



Town Commission Agenda Item Report

Meeting Date: September 12, 2024

Submitted By: Ken Rubach, Deputy Town Manager/Public Works Director

Submitting Department: Administration

Item Type: Ordinance

Agenda Section: ORDINANCES 1st Reading

Subject Title: ORDINANCE NO. 2024-08: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, AMENDING CHAPTER 14, "OFFENSES," ARTICLE III, "RESTRICTIONS ON RESIDENCY BY SEXUAL PREDATORS AND SEXUAL OFFENDERS," OF THE CODE OF ORDINANCES TO AMEND AND CREATE DEFINITIONS AND IMPLEMENT STRICTER ENFORCEMENT MECHANISMS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

Explanation: Section 775.215, Florida Statutes, establishes residency restrictions for registered sexual offenders and sexual predators. State law prohibits such individuals from residing within 1,000 feet of schools, parks, playgrounds, or other locations where children regularly congregate. These restrictions are intended to limit contact between sexual offenders and vulnerable populations. The Florida Department of Law Enforcement (FDLE) maintains a registry that tracks sexual offenders and their compliance with these residency requirements. Violations of these restrictions can lead to criminal penalties.

In addition to state law, case law has determined that this statute does not fully preempt the field of regulation and allows more strict local regulation. Municipalities across Florida have adopted more restrictive residency requirements, often imposing stricter buffer zones or additional conditions that offenders must comply with. These local ordinances supplement the state's regulations and reflect the unique concerns of individual communities.

The Town established its own residency restrictions for sexual offenders, supplementing the provisions of Florida law, in 2007. The Town's regulations prohibit registered sexual offenders from residing within 2,250 feet of schools, parks, playgrounds, and other locations frequented by children. Additionally, the Town's code currently defines a permanent residence as "a place where the person abides, lodges, or resides for five or more consecutive days."

At the July 23, 2024 Town Commission meeting, Commissioner Pouloupoulos asked that the Administration work with the Town Attorney to examine whether there were ways in which these regulations could be strengthened, and there was a consensus of the Town Commission to conduct this analysis and bring back any changes that were recommended.

The proposed Ordinance strengthens the protections for our community by increasing the age of the victim used to trigger sexual violator status from less than 16 years of age as provided in state law and in the current Code, to less than 18 years of age, thereby covering all juvenile victims of qualifying offenses. This change is stricter than state law, and is therefore permissible.

Furthermore, the proposed Ordinance strengthens the grandfather provisions of the current regulations to ensure clarity and enforceability. The current rules exempt anyone who was a permanent resident of the Town prior to their 2007 enactment at their existing residence **and** anywhere they might choose to move within the Town. As revised, sexual violators who were permanent residents before the adoption of the proposed Ordinance can remain in their current permanent residences as required by law. However, the Ordinance deems an absence from the registered address for more than 180 consecutive days, as shown on the FDLE Sexual Violator registration records, a lack of continuous permanent residency resulting in a forfeiture of the exemption.

The proposed Ordinance also includes several updates, definitions, clarifications, and corrections.

- It addresses the scrivener's errors found in the current regulations, and simplifies the language by consolidating all the qualified crimes and statutes applicable under one definition: "sexual violator". Instead of using separate terms like "sexual predator" and "sexual offender," the ordinance now uses the single term "sexual violators."
- It also streamlines terminology by defining locations that registered sexual offenders must avoid, such as schools, parks, playgrounds, and other places frequented by children, as "child safety zones."
- It modifies and creates definitions of "reside", "temporary residence", "transient residence", and "permanent residence" to more closely follow state law.
- The penalty provision of the current regulation has been revised to conform to the general penalty applicable to all ordinance violations in Chapter 1 of the Code, in conformance with state statute.

Recommendation: Approve the first reading of Ordinance 2024-08, and schedule second reading for the October 8 Town Commission meeting.

Exhibits:

1. Ordinance 2024-08 - Amending Chapter 14 Offenses of The Town Code

52 (b) It is the intent of the Town Commission in adopting this article to serve the Town's
53 compelling interest to promote, protect and improve the health, safety and welfare of the
54 citizens of the Town by creating areas around locations where children regularly
55 congregate in concentrated numbers wherein certain ~~sexual violators~~ ~~sexual offenders and~~
56 ~~sexual predators~~ are prohibited from establishing temporary or permanent residence.

