



## Agenda Item Summary

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**File ID:** 22-0883

**PH-2**

**Meeting Date:** 6/7/2022

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**PLACEMENT:** Public Hearings

**TITLE:**

**PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE PROVIDING FOR RESIDENTIAL AND OTHER RESTRICTIONS ON SEXUAL OFFENDERS AND SEXUAL PREDATORS**

**EXECUTIVE SUMMARY:**

This agenda item concerns the approval of an ordinance providing for residential and other restrictions on sexual offenders and sexual predators.

**DEPARTMENT:** County Attorney

**PREPARED BY:** **Name:** David Arthur  
**Title:** Senior Assistant County Attorney

**REQUESTED BY:** Martin County Sheriff's Office

**PRESET:**

**PROCEDURES:** None

**BACKGROUND/RELATED STRATEGIC GOAL:**

This agenda item concerns the approval of an ordinance providing for residential restrictions on sexual offenders and sexual predators (collectively "sexual offenders") that would apply to the incorporated and unincorporated areas of Martin County.

Pursuant to Article 8, Section 1(f) of the Florida Constitution concerning non-charter counties such as Martin County, the Board may enact ordinances applying not only to the unincorporated areas but also to incorporated areas, 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. Further, the Board is authorized to (i) adopt ordinances necessary for the exercise of its powers, (ii) prescribe fines and penalties for the violation of ordinances in accordance with law, (iii) perform any other acts not inconsistent with law, which acts are in the common interest of the people of the County, and (iv) exercise all powers and privileges not specifically prohibited by law. *Sections 125.01(1)(t) and (w), 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. *Section 944.606(2), Florida Statutes.* Accordingly, the Legislature has enacted statutes providing for 1,000-foot residence prohibitions from specified locations, including

schools and child care facilities, for certain sexual offenders. *Sections 947.1405(7)(a)2. and 948.30 (1)(b), Florida Statutes.*

However, at least sixteen counties have enacted more restrictive ordinances prohibiting sexual offenders from residing within 2,500 feet of schools and child care facilities, including our neighbors Palm Beach County, Okeechobee County, and St. Lucie County, as well as nearby Broward and Indian River Counties. In particular, Miami-Dade County enacted a more comprehensive ordinance prohibiting sexual offenders from residing within 2,500 feet of schools, and restricting access to County and municipal parks, child care facilities, and school bus stops, as well as prohibiting sexual offenders from loitering or prowling within 300 feet of any child safety zone, that is, schools, child care facilities, parks, and school bus stops. The Florida Third District Court of Appeal has twice found Miami-Dade's ordinance to be valid and not pre-empted by the State. *Exile v. Miami-Dade County*, 35 So.3d 118, 118 - 119 (2010) (ordinance challenged by the A.C.L.U.) and *Calderon v. State of Florida*, 93 So.3d 439, 440 - 441 (2012). Staff believes the Third District's validation of this ordinance makes it an ideal model for this County as it has withstood legal challenge twice. The fact that Miami-Dade is a charter county is inconsequential.

The Martin County Sheriff requested that the County Attorney's Office draft a proposed 2,500 feet residency restriction ordinance, and the Sheriff's staff has reviewed the proposed ordinance and approves it.

Staff, using the Miami-Dade version as a model, drafted the proposed ordinance, updating and strengthening the Miami-Dade version in certain respects and clarifying certain language. Further, the County Attorney's Office has notified each municipality of this proposed ordinance and has received no objection. The Town of Sewall's Point already has a 2,500 feet residency restriction ordinance, and the proposed ordinance would not conflict, but rather, would enhance the Town's restrictions already in place.

Specifically, the proposed ordinance would prohibit sexual offenders from:

1. Residing within 2,500 feet of a public or private kindergarten, elementary, middle or secondary (high) school or child care facility. This includes rental properties and imposes duties on landlords to do background checks on prospective tenants.
2. Knowingly accessing County and municipal parks when children under sixteen years of age are present, with an exception for an offender who is the parent or legal guardian of a child present in the park.
3. Accessing child care facilities, with an exception for an offender picking up or dropping off his or her child at the facility and the facility is supervising this activity.
4. Knowingly being within 300 feet of any child safety zone, that is, schools, child care facilities, parks, and school bus stops, when children under sixteen years of age are present and engaging in conduct manifesting an intent to commit a sexual offense, with specific examples of such conduct set forth. This type of conduct is known as loitering or prowling.

The proposed ordinance would take effect 90 days after the Board's approval so as not to create

unintended notice or taking issues as to the sale of real estate or rental of residences. The proposed ordinance would be prospective and not retroactive.

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.

In conclusion, the proposed ordinance is in the best interest of the health, safety and welfare of the residents, citizens, and visitors of the County, and staff recommends approval.

**ISSUES:**

None.

**LEGAL SUFFICIENCY REVIEW:**

This item has been reviewed for legal sufficiency to determine if it is consistent with applicable law, and in doing so, legal staff have identified legal risks, and have developed strategies for legal defensibility.

**RECOMMENDED ACTION:**

**RECOMMENDATION**

Move that the Board approve the ordinance providing for residential and other restrictions on sexual offenders and sexual predators.

**ALTERNATIVE RECOMMENDATIONS**

Provide staff with direction if necessary.

**FISCAL IMPACT:**

**RECOMMENDATION**

None

**ALTERNATIVE RECOMMENDATIONS**

None

**DOCUMENT(S) REQUIRING ACTION:**

- |  |                                       |   |
|--|---------------------------------------|---|
| <input type="checkbox"/> Budget Transfer / Amendment | <input type="checkbox"/> Chair Letter | <input type="checkbox"/> Contract / Agreement |
| <input type="checkbox"/> Grant / Application         | <input type="checkbox"/> Notice       | <input checked="" type="checkbox"/> Ordinance |
| <input type="checkbox"/> Other:                      | <input type="checkbox"/> Resolution   |   |

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