

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

ORDINANCE NUMBER _____

AN ORDINANCE OF MARTIN COUNTY, FLORIDA, ADDING ARTICLE 7, RESIDENTIAL RESTRICTIONS ON SEXUAL OFFENDERS AND SEXUAL PREDATORS TO CHAPTER 111, MISCELLANEOUS PROVISIONS, GENERAL ORDINANCES, MARTIN COUNTY CODE; PROVIDING FOR APPLICABILITY, CONFLICTING PROVISIONS AND SEVERABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article 8, Section 1(f) of the Florida Constitution concerning non-charter counties such as Martin County, the Board of County Commissioners may enact ordinances applying not only to the unincorporated areas but also to incorporated areas, that is, municipalities, so long as the ordinance is not in conflict with a municipal ordinance in which case the ordinance shall not be effective within the municipality to the extent of such conflict; and

WHEREAS, pursuant to Sections 944.606(2) and 943.0435(12), Florida Statutes, the Florida Legislature has found and determined that the protection of the public from sexual offenders, particularly those who have committed offenses against minors, is a paramount governmental interest; and

WHEREAS, Sections 775.215, 947.1405(7)(a)2. and 948.30(1)(b), Florida Statutes, provide for one thousand (1,000) feet residence prohibitions from specified locations for certain sexual offenders and sexual predators; and

WHEREAS, pursuant to Section 125.01(1)(t), Florida Statutes, the Board of County Commissioners is authorized to adopt ordinances and resolutions necessary for the exercise of its powers and to prescribe fines and penalties for the violation of ordinances in accordance with law; and

WHEREAS, pursuant to Section 125.01(1)(w), Florida Statutes, the Board of County Commissioners is authorized to perform any other acts not inconsistent with law, which acts are in the common interest of the people of the County, and to exercise all powers and privileges not specifically prohibited by law; and

WHEREAS, the County has a substantial and compelling interest in maintaining the quality of life and protecting the health, safety and welfare of citizens at schools, child care facilities and parks to engage in positive education, economic and social activities, and has a substantial and compelling interest in allowing the citizens to gainfully and productively use and

enjoy the facilities in such areas in the County without victimization at the hands of a sexual offender or sexual predator; and

WHEREAS, the County finds that the creation of a sexual offender and sexual predator residency prohibition section of the Martin County Code of Ordinances, which would prohibit sexual offenders and sexual predators under certain Florida Statutes from residing within twenty-five hundred (2,500) feet of specified locations in the County, is in the best interest of the health, safety and welfare of the residents, citizens, and visitors of the County; and

WHEREAS, the Florida Third District Court of Appeal has held that a county ordinance nearly identical to this proposed ordinance was valid and not preempted by the Legislature in *Exile v. Miami-Dade County*, 35 So.3d 118, 118 - 119 (2010) and *Calderon v. State of Florida*, 93 So.3d 439, 440 - 441 (2012); and

WHEREAS, the enactment of this proposed ordinance will not conflict with any municipal ordinance.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, MARTIN COUNTY, FLORIDA, THAT:

PART 1: ADDITION OF ARTICLE 7, RESIDENTIAL RESTRICTIONS ON SEXUAL OFFENDERS AND SEXUAL PREDATORS, TO CHAPTER 111, MISCELLANEOUS PROVISIONS, GENERAL ORDINANCES, MARTIN COUNTY CODE

Article 7, Residential Restrictions on Sexual Offenders and Sexual Predators, is hereby added to Chapter 111, Miscellaneous Provisions, of the Martin County Code of Ordinances to read as follows:

ARTICLE 7. RESIDENTIAL RESTRICTIONS ON SEXUAL OFFENDERS AND SEXUAL PREDATORS

Section 111.149. - Title.

This ordinance shall be known and may be cited as “The Martin County Residential Restrictions Ordinance”.

Section 111.150. - Findings and Intent.

1. 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.

