

ORDINANCE NO: 2005-11

AN ORDINANCE OF THE CITY OF AVENTURA, FLORIDA, AMENDING CHAPTER 1 OF THE CODE OF ORDINANCES OF THE CITY OF AVENTURA, ENTITLED "GENERAL PROVISIONS", TO ESTABLISH SECTION 1-16, ENTITLED "SEXUAL VIOLATOR RESIDENCY PROHIBITION," PROHIBITING CONVICTED SEXUAL VIOLATORS FROM RESIDING WITHIN 2,500 FEET OF SPECIFIED LOCATIONS WITHIN THE CITY OF AVENTURA; PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the recent attacks on children by registered sex offenders within the State of Florida has shed light upon the necessity of providing greater protection to children from the risks posed by registered sex offenders; and

WHEREAS, the City Commission of the City of Aventura is deeply concerned about the health, safety and protection of Aventura's children; and

WHEREAS, the City Commission of the City of Aventura believes it is of utmost importance to provide Aventura's children with safe areas in which to live and play, and therefore, the City Commission desires to establish a policy that will provide greater protection to children against the dangers posed by registered sex offenders; and

WHEREAS, Article VIII, Section 2(b) of the Florida Constitution and § 166.021, Florida Statutes, grant the City authority to adopt such provisions in order to protect the health, safety and welfare of its residents; and

WHEREAS, the Eighth Circuit United States Court of Appeals recently issued an opinion in the case of *Doe v. Miller*, 2005 WL 991635 (8th Cir. April 29, 2005) in which the Court upheld similar residency restrictions adopted by the State of Iowa, and found the restrictions to be valid; and

WHEREAS, the U.S. Department of Justice conducted a study titled *Recidivism of Sex Offenders Released from Prison in 1994* (November 2003), and the Center for Sex Offender Management (along with the Office of Justice Programs, National Institute of Corrections, and the State Justice Institute) published a study entitled *Recidivism of Sex Offenders* (May 2001), and both studies suggested that there is an increased risk of recidivism for persons convicted of sexual offenses; and

WHEREAS, the City Commission finds that the creation of a Sexual Offender Residency Prohibition section in the City Code of Ordinances to prohibit convicted sex offenders from living within two thousand five hundred (2,500) feet of specified locations in the City of Aventura is in the best interest of the health, safety and welfare of the residents and citizens of the City of Aventura.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

Section 2. **Code Amended.** That Chapter 1 of the Code of Ordinances of the City of Aventura is hereby amended by creating Section 1-16 "Sexual violator residency prohibition" to read, as follows:

Sec. 1-16. **Sexual violator residency prohibition.**

(A) It is unlawful for any "Sexual Violator", as that term is defined below, to reside within 2,500 feet of any school, day care center, public school bus stop, park or playground.

- (B) A person who violates Section 1-16(A) shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment.
- (C) For purposes of this section, a "Sexual Violator" is any person who has been convicted of any felony sexual offense in any state in the United States at any time, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, as that term was applied and used by the state in which the person was convicted.
- (D) The provisions of Section 1-16(A) shall not prohibit a person who is registered with the State of Florida as a Sexual Violator, sexual offender or sexual predator whose registration shows an address within the City prior to the effective date of this Section from continuing to reside at that precise address even if it is within 2,500 feet of any school, day care center, public school bus stop, park or playground.
- (E) The provisions of Section 1-16(A) shall not prohibit a person who is registered with the State of Florida as a Sexual Violator, sexual offender or sexual predator from continuing to reside at his or her registered address solely because a school, day care center, public school bus stop, park or playground is subsequently built or established within 2,500 feet of his or her registered address.
- (F) It shall be a violation of the City's Code of Ordinances for a landlord or owner of residential property in the City to rent or lease a residence to a Sexual Violator, if the Sexual Violator intends to reside at the property and if the property is located within 2,500 feet of a school, day care center, public school bus stop, park or playground, unless the landlord or owner can establish that, prior to entry of a lease, he or she used reasonable due diligence and was unable to determine that the tenant is a Sexual Violator. Any person violating this provision is subject to the code enforcement procedures set forth in Article V, "Code Enforcement" of Chapter 2 of the City Code.
- (G) The two thousand five hundred (2,500) distance shall be measured in a straight line from the outer boundary of the real property upon which the residential dwelling unit of the Sexual Violator is located to the nearest boundary line of the school, day care center, public school bus stop, park or playground. The distance may not be measured by a pedestrian route or automobile route, but instead shall be measured as the shortest straight line between the two points, without regard to any intervening structures or objects. Without otherwise limiting the foregoing measurement instructions, under those circumstances in which the residential dwelling unit of the Sexual Violator is within a cooperative, condominium, or apartment building, the parcel of real property described in this paragraph above shall consist of the parcel or parcels of real property upon which the cooperative,

condominium or apartment building which contains the residential dwelling unit of the Sexual Violator is located.

(H) Each day that a violation of this Section continues to exist shall constitute a separate offense, punishable as set forth in this Section.

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in Code. That it is the intention of the City Commission of the City of Aventura, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Aventura; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "Ordinance" may be changed to "Section" or other appropriate word.

Section 5. Effective Date. That this Ordinance shall take effect immediately upon its adoption on second reading.

The foregoing Ordinance was offered by Commissioner Holzberg, who moved its adoption on first reading. This motion was seconded by Commissioner Joel, and upon being put to a vote, the vote was as follows:

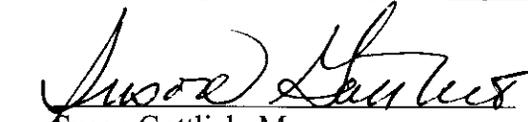
Commissioner Bob Diamond	<u>yes</u>
Commissioner Harry Holzberg	<u>yes</u>
Commissioner Billy Joel	<u>yes</u>
Commissioner Michael Stern	<u>yes</u>
Commissioner Luz Urbàez Weinberg	<u>yes</u>
Vice Mayor Zev Auerbach	<u>yes</u>
Mayor Susan Gottlieb	<u>yes</u>

The foregoing Ordinance was offered by Commissioner Weinberg who moved its adoption on second reading. This motion was seconded by Commissioner Holzberg and upon being put to a vote, the vote was as follows:

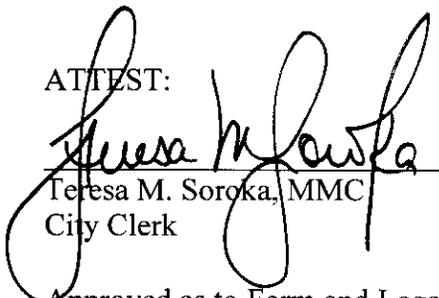
Commissioner Bob Diamond	<u>yes</u>
Commissioner Harry Holzberg	<u>yes</u>
Commissioner Billy Joel	<u>yes</u>
Commissioner Michael Stern	<u>yes</u>
Commissioner Luz Urbàez Weinberg	<u>yes</u>
Vice Mayor Zev Auerbach	<u>yes</u>
Mayor Susan Gottlieb	<u>yes</u>

PASSED AND ADOPTED on first reading this 6 day of July, 2005.

PASSED AND ADOPTED on second reading this 21 day of July, 2005.


 Susan Gottlieb, Mayor

ATTEST:


 Teresa M. Soroka, MMC
 City Clerk

Approved as to Form and Legal Sufficiency:


 City Attorney