

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Proposed Sexual Predator Ordinance

DEPARTMENT: County Attorney DIVISION: _____

AUTHORIZED BY: Robert A. McMillan CONTACT Sheriff Don Eslinger EXT. 6635

Agenda Date	<u>9.27.05</u>	Regular	<input type="checkbox"/>	Consent	<input type="checkbox"/>	Work Session	<input type="checkbox"/>	Briefing	<input type="checkbox"/>
		Public Hearing – 1:30	<input checked="" type="checkbox"/>	Public Hearing – 7:00	<input type="checkbox"/>				

MOTION/RECOMMENDATION:

Adopt the Proposed Sexual Predator Ordinance.

BACKGROUND:

The attached memorandum discusses the background and provides a map of Restrictions Regulating Residency and Mobility of Sexual Offenders and Sexual Predators.

Reviewed by:	_____
Co Atty:	_____
DFS:	_____
Other:	_____
DCM:	_____
CM:	_____
File No:	<u>PHBOCA</u>



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

To: Board of County Commissioners
Through: Robert A. McMillan, County Attorney
From: Kimberly Romano, Assistant County Attorney *VR*
Date: September 14, 2005
Subject: Sexual Predator Ordinance

RECOMMENDATION: Adopt the proposed sexual predator ordinance.

BACKGROUND: The proposed ordinance is essentially the same ordinance that was prepared by the Sheriff's Office after discussions at the Mayors and Managers meeting of July 20, 2005. This office made some minor revisions to the format and substance of the draft provided by the Sheriff. Copies were provided to all City Attorneys and Managers. Comments and suggestions have been incorporated, where appropriate.

The proposed ordinance applies to sexual offenders whose victims were younger than 16 and sexual predators regardless of the age of the victim ("offenders and predators"). The ordinance prohibits offenders and predators from residing (permanently or temporarily) within 1000 feet of schools (public and private), day care centers, parks (including the trails system) and playgrounds. There are exceptions for offenders and predators who are in residence before the adoption of the ordinance (who must move at the end of the term of their lease) and minors not sentenced as adults. Additionally, offenders and predators are prohibited from traveling within 1000 feet of schools, day care centers, parks and playgrounds, with ten (10) exceptions for such activities as meeting with lawyers, compliance with a court order, employment, etc. Landlords are prohibited from knowingly renting living facilities to offenders and predators if the premises are located within 1000 feet of a school, day care center, park or playground. The ordinance creates rebuttable presumptions that landlords are aware of the identity of registered offenders and predators and that any rental in a residential zoning area is intended to be used as a temporary or permanent residence. The Sheriff is required to provide offenders and predators with photo identification cards and maps showing the schools, day care centers, parks and playgrounds located in the County, however, failure to receive a map or failure of the map to show a particular facility is not a defense

to a violation of the ordinance. The ordinance provides a method to measure distances and provides for countywide application, enforcement, inclusion in the code, severability and an effective date.

A map showing the schools, day care centers, parks and playgrounds and the 1000 foot protected area is attached, as well as a copy of the proposed ordinance.

