

**ORDINANCE NO. 1765**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, RELATING TO THE RESIDENCES OF SEXUAL OFFENDERS (THOSE CONVICTED OF A VIOLATION OF SECTION 794.011, SECTION 800.04, SECTION 827.071, OR SECTION 847.0145, FLORIDA STATUTES, REGARDLESS OF WHETHER ADJUDICATION HAS BEEN WITHHELD, WHEN THE VICTIM OF THE OFFENSE FOR WHICH THE CONVICTION RESULTED WAS LESS THAN SIXTEEN (16) YEARS OF AGE AT THE TIME THE OFFENSE WAS COMMITTED) WITHIN THE CITY LIMITS OF THE CITY OF APOPKA AND PROHIBITING THE RENTAL OF CERTAIN REAL PROPERTY TO CERTAIN SEXUAL OFFENDERS AND SEXUAL PREDATORS; AMENDING CHAPTER 54 OF THE CODE OF ORDINANCES OF THE CITY OF APOPKA ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS," TO RESERVE CERTAIN SECTIONS OF ARTICLE II.; AND TO CREATE ARTICLE III. TO BE ENTITLED "SEXUAL OFFENDERS AND SEXUAL PREDATORS" BY CREATING SECTIONS 54-41 ENTITLED "FINDINGS AND INTENT," 54-42 ENTITLED "APPLICATION OF ORDINANCE/EXISTING CONTRACTS," 54-43 ENTITLED "DEFINITIONS," 54-44 ENTITLED "SEXUAL OFFENDER AND SEXUAL PREDATOR RESIDENCE PROHIBITION; MEASUREMENT; PENALTIES; EXCEPTIONS," PROVIDING FOR A PROHIBITION FOR SEXUAL OFFENDERS AND SEXUAL PREDATORS CONVICTED OF CRIMES UNDER CERTAIN FLORIDA STATUTES FROM LIVING WITHIN 2,500 FEET OF SPECIFIED LOCATIONS WITHIN THE CITY OF APOPKA; AND 54-45 ENTITLED "PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO CERTAIN SEXUAL OFFENDERS AND SEXUAL PREDATORS; PENALTIES," PROHIBITING OWNERS OF REAL PROPERTY FROM RENTING OR LEASING ANY PLACE, STRUCTURE, OR PART THEREOF, TRAILER OR OTHER CONVEYANCE LOCATED WITHIN 2,500 FEET OF SPECIFIED LOCATIONS WITHIN THE CITY OF APOPKA TO SEXUAL OFFENDERS AND SEXUAL PREDATORS CONVICTED OF CRIMES UNDER CERTAIN FLORIDA STATUTES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Apopka is deeply and profoundly concerned about the numerous occurrences within the State of Florida and the United States whereby convicted sexual offenders have been released from custody and then repeat the unlawful acts for which they had originally been convicted; and

**WHEREAS**, the City Council of the City of Apopka finds that the recidivism rate for released sexual offenders is alarmingly high, especially for those who commit crimes on children; and

**WHEREAS**, the United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, studied the recidivism of sex offenders released since 1994 and found the following:

- (1) Within three (3) years following their release, 5.3% of sex offenders (men who had committed rape or sexual assault) were rearrested for another sex crime.
- (2) On average the 9,691 sex offenders served less than half of their 8-year sentence.
- (3) Compared to non-sex offenders released from state prisons, released sex offenders were four (4) times more likely to be rearrested for a sex crime.
- (4) The 9,691 released sex offenders studied included 4,295 men who were in prison for child

- molesting.
- (5) Among child molesters released from prison in 1994, 60% had been in prison for molesting a child 13 years old or younger.

**WHEREAS**, the Washington State Institute for Public Policy published its findings of high recidivism rates among 417 released sexual predators and determined that 57% of the predators re-offended within six (6) years of being released from prison and the study further showed that felony sex offenses were the crimes of choice for the sex offenders of which 16% did not register as sex offenders and that approximately 180 of the “recidivists” committed crimes “considered precursors to child molestation”; and

**WHEREAS**, experts in the area of criminology have stated that “all sexual assaults should be considered violent behavior”; and

**WHEREAS**, State Board of Education Rule 6A-3.001 and Rule 6A-3.0171, *Florida Administrative Code*; the statutes which those Rules implement; and the policies of the Orange County School District provide that children living within two (2) miles of the school must provide their own transportation or either walk or ride their bicycles to their assigned school; and

**WHEREAS**, Section 947.1405(7), *Florida Statutes*, provides, in pertinent part, that:

“Any inmate who is convicted of a crime committed on or after October 1, 1995, or who has been previously convicted of a crime committed on or after October 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, and is subject to conditional release supervision, shall have, in addition to any other conditions imposed, the following special conditions imposed by the commission:

1. . . . .

