

Meeting Date
9-16-2014



AGENDA	
Section	New Business
Item No.	VE 3

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	COUNTY ORDINANCE NO. 2006-31
DEPT/OFFICE:	Citizen Request / REVISE AND AMEND COUNTY ORDINANCE NO. 2006-31

Requested Action:

REVISE AND AMEND COUNTY ORDINANCE NO. 2006-31 TO ALLOW SEXUAL OFFENDERS OR SEXUAL PREDATORS TO ENTER AND REMAIN INSIDE THE 1000-FOOT BUFFER ZONE FOR LEGITIMATE BUSINESS, INCLUDING BUT NOT LIMITED TO: GROCERY SHOPPING; GENERAL SHOPPING; USE OF A LAUNDRY ESTABLISHMENT; ACCESS TO PUBLIC TRANSIT; BAKING; FUEL PURCHASE; AND OTHER LEGITIMATE PURCHASES.

Summary Explanation & Background:

BREVARD COUNTY ORDINANCE NO. 2006-31 WAS ENACTED IN 2006 TO PROHIBIT ANY SEXUAL OFFENDER OR SEXUAL OFFENDER FROM REMAINING WITHIN A 1000-FOOT OF A DAYCARE CENTER, SCHOOL, PARK, PLAYGROUND PUBLIC OR PRIVATE.

THIS ORDINANCE NOW ENFORCED PREVENTS SEXUAL OFFENDERS AND SEXUAL PREDATORS FROM SHOPPING, BANKING, ETC. AT ANY LOCATION WITHIN 1000-FEET OF A LOCATION MENTIONED IN THE ORDINANCE: DAYCARE CENTER; SCHOOL; PARK; PLAYGROUND PUBLIC OR PRIVATE.

THIS COUNTY ORDINANCE HAS RESULTED IN SEXUAL OFFENDERS AND SEXUAL PREDATORS BEING UNABLE TO ENTER GROCERY STORES, PHARMACIES, BANKS, AND OTHER BUSINESSES TO CONDUCT LEGITIMATE BUSINESS. IT ALSO PREVENTS SEXUAL OFFENDERS AND SEXUAL PREDATORS FROM USING PUBLIC TRANSPORTATION IF THE ACCESS POINTS ARE WITHIN 1000 FEET OF LISTED LOCATIONS.

IT IS NOT BELIEVED THE INTENT OF THE COMMISSION IN ORIGINALLY ENACTING THIS COUNTY ORDINANCE WAS TO PREVENT SEXUAL OFFENDERS AND SEXUAL PREDATORS FROM SHOPPING OR CONDUCTING ACTIVITIES THAT ARE NECESSARY TO LIVE BASIC LIFE, AND IS REQUESTED THAT THE COMMISSION AMEND THE ORDINANCE AS REQUESTED.

Contact:
 Phone/e-mail: 321-458-3137/hdrussell2@gmail.com

Clerk to the Board Instructions:

Exhibits Attached:
Ordinance 06-31

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager, Mel Scott	Department Director / Extension
Stockton Whitten	Assistant County Manager, Venetta Valdengo	



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

September 17, 2014

MEMORANDUM

TO: Stockton Whitten, County Manager

RE: Item V.E.3., Citizen Request by Russell Holland to Revise and Amend County Ordinance No. 06-31

The Board of County Commissioners, in regular session on September 16, 2014, acknowledged citizen request of Russell Holland to revise and amend County Ordinance 06-31, but took no action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

ORDINANCE NO. 2006- 31

AN ORDINANCE RELATING TO SEXUAL OFFENDERS AND SEXUAL PREDATORS; ENTITLED "SEXUAL OFFENDERS AND SEXUAL PREDATORS"; PROVIDING FOR FINDINGS AND INTENT, DEFINITIONS, PROHIBITING SEXUAL OFFENDERS AND SEXUAL PREDATORS FROM RESIDING OR ENTERING 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, PROHIBITING ACCESS TO PUBLIC SHELTERS WITH EXCEPTION OF THOSE SPECIFICALLY DESIGNATED TO HOUSE SEXUAL OFFENDERS AND PREDATORS, EXCLUDING TRAVEL ON BREVARD COUNTY PUBLIC ROADWAYS; PROVIDING PENALTIES, PROVIDING FOR COUNTYWIDE APPLICATION, PROVIDING FOR ENFORCEMENT; 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 Brevard 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 children, is a paramount governmental interest [See F.S. §944.606(2)]; and

"Officially Filed with,
The Secretary of State,
May 24, 2006"

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, Brevard County is a family-oriented community that 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 Brevard County that children are frequently and regularly located and involved in activities; and

WHEREAS, Brevard 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 Brevard 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, persons utilizing public shelters during times of disaster must be protected from Sexual Offenders and Sexual Predators; 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, Brevard 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 Brevard 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 Brevard County and is not a zoning ordinance or a land development regulation.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AS FOLLOWS:

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

Section 2 – **Definitions.** As used in this ordinance, the following words and terms shall have the meaning ascribed thereto:

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

Public Shelter - Any shelter specifically designated by Brevard County or any municipality to house persons in times prior to, during and after the threat or occurrence of disaster.

Sexual Predator and Sexual Offender Shelter - Any shelter officially designated by Brevard County or any municipality that is designated to house Sexual Predators or Sexual Offenders in times prior to, during and after the threat or occurrence of disaster.

School - Any public or private school to include Charter Schools as defined in F.S. §§ 1000.04(1) and 1002.01 (2005) excluding facilities dedicated exclusively to the education of adults.

Sexual Offender - As defined in F.S. §944.606(1).