AN ORDINANCE RELATING TO SEXUAL OFFENDERS AND SEXUAL PREDATORS; CREATING CHAPTER 228 OF THE SEMINOLE COUNTY CODE ENTITLED "SEXUAL OFFENDERS AND SEXUAL PREDATORS"; PROVIDING FOR FINDINGS AND INTENT, DEFINITIONS, PROHIBITING SEXUAL OFFENDERS AND SEXUAL PREDATORS FROM RESIDING OR TRAVELING WITHIN 1000 FEET OF SCHOOLS, DAYCARE CENTERS, PARKS AND PLAYGROUNDS, PROVIDING EXCEPTIONS, REQUIRING LAW ENFORCEMENT OFFICERS TO AFFORD AN OPPORTUNITY TO EXPLAIN PRESENCE IN A PROHIBITED AREA, PROVIDING FOR MEASUREMENT OF DISTANCES, REQUIRING DECLARATION BY SEXUAL OFFENDERS AND SEXUAL PREDATORS UNDER CERTAIN CIRCUMSTANCES, REQUIRING PHOTO IDENTIFICATION, PROVIDING FOR MAPS OF SCHOOLS, DAYCARE CENTERS, PARKS AND PLAYGROUNDS, PROHIBITING PROPERTY OWNERS FROM RENTING TO SEXUAL OFFENDERS AND SEXUAL PREDATORS PROPERTY THAT LIES WITHIN 1000 FEET OF A SCHOOL DAYCARE CENTER, PARK OR PLAYGROUND, CREATING REBUTTABLE PRESUMPTIONS OF KNOWLEDGE UNDER CERTAIN CIRCUMSTANCES, PROVIDING PENALTIES, PROVIDING FOR COUNTYWIDE APPLICATION, PROVIDING FOR ENFORCEMENT; AMENDING SECTION 2.1 OF THE CODE TO ADD DEFINITIONS OF DAYCARE CENTER, PARK, PERMANENT RESIDENCE, PLAYGROUND, SCHOOL, SEXUAL OFFENDER, SEXUAL PREDATOR, AND TEMPORARY RESIDENCE; CREATING SECTIONS 228.1 THROUGH 228.7 OF THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners, collectively and in conjunction with other elected and appointed officials within Seminole County, notes that there have been numerous occurrences within the State of Florida and the United States where convicted sexual offenders and predators are released from custody and thereafter commit similar crimes; and

WHEREAS, it appears that the recidivism rate for released sexual offenders and sexual predators is alarmingly high, especially for those who commit crimes upon children; and

WHEREAS, the Legislature has found and determined that sexual offenders and sexual predators present an extreme threat to the public safety; are extremely likely to use physical violence and to repeat their offenses; commit many offenses and have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes (See F.S. §775.21(3)(a)); and

WHEREAS, the Legislature has found and determined that protection of the public from sexual offenders, particularly those who have committed offenses against minors, is a paramount governmental interest (See F.S. §944.606(2)); and

WHEREAS, Florida law prohibits certain sexual offenders from residing within 1,000 feet of any school, day care center, park, or playground (See F.S. §§794.065 and 947.1405); and

WHEREAS, the Florida Legislature passed House Bill 1877, commonly known as the "Jessica Lunsford Act", which was approved by Governor Jeb Bush on May 2, 2005, and codified as Chapter 2005-28, *Laws of Florida*; and

WHEREAS, the "Jessica Lunsford Act" will likely increase the number of offenders who will be designated as sexual offenders or sexual predators and will require electronic monitoring of certain offenders and predators and will otherwise strengthen the State's efforts to control the cancer of child sexual victimization; and

WHEREAS, Seminole County is a family-oriented community which highly values its children and is a place that families with young children find highly desirable; and

WHEREAS, schools, day care centers, parks and playgrounds are places within Seminole County that children are frequently and regularly located and involved in activities; and

WHEREAS, Seminole County has a substantial and compelling interest in maintaining the quality of life and protecting the health, safety and welfare of citizens at schools, daycare centers, parks and playgrounds to engage in positive educational, 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 these areas and communities without victimization at the hands of a sexual offender or sexual predator; and

WHEREAS, individuals have a significant interest in being able to travel and associate freely in all areas of Seminole County, except during times of a public safety emergency, such as natural or manmade disasters; and

WHEREAS, it is in the public interest to exclude certain sexual offenders and sexual predators from the areas surrounding schools, daycare centers, parks and playgrounds; and

WHEREAS, certain exceptions must be made to the blanket prohibition against sexual offenders and sexual predators

traveling to, through and in the area of schools, daycare centers, parks and playgrounds; and

WHEREAS, Seminole County desires to ensure that the citizens of the county are protected from criminal activity to the maximum extent afforded by controlling law in order to advance the public health, safety and welfare, and benefit the citizens of Seminole County to the maximum extent possible; and

WHEREAS, the County is not prohibited from acting on the subject matter of this Ordinance and the provisions of this Ordinance are not preempted by and are consistent with State law; and

WHEREAS, this Ordinance is enacted under the general home rule and law enforcement powers of Seminole County and is not a zoning ordinance or a land development regulation.

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

Section 1. Legislative Findings. The above recitals represent the legislative findings of the Board supporting the need for this Ordinance.