2. If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, designated public school bus stop, or other place where children regularly congregate. A releasee who is subject to this subparagraph may not relocate to a residence that is within 1,000 feet of a public school bus stop. Beginning October 1, 2004, the council or the department may not approve a residence that is located within 1,000 feet of a school, day care center, park, playground, designated school bus stop, or other place where children regularly congregate for any release who is subject to this subparagraph. On October 1, 2004, the department shall notify each affected school district of the location of the residence of a release 30 days prior to release and thereafter, if the release relocates to a new residence, shall notify any affected school district of the residence of the releasee within 30 days after relocation. If, on October 1, 2004, any public school bus stop is located within 1,000 feet of the existing residence of such releasee, the district school board shall relocate that school bus stop. Beginning October 1, 2004, a district school board may not establish or relocate a public school bus stop within 1,000 feet of the residence of a releasee who is subject to this subparagraph. The failure of the district school board to comply with this subparagraph shall not result in a violation of conditional release supervision.

3. . . . .

10. . . . .”; and

**WHEREAS**, it is the desire of the City Council of the City of Apopka that the Orange County School District carefully adhere to the provisions of section 947.1405(7), Fla. Stat., which relates to, among other things, the establishment and relocation of a public school bus stop; and

**WHEREAS**, during the recently ended Legislative Session, the Florida Legislature passed Home Bill 1877, which is commonly known as the “Jessica Lunsford Act” which Act was approved by Governor

Jeb Bush on May 2, 2005, and has been codified as Chapter 2005-28, *Laws of Florida*; and

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

**WHEREAS**, the Florida Department of Law Enforcement provides a database containing public record information on offenders classified as sexual predators and sexual offenders under Florida law because of a conviction of a sex-related crime and/or a specified crime against children which information is made available to interested citizens to help them educate themselves about the possible presence of such offenders in their local communities; and

**WHEREAS**, a study of the Center for Sex Offender Management, a project of the United States Department of Justice, noted that “[a]lthough sex offenders account for only a small percentage of the total offender population, probably no other group of offenders evokes as much fear in citizens and concern among policymakers and practitioners. In an effort to protect the public from the threats posed by known sex offenders and to ensure that the most effective management practices possible are in place, communities across the country are working hard to assess and plan improvements in their current approaches to sex offender management”; and

**WHEREAS**, a publication of the American Medical Association (AMA) states that “[c]hild sexual abuse has been endemic for generations, but recognition of the prevalence and the potential devastating psychological effects have only recently received attention” and the AMA publication goes on to state that “[r]ecent studies suggest that approximately 20% of children will be sexually abused in some way before they reach adulthood, with this figure cumulating at a rate of about 1% each year”; and

**WHEREAS**, the Florida Department of Law Enforcement has noted that “[t]he theme of the 1997 National Institute of Justice (NIJ) Conference on Criminal Justice Research and Evaluation, *Crime and Place*, reflects an emerging trend among criminal justice researchers and practitioners to shift the focus of crime prevention and suppression efforts from people (potential offenders) to places”; and

**WHEREAS**, the Colorado Bureau of Investigation has assembled the following relevant statistics:

- (1) In 2003, there were approximately 455,000 registered sex offenders in the United States.
- (2) Over 80% of convicted adult rapists report that they have molested children.
- (3) Approximately one-third (1/3) of sex offenders report assaulting both males and females. Research shows that most convicted sex offenders have committed many, many assaults before they are caught.
- (4) Most sex offenders report that they have committed multiple types of sexual assault (sexual assault crimes include exhibitionism, voyeurism, oral sex, vaginal penetration, attempted penetration, fondling, and incest).
- (5) Over two-thirds (2/3) of offenders who reported committing incest also said they assaulted victims outside the family.
- (6) Young victims who know or are related to the perpetrator are least likely to report the crime to authorities.
- (7) There is no such thing as a “typical” sex offender, however all tend to be manipulative, deceptive, and secretive. Sex offenders come from all backgrounds, ages, income levels, and professions.