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 – Sexual Offenders and Sexual Predators.

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 Brevard 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 Brevard 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 in the specific dwelling in question prior to the effective date of this Ordinance.
- (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 school, day care center, park or playground was opened or established after the Sexual Offender or Sexual Predator established the permanent residence.

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

- (a) Attend a scheduled interview or meeting with a social service provider licensed by the State of Florida;
- (b) Comply with a request or court order from the judiciary, a correctional facility or a law enforcement entity;
- (c) Attend a scheduled meeting or interview with criminal justice personnel at a criminal justice facility;
- (d) Attend a bona fide educational institution as a registered student;

- (e) Attend a scheduled or emergency health care visit with a licensed physician;
- (f) As a result of fulfilling legally allowable duties imposed by gainful employment;
- (g) Transport children within their legal custody to and from school or daycare without any undue delay or loitering on premises;
- (h) Seek refuge in a public shelter that has been officially designated by Brevard County or any municipality to house Sexual Offenders or Sexual Predators during times of impending natural disasters or acts of terrorism;
- (i) Attend a scheduled legal consultation meeting with an attorney who is recognized as a licensed member of the Bar of the State of Florida;
- (j) Attend a church service or function;
- (k) Vote at a designated polling place within his or her district;
- (l) If the Sexual Offender or Sexual Predator is the parent or guardian of a person under eighteen (18) years of age, provided the Sexual Offender or Sexual Predator has declared his or her status as a Sexual Offender or Sexual Predator prior to entering the school property and has either scheduled a set time period to enter upon the property with the principal or designee or immediately notifies the principal or designee upon entering the school property:
 - (1) Attend a scheduled conference at school with school personnel to discuss the progress of his or her child academically or socially;
 - (2) Participate in scheduled child review conferences in which evaluation and placement decisions may be made or considered with respect to his or her child regarding special education services; or
 - (3) Attend scheduled conferences to discuss other student issues concerning his or her child such as retention and promotion.
- (m) If the Sexual Offender or Sexual Predator lawfully resides within 1,000 feet of any school, day care center, park or playground, he or she may enter into or remain within 1,000 feet of such school, day care center, park or playground for the purposes of travel to and from his or her residence, and any other bona fide activity arising from the ordinary maintenance and activities associated with such residence.

However, this Section shall not be construed as prohibiting any person from traveling on those public roads located within the County when traveling through the buffer zone without intentional delay. 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.

Measurement of Distance Requirement for Residence. 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 were 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.

Measurement of Distance Requirement for Sexual Offender or Sexual Predator. For purposes of measuring separation of a person designated as a Sexual Offender or Sexual Predator from a school, day care center, park or playground, all distances shall be measured from the closest observed location of the Sexual Offender or Sexual Predator to the outermost property line of the school, day care center, park or playground using a direct line measurement.

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. Sexual Offenders or Sexual Predators will not be permitted to remain at general shelters not designated to house them. Sexual Offenders and Sexual Predators will only be permitted housing at shelters specifically approved to house Sexual Offenders and Sexual Predators.

(2) A Sexual Offender or Sexual Predator attending any school or transporting children they have legal custody of to a school or day care center must declare his or her status as a sexual offender or sexual predator to the school or day care center principal or designee prior to entering the school or day care center property, and must also either schedule with the principal a set time period to enter upon the property or immediately notify the principal or designee upon entering school grounds or day care center property.

(3) All Sexual Offenders and Sexual Predators registered in Brevard County shall carry their State Driver's License or State Identification Card on their person at all times.

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:

- (a) 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
- (b) 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.

Unlawful Residency. It is unlawful for a Sexual Offender or Sexual Predator to establish residency, whether through ownership, rental or lease after the effective date of this ordinance, if such place, structure, or part thereof, is located within 1,000 feet of any school, day care center, park or playground.

Section 4 – Penalties. Any person or entity that 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. 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 Brevard County Sheriffs Office and all municipal police departments within may enforce the provisions of this ordinance 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 Brevard 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.

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.

DONE, ORDERED AND ADOPTED in Regular Session, this 16 day of May, 2006.

Attest:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Helen Voltz, Chair

As approved by the Board of County Commissioners on 5/16/06.



RECEIVED

JUN 02 2006

COUNTY ATTORNEY

PHONE CALL

See me

FOR *Pat & Sally* DATE *9/10/14* TIME *3:52* A.M.
 P.M.
 M *Russell Holland County*
 OF *to update ordinance on Sexual*
 PHONE *458-3137* CELL *Predators.*
 MESSAGE *Please call call him*
to make sure Sally had
the agenda item he sent 45 min
ago. Sally told him to send
it by 5pm. He was sending
 SIGNED *an updated one.*

TELEPHONED
 RETURNED YOUR CALL
 PLEASE CALL
 WILL CALL AGAIN
 CAME TO SEE YOU
 WANTS TO SEE YOU

Lewis, Sally A

From: Russell Holland <hdrussell2@gmail.com>
Sent: Wednesday, September 10, 2014 1:15 AM
To: Lewis, Sally A
Subject: Agenda Report Request for 2014.09.09
Attachments: Agenda Report Scan.jpg

Ms. Lewis,

My name is Russell Holland and I spoke to you last Friday. I have in an attachment the Agenda Report Request for September 16, 2014 County meeting 9 am, building C government center. If there are any questions about the attached Agenda Request, you may email or call me. I remember you saying it had to be in before the 11th, Thursday and so I have it. If it does not load I can bring it by Wednesday, the 10th.

Thank you for your assistance and helping me.

Sincerely,
Russell Holland

--

Romans 10:5-13

God Bless,
H.D.Rusell