Section 2. Chapter 2, Section 2.1, Seminole County Code is hereby amended to add the following definitions:

Sec. 2.1. Definitions.

Day Care Center - Any family or child care facility licensed by the State of Florida pursuant to Chapter 402, F.S. For purposes

of Chapter 228 of this Code, a day care center includes the parking lot, curtilage, yards, landscaped areas, playgrounds, accessory buildings and all outdoor areas of the facility. It is the intent to include all areas reasonably included in and part of the facility.

Park - A publicly owned or operated area used or available for the public's use as a recreational facility, including, by way of example and not limitation, linear parks and the State, County and municipal recreational trails systems.

Permanent Residence - A place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

Playground - An established or dedicated outdoor area for recreation and play, including, by way of example and not limitation, soccer fields, baseball diamonds, football fields and locations with outdoor equipment, such as, by way of example and not limitation, swing sets, climbing apparatus and slides.

School - Any public or private school as defined in F.S. §§1000.04(1) and 1002.01 (2004), excluding facilities dedicated exclusively to the education of adults.

Sexual Offender - As defined in F.S. §944.606(1). For purposes of Chapter 228 of this Code, a Sexual Offender is a person whose victim was, at the time of the offense, less than sixteen (16) years old.

Sexual Predator - As defined in F.S. §775.21.

Temporary Residence - Any place where a person may abide, lodge or reside that is not that person's Permanent Residence.

Section 3. Chapter 228, Seminole County Code is hereby created, to read as follows:

Chapter 228. Sexual Offenders and Sexual Predators.

Sec. 228.1. Prohibited Residences of Sexual Offenders and Sexual Predators. It is prohibited and unlawful for any Sexual Offender or Sexual Predator to abide, lodge or reside in a permanent or temporary residence located within Seminole County when such residence is located within 1,000 feet of any school, day care center, park or playground, regardless of whether the school, day care center, park or playground lies within the jurisdictional limits of Seminole County.

A Sexual Offender or Sexual Predator, having a permanent residence within 1,000 feet of any school, day care center, park or playground, does not commit a violation of this section if any of the following apply:

- (a) The Sexual Offender or Sexual Predator established the permanent residence prior to the effective date of this Ordinance, provided however, that at the end of the then current rental term, in the case of a lease, the Sexual Offender or Sexual Predator shall be required to abandon that permanent residence and establish a new permanent residence at a location that

is not within 1,000 feet of any school, day care center, park or playground.

(b) The Sexual Offender or Sexual Predator was a minor when committing the offense causing the designation as a Sexual Predator or Sexual Offender and was not sentenced as an adult for that offense.

(c) The Sexual Offender or Sexual Predator is under the age of eighteen (18).

(d) The school, day care center, park or playground was opened or established after the Sexual Offender or Sexual Predator established the permanent residence.

Section 228.2. Restriction of Certain Activities of Sexual Offenders and Sexual Predators. No Sexual Offender or Sexual Predator shall travel through or remain within the 1000 foot buffer zone surrounding any school, daycare center, park or playground except to:

(a) Attend a scheduled meeting with an attorney who is recognized as a licensed member of the Bar of the State of Florida;

(b) Attend a scheduled interview with a social service provider licensed by the State of Florida;

(c) Comply with a request or court order from the judiciary, a correctional facility or a law enforcement entity;

- (d) Contact criminal justice personnel at a criminal justice facility;
- (e) Attend a church service or function;
- (f) Attend a bona fide educational institution as a registered student;
- (g) Attend to medical or health care needs with a licensed physician;
- (h) Attend to familial or parental obligations;
- (i) Be gainfully employed or as part of duties imposed by gainful employment;
- (j) Seek refuge during times of impending natural disasters or acts of terrorism, if such schools have been designated by Seminole County or the State of Florida as a place of refuge.

A law enforcement officer shall, prior to any arrest for an offense under this section 228.2, afford the person an opportunity to explain his or her presence in the area and the purpose thereof. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have authorized the person to be in the area pursuant to one of the exceptions listed above.