- (8) Sex offenders usually do not commit their crimes impulsively. They usually carefully plan their crimes; and

**WHEREAS**, the City of Apopka 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 (such as miniparks and recreational open spaces) are places within the City of Apopka that children are frequently and regularly located and involved in activities and to which children walk thereby passing the residences of persons who may target the children for criminal activities; and

**WHEREAS**, §§794.065 and 947.1405, Fla. Stat., provide for one thousand (1,000) foot residence prohibitions from specified locations for certain sexual offenders and sexual predators; and

**WHEREAS**, §847.0134, Fla. Stat., provides that certain adult entertainment venues may not be located within two thousand five hundred (2,500) feet of the real property that comprises a public or private elementary school, middle school, or secondary school; and

**WHEREAS**, the City Council of the City of Apopka desires to ensure that the citizens of the City of Apopka 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 the City of Apopka to the maximum extent possible; and

**WHEREAS**, the City Council of the City of Apopka may act in accordance with the provisions of Article VIII, Section 2(b) of the *Constitution of the State of Florida*, which provides, in pertinent part, that “[m]unicipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law”; and

**WHEREAS**, the City Council of the City of Apopka may act in accordance with the provisions of Section 166.021(1), *Florida Statutes*, which provides, in pertinent part, that “[a]s provided in S. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law”; and

**WHEREAS**, the City Council of the City of Apopka may act in accordance with the provisions of Section 166.021(3), *Florida Statutes*, which provided, in pertinent part, that “[t]he Legislature recognizes that pursuant to the grant of power set forth in S. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state legislature may act” except for certain very limited matters; and

**WHEREAS**, the City Council of the City of Apopka finds and concludes that the city is not prohibited from acting on the subject matter of this ordinance, that the Legislature of the State of Florida may act upon the subject matter of this ordinance and that the provisions of this ordinance are not preempted by and are consistent with the State law; and

**WHEREAS**, the ordinance is enacted under the general home rule and police powers of the City of Apopka and is not a zoning matter or a land development regulation; and

**WHEREAS**, the City of Apopka has complied with all requirements and procedures of Florida law in processing, noticing and advertising this ordinance; and

**WHEREAS**, it is within the police power of the city to regulate and proscribe rules in the interest of the health, safety and general welfare of the residents of the city; and

**WHEREAS**, after public notice and due consideration of public comment, the City Council of the City of Apopka hereby finds and declares the adoption of this ordinance is necessary and appropriate to advance and serve the health, safety and general welfare of the citizens of Apopka, Florida.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY OF APOPKA, FLORIDA:**

**Section 1.** The City Council of the City of Apopka has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the state of Florida and Chapter 166, Florida Statutes.

**Section 2.** That Chapter 54, Article II., of the Code of Ordinances of the City of Apopka is hereby amended to reserve Sec. 54-28 through Sec. 54-40, as follows:

Sec. 54-28 – 54-40. Reserved.

**Section 3.** That Chapter 54 of the Code of Ordinances of the City of Apopka is hereby amended to add Article III. entitled “Sexual Offenders and Sexual Predators”, Sections 54-41 through 54-45, to read as follows:

**Article III. Sexual Offenders and Sexual Predators**

**Sec. 54-41. Findings and Intent.**

- (a) The findings set forth in the recitals (whereas clauses) to this ordinance are hereby adopted as additional legislative findings.
- (b) The City Council of the City of Apopka hereby adopts the provisions of Section 775.21(3)(a), Fla. Stat., which state as follows:  
  
“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, and 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.”
- (c) The City Council of the City of Apopka hereby adopts the provisions of Section 947.1405(8), Fla. Stat., which provides, in pertinent part, that:  
  
“It is the finding of the Legislature that the population of offenders released from state prison into the community who meet the conditional release criteria poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, the Department of Corrections is to provide intensive supervision by experienced correctional probation officers to conditional release offenders.”
- (d) It is the intent of this ordinance to serve the city’s compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City of Apopka by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.
- (e) The City Council of the City of Apopka hereby finds and determines that the provisions of this ordinance advance a legitimate public purpose and promotes and protects the public health, safety, morals and welfare of the public.