2. 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: (i) establishing temporary or permanent residence in certain areas where children are known to regularly congregate; (ii) renting or leasing certain property to sexual offenders or sexual predators if such property is located in close proximity to where children are known to regularly congregate; and (iii) accessing parks and child care facilities.

Section 111.151. - Applicability.

This ordinance shall be applicable to the incorporated and unincorporated areas of Martin County to the extent not in conflict with a valid municipal ordinance.

Section 111.152. – Definitions and References to Statutes and Codes.

A. Definitions. The following terms and phrases, whether the first letter is capitalized or in lower case or in the singular or plural, when used in this ordinance 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”, as defined in Section 402.302(2), Florida Statutes, means any child care center or child care arrangement which provides child care for more than five (5) children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, whether or not operated for profit, and that is duly licensed pursuant to Sections 402.301 - 319, Florida Statutes, and Rule 65C-22, Florida Administrative 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 plea (or an Alford or Kennedy plea), regardless of whether adjudication is withheld or if there is a suspended execution or imposition of sentence, resulting in a “sanction,” which includes, but is not limited to, community control, community service, conditional release, controlled release, a fine, hospitalization or institutionalization, monitoring, parole, probation, remedial program, or incarceration in a federal prison, state prison, private correctional facility, or local detention facility including but not limited to a county or municipal jail. Convictions may be from any federal or state

jurisdiction, the jurisdictions of any territory or possession of the United States, a military tribunal including courts-martial conducted by any branch of the Armed Forces of the United States, any tribal jurisdiction, and any foreign jurisdictions, that is, jurisdictions outside of the United States and its possessions and territories where the foreign jurisdiction accords the minimum of due process to an accused and has followed the foreign jurisdiction's own procedures.

5. "Day" means a calendar day.
6. "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.
7. "Park" means a County or municipal park.
8. "Permanent residence" means a place where a person abides, lodges, or resides for three (3) or more consecutive days.
9. "Reside" or "residence" means to have a place of permanent residence, temporary residence, or transient residence.
10. "School" means a public or private kindergarten, elementary, middle or secondary (high) school or any educational facility operated by the Martin County Public School System.
11. "Sexual offender" shall have the meaning ascribed to such term in Section 943.0435, Florida Statutes.
12. "Sexual offense" means a conviction under Sections 794.011, 800.04, 827.071, 847.0135 excluding 847.135(6), 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.
13. "Sexual predator" shall have the meaning ascribed to such term in Section 775.21, Florida Statutes.
14. "Temporary residence" means a place where the person abides, lodges, or resides for a period of three (3) 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 three (3) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.
15. "Transient residence" means a place where a person lives, remains, or is located for a period of three (3) or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a structure or outdoor area where the person sleeps or seeks shelter and a location that has no specific street address.

B. References to Statutes and Codes. Any amendment, revision, re-codification or change to any statute or code that is cited in this ordinance shall be as effective as the

original citation. Nothing herein shall preclude the County from amending this ordinance as necessary.

Section 111.153. - Sexual Offender and Sexual Predator Residence Prohibition; Penalties.

1. It is unlawful for any person who has been convicted of a violation of Sections 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 (sexual acts transmitted over computer) excluding 847.0135(6), 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 or child care facility.
 - a. 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 or child care facility. 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.
2. Penalties. A person who violates this section shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment in the County jail for not more than three hundred sixty-four (364) days or by both such fine and imprisonment.

Section 111.154. - Exceptions.

1. A sexual offender or sexual predator residing within 2,500 feet of any school or child care facility does not commit a violation of this section if any of the following apply:
 - a. The sexual offender or sexual predator established a residence on or before September 5, 2022. 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 or child care facility was opened after the sexual offender or sexual predator established the residence.
2. This section 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 or child care facility.

Section 111.155. - Property Owners or Lessors Prohibited from Renting Real Property to Certain Sexual Offenders or Sexual Predators; Penalties.

