

ORDINANCE NO. 3653

AN ORDINANCE
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 50 MISCELLANEOUS OFFENSES AND CRIME PREVENTION PROGRAMS BY AMENDING ARTICLE V YOUTH PROTECTION BY RESERVING SECTIONS 50-136 – 50-139; CREATING ARTICLE VI CHILD SAFETY ZONE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS: The City Council of the City of Fort Myers, Florida, hereby finds and determines that sexual predators and sexual offenders present an extreme threat to the public health, safety, and welfare; and

WHEREAS: Sexual predators and sexual offenders are extremely likely to use physical violence and repeat their offenses, and most commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes; and

WHEREAS: This makes the cost of sexual predator and sexual offender victimization to society at large, while incalculable, clearly exorbitant and a drain on the resources of society; and

WHEREAS: It is the intent of this ordinance to reduce the potential risk of harm to children of the community by limiting the opportunity for sexual predators and sexual offenders to be in contact with unsuspecting children in locations that are primarily designed for use by children, are primarily used by children, or are customary gathering places for children; and

WHEREAS: This ordinance is not intended to interfere with a sexual predator's or sexual offender's ability to participate in his or her own children's activities occurring at school and at other recreational type facilities, and is also not intended to interfere with a sexual predator's or sexual offender's ability to attend religious services, conduct business with the government, or attend school if a minor.

ORDINANCE NO. 3653

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL
OF THE CITY OF FORT MYERS, FLORIDA,** that:

SECTION 1. The City Code of the City of Fort Myers, Florida, Chapter 50, Miscellaneous Offenses and Crime Prevention Programs, Article V Youth Protection is hereby amended by reserving Sections 50-136 – 50-139.

SECTION 2. The City Code of the City of Fort Myers, Florida, Chapter 50, Miscellaneous Offenses and Crime Prevention Programs is hereby amended by creating Article VI. Child Safety Zone to read as follows:

ARTICLE VI. CHILD SAFETY ZONE

Sec. 50-140. Definitions.

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

(a) *Business or transient facilities* means, but is not limited to, day care centers or child care facilities, as well as video arcades, fairs, carnivals, zoos, and school bus stops while any child or children are present.

(b) *Child, children, or minor* means individuals whose chronological age is under 18 years.

(c) *Child care facility* means any child care arrangement that is either required to be licensed by, or which is exempt from licensure in accordance with state or local law, including but not limited to, any family child care home, large family child care home, day care facility, drop-in child care facility, school age child care center, specialized child care facility for the care of mildly-ill

ORDINANCE NO. 3653

children, and after school programs and child care facilities of a church or parochial school.

(d) *Loitering and prowling* shall have the same meaning as FS §§ 856.021 and 856.022, as they may be amended, renumbered, or replaced.

(e) *Park* means and includes all public and private property specifically designated as being utilized for park and recreational purposes, including designated public beaches, regardless of ownership.

(f) *Permanent or stationary facilities* means any public or private schools, public libraries, public or private playgrounds and/or play facilities, YMCA and YWCA facilities, Boys and Girls Club facilities, youth camp grounds, parks, youth sports facilities, skate parks and rinks, libraries, amusement parks, indoor recreational facilities, public zoos, water parks, and public swimming pools. Permanent facilities may include, but are not specifically limited to, the grounds of any public or private school for children during such times as the location is being used by children for school activities, latchkey or organized youth sports or during such time when children otherwise congregate at the facility.

(g) *Public beach* means any beach located within the territorial boundaries of the city which:

- (1) Is below the mean high-water lines; or
- (2) Is owned by the city; or
- (3) Has arisen upon it a right of customary use by the public; or

ORDINANCE NO. 3653

(4) Has arisen upon it a public easement, prescriptive or otherwise; or

(5) Is the foreshore of tidal navigable waters, that is the land between the high and low water marks, and is owned by the state or city.

(h) Safety zone means on or within 300 feet of the specified location.

(i) School means any public or private school as defined in FS §§ 1000.04(1) and 1002.01, excluding facilities dedicated to the education of adults.

(j) Sexual predator has the meaning set forth in FS § 775.21, as it may be amended, renumbered, or replaced. For purposes of enforcing this article, "sexual predator" does not include a person who is no longer required to register as a sexual predator pursuant to FS § 943.04354.

(k) Sexual offender has the meaning set forth in FS § 943.0435 as it may be amended, renumbered, or replaced. For purposes of enforcing this article, "sexual offender" does not include a person who is no longer required to register as a sexual offender pursuant to FS § 943.04354.

Sec. 50-141. Prohibited presence, loitering or prowling at certain locations; exceptions.

(a) Prohibition. A sexual predator or sexual offender is prohibited from being on or within the area encompassed by the following specified locations, as defined herein, or loitering or prowling within the associated safety zone.

ORDINANCE NO. 3653

- (1) Permanent or stationary facilities;
- (2) Public beach areas when children are present;
- (3) Child care facilities;
- (4) Public parks when children are present;
- (5) Business or transient facilities.

(b) Exceptions. The prohibition established above does not apply under the following circumstances.

- (1) A single trip while traveling past a location specified in this section or through a safety zone while en route to another destination.
- (2) Traveling to or from, or attendance at religious services.
- (3) Traveling to or from, or being at a government building for the purpose of conducting official business.
- (4) Residing at, or traveling to and from, the sexual predator's or sexual offender's place of residence when the residency is in compliance with FS § 775.215 and the Florida Sexual Predators Act.
- (5) The permanent facility, child care facility or school is a voting or voter registration location and the predator or offender is present for the purposes of voting or registering during the hours designated for the voting or registration process, but only for the time required to complete the voting or registration process.
- (6) The sexual predator or sexual offender is a minor enrolled in a county public or private

ORDINANCE NO. 3653

school, in grades 1 through 12, when present at the school during normal school hours or for after or before school activities with the permission of the school, or at his or her designated bus stop for transport to and from school.