**Sec. 54-42. Application of Ordinance/Existing Contracts.**

The provisions of this ordinance shall not be applied to persons residing at a prohibited location on the effective date of this ordinance such that it is not the intent of this ordinance to impair valid, existing and bona fide contract rights; provided, however, that the provisions of this ordinance shall apply upon expiration or termination of any leasehold arising from a landlord-tenant relationship or the expiration of a lease. When a person who is a subject of this ordinance changes residences or commences a new or renewed lease term, this ordinance shall fully apply to such persons.

**Sec. 54-43. Definitions.**

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

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

“Temporary residence” means a place where the person abides, lodges, or resides for a period of 14 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 4 or more consecutive or nonconsecutive days in any month and which is not the person’s permanent residence.

**Sec. 54-44. Sexual Offender and Sexual Predator Residence Prohibition; Measurement; Penalties; Requirements; Measurement; Violations; Application.**

- (a) It is unlawful for any person who has been convicted of a violation of §§794.011, 800.04, 827.071, or 847.0145, Fla. Stat., regardless of whether adjudication has been withheld, in which the victim of the offense for which the conviction resulted was less than sixteen (16) years of age at the time the offense was committed, to establish a permanent or temporary residence within 2,500 feet of any school, day care center, park, or playground.
- (b) Measurement. For purposes of determining the minimum distance separation, the 2,500 feet requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of a school, day care center, park, or playground.
- (c) Penalties. A person who violates this section shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment; for a second or subsequent conviction of a violation of this section, said person shall be punished by a fine not to exceed \$1,000.00 or imprisonment for a term not exceeding one (1) year, or by both such fine and imprisonment.
- (d) Exceptions. A person residing within 2,500 feet of any school, day care center, park, or playground does not commit a violation of this section if any of the following apply: (1) the person established the permanent residence or temporary residence and reported and registered the residence pursuant to §§775.21, 943.0435, or 944.607, Fla. Stat., prior to the effective date of this ordinance; (2) the person was a minor when he/she committed the offense and was not convicted as an adult; (3) the person is a minor; (4) the school, day care center, park, or playground within 2,500 feet of the person’s permanent residence was opened after the person established the permanent residence and reported and registered the residence pursuant to §§775.21, 943.0435, or 944.607, Fla. Stat.

**Sec. 54-45. Property Owners Prohibited from Renting Real Property To Certain Sexual Offenders and Sexual Predators; Penalties.**

- (a) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to s. 54-44 of this Code, if such place, structure, or part thereof, trailer or other conveyance, is located within 2,500 feet of any school, day care center, park, or playground.
- (b) A property owner's failure to comply with the provisions of this section shall constitute a violation of this section and shall subject the property owner to the code enforcement provisions and procedures as provided in this Code, including action before the code enforcement hearing officer and the issuance of citation by a police officer as a class III violation. In the alternative, the city may pursue any other enforcement action or legal remedy available under controlling state law, including but not limited to injunctive relief. If injunctive relief or other civil judicial relief is sought, the city shall be entitled to recover its reasonable attorneys' fees and costs from the defendant. The foregoing shall be supplemental to and not in derogation of any other remedy.

**Section 4.** It is the intention of the city council of the city that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the city; and that sections of this ordinance may be numbered or renumbered or lettered or relettered and the word "ordinance" may be changed to "chapter", "section", "article", or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be numbered or renumbered or lettered or relettered and typographical errors which do not affect the intent may be authorized by the mayor, without need of public hearing, by filing a corrected or recodified copy of same with the city clerk.

**Section 5.** All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**Section 6.** If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses or phrases under application shall not be affected thereby.

**Section 7.** This ordinance shall become effective immediately upon its passage and adoption.

FIRST READING: August 3, 2005

SECOND READING

AND ADOPTION: August 17, 2005

\_\_\_\_\_  
JOHN H. LAND, MAYOR

ATTEST:

\_\_\_\_\_  
Janice G. Goebel, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Frank C. Kruppenbacher, City Attorney

DULY ADVERTISED FOR PUBLIC HEARING: August 5, 2005