

ORDINANCE O 05- 035

AN ORDINANCE OF THE CITY OF BOYNTON BEACH, FLORIDA, AMENDING CHAPTER 15, ENTITLED, "OFFENSES MISCELLANEOUS," OF THE CITY OF BOYNTON BEACH CODE OF ORDINANCES, TO CREATE ARTICLE X, ENTITLED "SEX OFFENDER RESIDENCY PROHIBITION; ENACTING SECTION 15-121, ENTITLED FINDINGS AND INTENT"; PROVIDING FOR FINDINGS AND INTENT; ENACTING SECTION 15-122, ENTITLED "DEFINITIONS,;" PROVIDING FOR DEFINITIONS; ENACTING SECTION 15-123, ENTITLED "SEXUAL OFFENDER AND SEXUAL PREDATOR RESIDENCE PROHIBITION; PENALTIES; EXCEPTIONS," PROVIDING FOR A PROHIBITION FOR SEXUAL OFFENDERS AND SEXUAL PREDATORS CONVICTED OF CRIMES UNDER CERTAIN FLORIDA STATUTES FROM LIVING WITHIN A SPECIFIED DISTANCE WITHIN THE CITY OF BOYNTON BEACH; ENACTING SECTION 15-124, 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 A SPECIFIED DISTANCE WITHIN THE CITY OF BOYNTON BEACH TO SEXUAL OFFENDERS AND SEXUAL PREDATORS CONVICTED OF CRIMES UNDER CERTAIN FLORIDA STATUTES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Boynton Beach is deeply concerned about the numerous recent occurrences in our state and elsewhere, whereby convicted sex offenders who have been released from custody repeat the unlawful acts for which they had originally been convicted; and,

WHEREAS, the City Commission of the City of Boynton Beach finds from the available evidence that the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes on children; and,

1 **WHEREAS**, the City of Boynton Beach is a very attractive place of residence for
2 families with small children; and,

3 **WHEREAS**, the City Commission of the City of Boynton Beach desires to establish a
4 policy providing for the maximum protection of the lives and persons in the City of Boynton
5 Beach; and,

6 **WHEREAS**, the City has the authority, pursuant to Article VIII, Section 2(b) of the
7 Florida Constitution, and Section 166.021, Florida Statutes, to adopt such provisions in order
8 to protect the health, safety, and welfare of its residents; and,

9 **WHEREAS**, the United States 8th Circuit Court of Appeals recently issued an opinion
10 in the case of Doe v. Miller, 2005 WL 991635 (8th Cir. April 29, 2005), in which the Court
11 upheld similar residency restrictions contained in the State of Iowa Statutes, and found the
12 restrictions to be constitutional; and,

13 **WHEREAS**, the City Commission finds that the creation of a Sexual Offender
14 Residency Prohibition section of the City Code of Ordinances to prohibit sex offenders
15 convicted of crimes under certain Florida Statutes from living within twenty-five hundred feet
16 (2500') of specified locations in the City of Boynton Beach is in the best interest of the health,
17 safety, and welfare of the residents and citizens of the City of Boynton Beach.

18 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF**
19 **THE CITY OF BOYNTON BEACH, THAT:**

20 **SECTION 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed
21 as being true and correct and are hereby made a specific part of this Ordinance upon adoption
22 hereof.

1 **SECTION 2.** That Chapter 15, "Offenses - Miscellaneous," of the City of Boynton
2 Beach Code of Ordinances, be, and the same is hereby amended, by creating a new Article X,
3 entitled "Sexual Offender Residency Prohibition, Section 15-121; Findings and Intent," to
4 read as follows:

5 **ARTICLE X. SEXUAL OFFENDER RESIDENCY PROHIBITION**

6 **Sec. 15-121 Findings and Intent.**

7
8 (a) Repeat sexual offenders, sexual offenders who use physical violence,
9 and sexual offenders who prey on children are sexual predators who present
10 an extreme threat to the public safety. Sexual offenders are extremely likely
11 to use physical violence and to repeat their offenses, and most sexual
12 offenders commit many offenses, have many more victims than are ever
13 reported, and are prosecuted for only a fraction of their crimes. This makes
14 the cost of sexual offender victimization to society at large, while
15 incalculable, clearly exorbitant.

16
17 (b) it is the intent of this ordinance to serve and to protect the city's
18 compelling interest to promote, protect and improve the health, safety and
19 welfare of the citizens of the City by creating areas around locations where
20 children regularly congregate in concentrated numbers wherein certain sexual
21 offenders and sexual predators are prohibited from establishing temporary or
22 permanent residence.