(7) The sexual offender or sexual predator is only dropping off or picking up his or her own children or grandchildren at a permanent facility, child care facility or school. The sexual predator or sexual offender may not remain or loiter any longer than is reasonably necessary to accomplish the task.

(8) The sexual predator or sexual offender is attending a function at a child care facility, school or another location designated by the child care facility or school, and has provided written notification to the appropriate official regarding the sexual predator's or sexual offender's intent to attend; and, the sexual predator or offender remains under the direct supervision of a school/facility official during the event. For purposes of this subsection, school official means a principal, school resource officer, a teacher or any other employee of the school, the superintendent of school, a member of the school board, a child care facility owner or a child care provider. The sexual predator or sexual offender may

ORDINANCE NO. 3653

not remain or loiter any longer than is reasonably necessary to accomplish the task.

- (9) The sexual offender or predator is dropping off or picking up a friend or relative's child, with the permission of the child's parent or legal guardian from one of the designated facilities; or, is attending a function involving a friend or relative's child, with permission of the child's parent or legal guardian, and has provided written notification to the appropriate official regarding the sexual predator's or sexual offender's intent to attend; and, the sexual predator or offender remains under the direct supervision of a school/facility official during the event. The sexual predator or sexual offender may not remain or loiter any longer than is reasonably necessary to accomplish the task.

Sec. 50-142. Distance measurement.

For the purposes of determining the minimum distance separation requirement, distance will be measured by following a straight line from the outer property line of the facility primarily designed for use by, or which is primarily used by children.

Sec. 50-143. Violations.

- (a) Consistent with F.S. § 856.022, it is a violation of this article for a sexual predator or sexual offender to:

ORDINANCE NO. 3653

- (1) Be on or within the locations identified in Sec. 50-140(a) unless the sexual predator's or sexual offender's presence in these locations is pursuant to an exception.
- (2) Loiter or prowl within an established child safety zone.
- (3) Knowingly approach, contact or communicate with a child under 18 years of age in any public park building or on real property comprising any public park or playground with the intent to engage in conduct of a sexual nature or to make a communication of any type with any content of a sexual nature.
[This provision only applies to sexual offenders and sexual predators whose offense was committed on or after May 26, 2010.]
- (4) Knowingly be present in any child care facility or school containing any students in pre-kindergarten through grade 12 or on real property comprising any child care facility or school containing any students in pre-kindergarten through grade 12 when the child care facility or school is in operation, unless the sexual offender or predator provided prior written notification of his or her intent to be present to the school board, superintendent, principal or child care facility owner.

ORDINANCE NO. 3653

(5) Fail to notify the child care facility owner or the school official when he or she arrives and departs the child care facility or school in conjunction with attendance at a school/facility event.

(6) Fail to remain under the direct supervision of a school official or designated chaperone when present in the vicinity of children and at one of the otherwise prohibited locations.

(b) Each separate occurrence of any conduct prohibited by this article is a separate violation.

Sec. 50-144. Penalties.

The city may pursue any enforcement action or legal remedy available under controlling state law and any legal remedy available to the city to include, but not limited to, a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 60 days or by both a fine and imprisonment, unless authorized by law.

Sec 50-145. Enforcement.

(a) The provisions of this article will be enforced by the Fort Myers Police Department.

(b) Enforcement assistance. School officials, park workers, library staff, YMCA and YWCA staff, Boys and Girls Club staff, day care operators, video arcade, amusement park and zoo workers and all others working at permanent or business facilities primarily designed for use by, or primarily used by children are encouraged to collaborate with and facilitate law enforcement in its efforts of protecting children.

ORDINANCE NO. 3653

(c) *Other remedies.* The city council may adopt such resolutions as are necessary to effectively administer this article.

Sec 50-146. Preemption and sunset.

In the event any state or federal law is enacted that is more restrictive in nature as to where a sexual predator or sexual offender may physically be located, then those portions of this article that conflict with the state or federal law will cease to be in effect. In addition, this article will automatically sunset upon the effective date of any state or federal law that preempts other regulations related to the subject matter and restrictions contained in this article.

Secs. 50-147—50-149. Reserved.

SECTION 3. Severability. If for any reason any section, subsection, paragraph, or part of this ordinance shall be held invalid or destroy any other section, subsection, or part of this ordinance then the remaining portions thereof shall remain in full force and effect without regard to the section, subsection, paragraph, or part invalidated.

SECTION 4. This ordinance shall become effective immediately upon adoption.

ORDINANCE NO. 3653

PASSED IN PUBLIC SESSION of the City Council of the City of Fort Myers, Florida, this 4th day of February, A.D., 2013.

| | |
|------------|-----------------------------------|
| <u>Aye</u> | <u>/s/ Teresa Watkins Brown</u> |
| <u>Aye</u> | <u>/s/ Johnny W. Streets, Jr.</u> |
| <u>Aye</u> | <u>/s/ Levon Simms</u> |
| <u>Aye</u> | <u>/s/ Michael Flanders</u> |
| <u>Aye</u> | <u>/s/ Forrest Banks</u> |
| <u>Aye</u> | <u>/s/ Thomas C. Leonardo</u> |

Council Members

APPROVED this 4th day of February, A.D., 2013, at 9:11 o'clock p.m.

| | |
|------------|--------------------------------------|
| <u>Aye</u> | <u>/s/ Randall P. Henderson, Jr.</u> |
|------------|--------------------------------------|

Mayor

FILED in the Office of the City Clerk this 4th day of February, A.D., 2013.

/s/ Marie Adams, MMC
City Clerk