57 **Sec. 14-81. - Definitions.**

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

60 ~~Beach, for the purpose of this chapter,~~ means the zone of unconsolidated material that
61 extends landward from the mean low water line to the place where there is marked change in
62 material or physiographic form, or to the line of permanent vegetation, usually the effective limit
63 of storm waves.

64 Child safety zone. An area containing schools, designated public or private school bus
65 stops, day care centers, parks, beaches, and playgrounds, or other place where children regularly
66 congregate.

67 Park means an area of land set aside for public use or maintained for recreational and
68 ornamental purposes, usually consisting of beaches, grassed areas, trees, paths, sports fields,
69 playgrounds, picnic areas and/or other features for amusement and relaxation.

70 Permanent residence means a place where the person abides, lodges, or resides for
71 five or more consecutive days. For the purpose of calculating a permanent residence under
72 this paragraph, the first day that a person abides, lodges, or resides at a place is excluded and each
73 subsequent day is counted. A day includes any part of a calendar day.

74 Reside means to live, remain, or locate for the purpose of abiding, lodging, or dwelling in
75 a permanent, transient, or temporary residence.

76 ~~Sexual offender, for purposes of this chapter, shall be defined as provided by F.S. §~~
77 ~~943.0435(a), as may be amended from time to time.~~

78 ~~Sexual predator, for purposes of this chapter, shall be defined as a repeat sexual offender,~~
79 ~~a sexual offender who uses physical violence, a sexual offender who preys on children or as~~

80 otherwise defined by F.S. § 775.21, also known as the Florida Sexual Predators Act, as may be
81 amended from time to time.

82 Sexual violator means any person who has been convicted of any Felony Sexual Offense in
83 any jurisdiction, in which the victim of the offense was less than 18 years of age, as that term was
84 applied and used by the jurisdiction in which the person was convicted, regardless of whether
85 adjudication has been withheld. This term includes, without limitations, offenses qualifying a
86 convicted felon as a sexual predator as provided by F.S. § 775.21 and as a sexual offender as
87 provided by F.S. § 943.0435.

88 Temporary residence means a place where the person abides, lodges, or resides, including,
89 but not limited to, vacation, business, or personal travel destinations in or out of this state, for a
90 period of ~~five~~ three or more days in the aggregate during any calendar year and which is not the
91 person's permanent address or, for a person whose permanent residence is not in this state, a place
92 where the person is employed, practices a vocation, or is enrolled as a student for any period of
93 time in this state. For the purpose of calculating a temporary residence under this paragraph, the
94 first day that a person ~~routinely~~ abides, lodges, or resides at a place is excluded and each subsequent
95 day is counted. A day includes any part of a calendar day. ~~for period of four or more consecutive~~
96 ~~or nonconsecutive days in any month and which is not the person's permanent residence.~~

97 Transient residence means a place where the person lives, remains, or is located for the
98 purpose of abiding, lodging, or residing for a period of three or more days in the aggregate during
99 a calendar year and which is not the person's permanent or temporary address. The term includes,
100 but is not limited to, a place where the person sleeps or seeks shelter and a location that has no
101 specific street address. For the purpose of calculating a transient residence under this paragraph,
102 the first day that a person lives, remains, or is located in a place for the purpose of abiding, lodging,
103 or residing is excluded and each subsequent day is counted. A day includes any part of a calendar
104 day.

105 **Sec. 14-82. – Sexual violator ~~offender and sexual predator~~ residence prohibition; penalties;**
106 **exceptions.**

107 (a) It is unlawful for any sexual violator or a person who has been-convicted of a violation of
108 F.S. §§ 794.011, 800.04, 827.071 or 847.0145, or of a similar crime in another jurisdiction,
109 regardless of whether the adjudication has been withheld, in which the victim of the offense

110 was less than 186 years of age, to establish a permanent, ~~transient, residence~~ or temporary
111 residence within 2,250 feet of any child safety zone school, ~~designated public school bus~~
112 ~~stop, day care center, park, playground, beach or other place where children regularly~~
113 ~~congregate.~~