23
24 **SECTION 3.** That Chapter 15, "Offenses - Miscellaneous," of the City of Boynton
25 Beach Code of Ordinances, be, and the same is hereby amended, by creating a new Article X,
26 Section 15-122, entitled "Definitions," to read as follows:

27 **Sec. 15-122. Definitions.**

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

32
33 "Permanent residence" means a place where the person abides, lodges, or
34 resides for 14 or more consecutive days.

35
36 "Temporary residence" means a place where the person abides, lodges, or
37 resides for a period of 14 or more days in the aggregate during any calendar

1 year and which is not the person's permanent address, or a place where the
2 person routinely abides, lodges, or resides for a period of 4 or more
3 consecutive or nonconsecutive days in any month and which is not the
4 person's permanent residence.

5
6 **SECTION 4.** That Chapter 15, "Offenses - Miscellaneous," of the City of Boynton
7 Beach Code of Ordinances, be, and the same is hereby amended, by creating a new Article X,
8 Section 15-123, entitled " Penalties; Exceptions," to read as follows:

9 **Section 15-123 Penalties; Exceptions.**

10
11 (a) It is unlawful for any person who has been convicted of a violation of
12 §§794.011, 800.04, 827.071, or 847.0145, Fla. Stat., regardless of
13 whether adjudication has been withheld, in which the victim of the offense
14 was less than 16 years of age, to establish a permanent residence or
15 temporary residence within two thousand five hundred (2500') feet of any
16 school, designated public school bus stop, day care center, park, playground,
17 or other place where children regularly congregate.

18
19 (b) For purposes of determining the minimum distance separation, the
20 requirement shall be measured by following a straight line from the outer
21 property line of the permanent residence or temporary residence to the
22 nearest outer property line of a school, designated public school bus stop, day
23 care center, park, playground, or other place where children regularly
24 congregate.

25
26 (c) Penalties. A person who violates this section shall be punished by a
27 fine not exceeding \$500.00 or by imprisonment for a term not exceeding
28 60 days, or by both such fine and imprisonment; for a second or subsequent
29 conviction of a violation of this section, such person shall be punished by a
30 fine not to exceed \$1,000.00 or imprisonment in the county jail not more than
31 12 months, or by both such fine and imprisonment.

32
33 (d) Exceptions. A person residing within two thousand five hundred
34 (2500') feet of any school, designated public school bus stop, day care center,
35 park, playground, or other place where children regularly congregate does not
36 commit a violation of this section if any of the following apply:

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38 (i) The person established the permanent residence prior to July
39 1, 2005.

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41 (ii) The person was a minor when he/she committed the offense
42 and was not convicted as an adult.

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(iii) The person is a minor.

(iv) The school, designated public school bus stop or day care center within two thousand five hundred (2500') feet of the persons permanent residence was opened after the person established the permanent residence.

SECTION 5. That Chapter 15, "Offenses - Miscellaneous" of the City of Boynton Beach Code of Ordinances, be, and the same is hereby amended, by creating a new Article X, Section 15-124, entitled " Property Owners Prohibited from Renting Real Property to Certain Sexual Offenders and Sexual Predators; Penalties," to read as follows:

Sec. 15-124. 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 this Code, if such place, structure, or part thereof, trailer or other conveyance, is located within two thousand five hundred (2500') feet of any school, designated public school bus stop, day care center, park, playground, or other place where children regularly congregate.

(b) A property owner's failure to comply with 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 for in this Code of Ordinances, including the provisions that allow the city to seek relief as otherwise provided by law.

SECTION 6. It is the intention of the City Commission of the City of Boynton Beach that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Boynton Beach, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the words "Section," "Article" or such other word or phrase may be changed in order to accomplish such intention.

1 **SECTION 7.** If any clause, section, or other part or application of this Ordinance
2 shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such
3 unconstitutional or invalid part or application shall be considered as eliminated and so not
4 affecting the remaining portions or applications remaining in full force and effect.

5 **SECTION 8.** All Ordinances or parts of Ordinances, Resolutions or parts of
6 Resolutions in conflict herewith be, and the same are hereby repealed to the extent of such
7 conflict.

8 **SECTION 9.** This Ordinance shall become effective immediately upon adoption.

9 FIRST READING this 5 day of July, 2005.

10 SECOND, FINAL READING AND PASSAGE this 19 day of July,
11 2005.

CITY OF BOYNTON BEACH, FLORIDA

Jerry Taylor
Mayor

[Signature]
Vice Mayor

Robert E. [Signature]
Commissioner

[Signature]
Commissioner

Muri C. Ferguson
Commissioner

ATTEST:

Janet M. Prainito
City Clerk