Section 228.3. Measurement of Distance. For purposes of measuring separation of a residence from a school, day care center, park or playground, all distances shall be measured from the outermost property line of the parcel upon which the residence is located running in a direct line to the outermost property line of the school, day care center, park or playground. For example, if the residence is located in a generally southwesterly direction from a park, then the measurement would be from the northeast corner of the residential parcel to the southwest corner of the park. For all other purposes, measurements shall run from the outermost property line of the school, day care center, park or playground.

Section 228.4. Required Declaration of Status as a Sexual Offender or Sexual Predator.

(1) During times of impending natural disasters or acts of terrorism, Sexual Offenders and Sexual Predators shall immediately identify themselves as a Sexual Offender or Sexual Predator, as the case may be, to the official in charge of any public shelter where they seek refuge.

(2) A Sexual Offender or Sexual Predator attending any school or day care function, must declare his or her status as a Sexual Offender or Sexual Predator with the school principal or designee immediately upon entering the school property.

Section 228.5. Photo Identification Card. By no later than October 1, 2006, the Seminole County Sheriff's Office shall provide a photo identification card to all Sexual Offenders and Sexual Predators currently registered with the Seminole County Sheriff's Office. All new registrants shall receive such a card upon registration. Such card shall include limited biographical information and a registration number. All Sexual Offenders and Sexual Predators registered in Seminole County shall carry this card on their person at all times.

Section 228.6. Maps Showing Schools, Daycare Centers, Parks and Playgrounds. At the time of registration, the Sheriff's Office shall provide all Sexual Offenders and Sexual Predators a map showing the location of all schools, day care centers, parks and playgrounds. Failure to receive such a map and failure of the map to identify a particular school, day care center, park or playground shall not be defenses to a claimed violation of this ordinance, such map being provided only as a convenience.

Section 228.7. Prohibition on Rentals and Leaseholds. It is unlawful for a property owner to knowingly let or rent any place, structure, or part thereof, to a Sexual Offender or Sexual Predator, with the knowledge that it will be used as a permanent or temporary residence, if such place, structure, or part thereof, is located within 1,000 feet of any school, day

care center, park or playground. In any prosecution for a violation of this section there shall be the following rebuttable presumptions:

(1) That the property owner had knowledge that the person letting or renting the premises was a Sexual Offender or Sexual Predator, upon proof that the person was registered as same, either in the statewide or local registry; and

(2) That the place, structure or part thereof would be used as a permanent or temporary residence, upon proof that the property is located within a residential zoning classification.

Section 4. Penalties. Any person or entity who violates any provision of this Ordinance shall be subject to any and all remedies available at law, including but not limited to, the code enforcement provisions of Chapter 162, Florida Statutes.

Any person violating any of the provisions of Section 3 of this Ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) or by imprisonment in the County jail, not to exceed sixty (60) days or by both such fine and imprisonment, or if the offender is supervised by the Department of Corrections under Conditional Release, the

offender may be charged with a violation of his or her supervision and be returned to state custody.

Section 5. Countywide Application. In accordance with sec. 1.5 of the Code of Seminole County, this ordinance shall apply in both the incorporated and unincorporated areas of the County; provided that any provision of this ordinance in conflict with a municipal ordinance shall not be effective within that municipality to the extent of such conflict.

Section 6. Enforcement. The provisions of this ordinance may be enforced by the Seminole County Sheriff's Office and all municipal police departments within their respective jurisdictions.

Section 7. Severability. If any section or portion of this Ordinance proves to be invalid, unlawful or unconstitutional, it shall not be held to impair the validity, force or effect of any other section or part of this Ordinance.

Section 8. Codification. The provisions of this Ordinance shall be codified as and become and be made a part of the Seminole County Code. The Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance" or similar words, may be changed to "Section", "Article", or other appropriate word; provided however, that sections 4, 5, 6, 7, 8 and 9 shall not be codified.

Section 9. Effective Date. This Ordinance shall become effective upon receipt of official acknowledgment by the Clerk of the Board of County Commissioners from the Department of the State that this Ordinance has been filed with the Department of State.

ADOPTED this _____ day of _____, 2005.

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____
CARLTON D. HENLEY, CHAIRMAN

08/31/05
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Restrictions Regulating Residency and Mobility of Sexual Offenders and Sexual Predators 1000ft Buffers

