

ORDINANCE NO. 2008-01

AN ORDINANCE RELATING TO SEXUAL OFFENDERS AND SEXUAL PREDATORS; PROVIDING FOR FINDINGS AND INTENT, DEFINITIONS, PROHIBITING SEXUAL OFFENDERS AND SEXUAL PREDATORS FROM RESIDING OR TRAVELING WITHIN 2500 FEET OF SCHOOLS, DAY CARE CENTERS, LIBRARIES AND PARKS AND PLAYGROUNDS, PROVIDING EXCEPTIONS, REQUIRING LAW ENFORCEMENT OFFICERS TO AFFORD AN OPPORTUNITY TO EXPLAIN PRESENCE IN A PROHIBITED AREA, PROVIDING FOR MEASUREMENT OF DISTANCE, REQUIRING DECLARATION BY SEXUAL OFFENDERS AND SEXUAL PREDATORS UNDER CERTAIN CIRCUMSTANCES, REQUIRING PHOTO IDENTIFICATION, PROVIDING FOR MAPS OF SCHOOLS, DAY CARE CENTERS, LIBRARIES AND PARKS AND PLAYGROUNDS, PROHIBITING PROPERTY OWNERS FROM RENTING TO SEXUAL OFFENDERS AND SEXUAL PREDATORS PROPERTY THAT LIES WITHIN 2500 FEET OF A SCHOOL DAY CARE CENTER, PARK OR PLAYGROUND, CREATING REBUTTABLE PRESUMPTIONS OF KNOWLEDGE UNDER CERTAIN CIRCUMSTANCES, EXCLUDING TRAVEL ON FLORIDA INTRASTATE HIGHWAY SYSTEM; PROVIDING PENALTIES, PROVIDING FOR COUNTYWIDE APPLICATION, PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners, collectively and in conjunction with other elected and appointed officials within Calhoun 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

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TALLAHASSEE, FLORIDA

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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, local governments may adopt stricter standards for the protection of its citizens that provided by State Law; 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, Calhoun County is a family-oriented community which highly values its children and is place that families with young children find highly desirable; and

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

WHEREAS, Calhoun County has a substantial and compelling interest in maintaining the quality of life and protecting the health, safety and welfare of citizens at schools, day care centers, libraries, 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 Calhoun 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, day care centers, libraries, 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, day care centers, libraries, parks and playgrounds; and

WHEREAS, Calhoun 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 Calhoun 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 Calhoun County and is not a zoning ordinance or a land development regulation.

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

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

Section 2. 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 reasonable included in and part of the facility.

Library- A place where literary, and artistic materials, such as books, periodicals, newspapers, pamphlets, prints, records, tapes and video recordings are available for public reading, reference and lending.

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 public 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 this Ordinance, 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. 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 Calhoun County when such residence is located within 2,500 feet of any school, day care center, library, and park or playground, regardless of whether the school, day care center, library, park or playground lies within the jurisdictional limits of Calhoun County.

A Sexual Offender or Sexual Predator, having a permanent residence within 2,500 feet of any school, day care center, library, 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 2,500 feet of any school, day care center, library, 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, library, park or playground was opened or established after the Sexual Offender or Sexual Predator established the permanent residence.

Section 4. Restriction of Certain Activities of Sexual Offenders and Sexual Predators. No Sexual Offender or Sexual Predator shall travel through or remain within 2,500 foot buffer zone surrounding any school, day care center, library, 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 or terrorism, if such schools have been designated by Calhoun County or the State of Florida as a place of refuge.
- (k) Attend to bonafide business needs at a places of business which are not typically frequented by unaccompanied minors, such as post offices, grocery stores, insurance agencies pharmacies and the like. Upon visiting said locations with the exclusion zones listed herein any Sexual Predator or Sexual Offender shall not loiter on the business property except to conduct normal business.
- (l) Traveling on a designated State, County or City roadway in a normal traffic pattern in such a way as to not draw attention to one's self. Un-necessary stopping, cruising, circling or action that would cause the offender to remain within 2,500 feet of the prohibited area for more than the period of time necessary to traverse the area at the posted speed limit.

A law enforcement officer shall, prior to any arrest for an offense under this section, 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 5. Measurement of Distance. For purposes of measuring separation of a residence from a school, day care center, library, park or playground, all distance 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, library, 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, library, park or playground.

Section 6. 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 7. Photo Identification Card. The State of Florida provides a photo identification card to all Sexual Offenders and Sexual Predators. Any Sexual Offender or Sexual Predator shall register with the Calhoun County Sheriff's Office as required by general law and produce such card upon registration. All Sexual Offenders and Sexual Predators registered in Calhoun County shall carry this card on their person at all times.

Section 8. Maps Showing Schools, Day Care Centers, Parks, Libraries, 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, libraries, 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 9. 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 2,500 feet of any school, day care center, library, 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 10. Travel on Highways and Toll Roads.

Nothing herein shall prohibit any person from traveling on those roads currently included within the Florida Intrastate Highway System located within the County.

Section 11. 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 12. Countywide Application. 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 13. Enforcement. The provisions of this ordinance may be enforced by the Calhoun County Sheriff's Office and all municipal police departments within their respective jurisdictions.

Section 14. 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 15. 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.

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ADOPTED this 15th day of April, 2008, by the Calhoun County
Board of County Commissioners.

BOARD OF COUNTY COMMISSIONERS
CALHOUN COUNTY, FLORIDA

BY: Willie T. Grant
TRUMAN GRANT, Chairman

ATTEST:

Ruth W. Attaway
Ruth W. Attaway, Clerk