT ORDAINED BY THE CITY COMMISSION OF THE
 11 CITY OF GAINESVILLE, FLORIDA;

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

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 18 **ARTICLE III SEXUAL OFFENDERS AND SEXUAL PREDATORS**

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 20 **Sec. 17-30. Short title.**

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

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 25 **Sec. 17-31. Findings and Intent**

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 27 (a) Repeat sexual offenders, sexual offenders who use physical violence, and sexual
 28 offenders who prey on children are sexual predators who present an extreme
 29 threat to the public safety. Sexual offenders are extremely likely to use physical
 30 violence and to repeat their offenses, and most sexual offenders commit many
 31 offenses, have many more victims than are ever reported and are prosecuted for
 32 only a fraction of their crimes. This makes the cost of sexual offender
 33 victimization to society at large, which incalculable, clearly exorbitant.
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 35 (b) It is the intent to the Article to serve the city’s compelling interest to promote,
 36 protect and improve the health, safety and welfare of the citizens of the City by
 37 creating areas around locations where children regularly congregate in
 38 concentrated numbers wherein certain sexual offenders and sexual predators are
 39 prohibited from establishing temporary or permanent residence.

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2 **Sec. 17-32. Definitions.**
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4 The following words, terms and phrases, when used in this article, shall have the meanings
5 ascribed to them in this article, except where the context clearly indicates a different meaning:
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7 “Permanent residence” means a place where the person abides, lodges or resides for a period of
8 14 or more days.
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10 “Temporary residence” means a place where the person abides, lodges or resides for a period of
11 14 or more days in the aggregate during any calendar year and which is not the person’s
12 permanent address, or a place where the person routinely abides, lodges or resides for a period of
13 four or more consecutive or nonconsecutive days in any month and which is not the person’s
14 permanent residence.
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16 “Property owner” means the registered owner of the property and, for purposes of this Article,
17 shall include any person, business or corporation with authority to let or rent the premises.
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19 **Sec. 17-33. Sexual offender and sexual predator residence prohibitions; Penalties;**
20 **Exceptions.**
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- 22 (a) It is unlawful for any person who has been convicted of a violation of §§ 794.011,
23 800.04, 827.071 or 847.0145, Florida Statutes, regardless of whether adjudication has
24 been withheld, or, any equivalent violation in any state of the United States or any
25 foreign nation, in which the victim of the offense was less than 16 years of age, to
26 establish a permanent residence or temporary residence within 2,500 feet of any
27 school, day care center, park, playground or other place where children regularly
28 congregate.
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- 30 (b) For purposes of determining the minimum distance separation, the requirement shall
31 be measured by following a straight line from the outer property line of the permanent
32 residence or temporary residence to the nearest outer property line of a school, day
33 care center, park, playground, or other place where children regularly congregate.
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- 35 (c) Penalties. A person who violates this section shall be punished by a fine not
36 exceeding \$500.00 or by imprisonment for a term not exceeding 60 days or by both
37 such fine and imprisonment.
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- 39 (d) Exceptions. A person residing within 2,500 feet of any school, day care center, park,
40 playground, or other place where children regularly congregate does not commit a
41 violation of this section if any of the following apply:
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- 43 (i) The person established the permanent residence prior to effective date of this
44 ordinance.

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2 (ii) The school or day care center within 2,500 feet of the person's permanent
3 residence was opened after the person established the permanent residence.
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5 (iii) The person was a minor when the requisite offense was committed and was
6 not convicted as an adult.
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8 (iv) The person is a minor.
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10 Any person who qualifies for an exception pursuant to sections (d)(i) or (d)(ii) above,
11 becomes fully subject to this ordinance upon any change of address.
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13 **Sec. 17-34. Property owners prohibited from renting real property to certain sexual**
14 **offenders and sexual predators; Penalties.**
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16 (a) It is unlawful to let or rent any place, structure, or part thereof, trailer or other
17 conveyance, with the knowledge that it will be used as a permanent residence or
18 temporary residence by any person prohibited from establishing such permanent
19 residence or temporary residence pursuant to section 17-33 of this Code, if such place,
20 structure, or part thereof, trailer or other conveyance, is located within 2,500 feet of any
21 school, day care center, park playground, or other place where children regularly
22 congregate.
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24 (b) A property owner's failure to comply with provisions of this section shall
25 constitute a violation of this section and shall subject the property owner to the code
26 enforcement provisions and procedures of the Gainesville Code of Ordinances that allow
27 the city to seek relief as otherwise provided by law.
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29 **Sec. 17-35. Sexual Offender Notice of Responsibilities; failure to execute; Penalties.**
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31 A sexual offender or sexual predator who resides in the City of Gainesville shall, upon
32 presentment by a law enforcement officer, sign an acknowledgement that he/she has received
33 and understands the responsibilities of a sexual offender or sexual predator as those
34 responsibilities are stated on the form. Refusal to sign the acknowledgement shall be a violation
35 of this section and shall subject the violator to a fine not exceeding \$500.00 or by imprisonment
36 for a term not exceeding 60 days or by both such fine and imprisonment.
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