1. 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 ordinance, if such place, structure, or part thereof, trailer or other conveyance, is located within 2,500 feet of a school or child care facility. 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.
2. 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 or child care facility, and annually thereafter if a rental agreement is entered into, the owner or lessor shall obtain confirmation of a nationwide search from the Martin County Sheriff's Office 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 this ordinance. A person may call the Martin County Sheriff's Office 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 or child care facility.
3. Penalties.
 - a. A person who violates subsection 1 of this section shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment in the County jail for not more than sixty (60) days, or both such fine and imprisonment. A person who is convicted of a second or subsequent violation of subsection 1 of this section shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment in the County jail for not more than 364 days, or by both such fine and imprisonment.
 - b. A person who violates subparagraph 2 of this section shall be punished by a civil penalty of \$500.00 for each day of violation or noncompliance.

Section 111.156. - Sexual Offender and Sexual Predator Access to Parks and Child Care Facilities Restricted; Penalties.

1. It is unlawful for a sexual offender or sexual predator convicted of a sexual offense to knowingly be present in a County or municipal park when a child under the age of 16 years is present, unless the sexual offender or sexual predator is the parent or legal guardian of a child present in the park.

2. Within one hundred eighty (180) days after the effective date of this ordinance, signage at the entrance of County and municipal parks shall include notification that a person convicted of a sexual offense 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.
3. It is unlawful for a sexual offender or sexual predator convicted of a sexual offense to knowingly enter or remain in a child care facility (“facility”) or on its premises unless the sexual offender or sexual predator:
 - a. Is dropping off or picking up a child registered at the facility and is the parent or legal guardian of said child; and
 - b. Remains under the supervision of a facility supervisor or his or her designee while on the facility premises.
4. Penalties. A person who violates this section 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 this section 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.

Section 111.157. - Loitering or prowling in child safety zone; penalties.

1. It is unlawful for any sexual offender or sexual predator:
 - a. To loiter or prowl with the intent to commit a sexual offense while knowingly within a child safety zone when children are present; and
 - b. To engage in overt conduct that, under the circumstances, manifests an intent to commit a sexual offense.
2. Conduct which may, under the circumstances, be deemed adequate to manifest an intent to commit a sexual offense includes, but is not limited to, conduct such as the following:
 - a. Making sexual conversation or sexual remarks to a child;
 - b. Making lewd or sexual gestures to a child, or exposing sexual organs to a child; and
 - c. Giving gifts of candy, money, music, or other items to a child to which he or she is not related or acquainted.
3. 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.

4. 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.
5. Penalties. A person who violates this section 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 imprisonment.
6. This section 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, Section 856.021, Florida Statutes.

Sections 111.158 – 111.163. – Reserved.

PART 2: APPLICABILITY OF ORDINANCE.

This Ordinance shall be applicable to the unincorporated areas of Martin County, and to the incorporated areas of Martin County to the extent permitted by Article VIII, Section 1(f), of the Constitution of the State of Florida.

PART 3: CONFLICTING PROVISIONS.

Martin County ordinances, County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict.

PART 4: SEVERABILITY.

If any portion of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Ordinance. If this Ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstances.

PART 5: FILING WITH THE DEPARTMENT OF STATE.

The Clerk be and hereby is directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

PART 6: CODIFICATION.

Provisions of this Ordinance shall be incorporated into the Martin County General Ordinances, except that parts 2 through 7 shall not be codified. The word “ordinance” may be changed to

“article,” “section,” or other word, and the sections of this Ordinance may be renumbered or re-lettered.

PART 7: EFFECTIVE DATE

This Ordinance shall take effect on September 5, 2022.

PASSED AND DULY ADOPTED THIS 7th DAY OF JUNE, 2022.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

**CAROLYN TIMMANN, CLERK
OF THE CIRCUIT COURT AND
COMPTROLLER**

DOUG SMITH, CHAIRMAN

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**SARAH W. WOODS
COUNTY ATTORNEY**