114 ~~(b) It is unlawful for any person who is required to register as a sexual offender or sexual~~
115 ~~predator under the laws of the State of Florida, to establish a permanent residence, to~~
116 ~~establish a permanent residence or temporary residence within 2,250 feet of any school,~~
117 ~~designated public school bus stop, day care center, park, playground, or other place where~~
118 ~~children regularly congregate.~~

119 ~~(e)(b)~~ For purposes of determining the minimum distance separation, the requirement shall be
120 measured by following a straight line from the outer property line of the permanent residence
121 or temporary residence to nearest outer property line of a child safety zone school, ~~designated~~
122 ~~public school bus stop, day care center, park, playground, or other place where children~~
123 ~~regularly congregate.~~

124 ~~(d)(c)~~ A person permanently residing within 2,250 feet of any child safety zone school,
125 ~~designated public school bus stop, day care center, park, playground, or other place where~~
126 ~~children regularly congregate~~ does not commit a violation of this article section if any of the
127 following apply:

128 (1) The person established the permanent residence prior to ~~the date of adoption~~
129 ~~[March 13, 2007] , the date of adoption~~ of the ordinance establishing this article.

130 (2) The person was a minor when he/she committed the offense and was not convicted
131 as an adult.

132 (3) The person is a minor and is not emancipated.

133 (4) The child safety zone school, ~~designated public school bus stop, or day care center~~
134 within 2,250 feet of the person's permanent residence was opened or established
135 after the person established the permanent residence.

136 (5) ~~If the person was a resident prior to the adoption of the ordinance adopting this~~
137 ~~article and elects to move within the Town limits. Any sexual violator who has~~
138 established a permanent residence within the Town prior to October 8, 2024, shall

139 be permitted to continue to reside at that location, provided that the sexual violator
140 registered their address with the Town before October 8, 2024.

141 (6) Any sexual violator who may be grandfathered under subsections (c)(1) or (c)(5)
142 of this section loses this exception upon relocation for more than 180 consecutive
143 days from their permanent residence, as shown on the FDLE Sexual Violator
144 registration records. Such relocation shall constitute a lack of continuous residence
145 and a forfeiture of the applicability of this exception.

146 **Sec. 14-83. - Property owners and property managers prohibited from renting real property**
147 **to certain sexual violators, sexual offenders and sexual predators; penalties.**

148 (a) It is unlawful for any property owner or property manager or his or her agent or assignee
149 to knowingly let, rent, or allow to be occupied free of charge any place, structure, or part
150 thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent,
151 transient or temporary residence ~~or temporary residence~~ by any person prohibited from
152 establishing such ~~permanent residence of temporary~~ residence pursuant to any provision of
153 this Code, if such place, structure, or part thereof, trailer or other conveyance, is located
154 within 2,250 feet of any child safety zone school, designated public school bus stop, day
155 care center, park, playground, beach or other place where children regularly congregate.

156 (b) A property owner's or property manager's failure to comply with provisions of this section
157 shall constitute a violation of this section and shall subject the property owner or property
158 manager to the code enforcement provisions and procedures as provided in chapter 4 6.5
159 of this Code, including the provisions of chapter 4 6.5 that allow the Town to seek relief as
160 otherwise provided by law. A property owner or property manager shall be in violation of
161 this ~~Code section~~ article if they knew or should have known that an occupant of property
162 under their control was in violation of this Code. A property owner or property manager
163 who is found to be in violation of this article ~~Code section~~ shall be issued a notice to appear.

164 **Sec. 14-84. - Penalties.**

165 ~~(a)~~ A sexual violator found to be in violation of this article shall be punished pursuant to
166 section 1-12 of this Code, in accordance with the requirements of Florida Statutes. A sexual
167 predator or sexual offender found to be in violation of this section shall be subject to arrest

168 or issued a notice to appear and shall appear at the prearranged court date to answer the
169 charge. Once notified of the residency restriction, the person shall have two weeks to vacate
170 the premises. A person who fails to vacate the premises within two weeks after receiving
171 notice to the residency restriction shall be subject to arrest.

172 ~~(b) Any person who violates this section shall be punished by a fine not exceeding \$500.00 or~~
173 ~~by imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment;~~
174 ~~for a second or subsequent conviction of a violation of this section, such person shall be~~
175 ~~punished by a fine not to exceed \$1,000.00 or imprisonment in the County jail not more~~
176 ~~than 12 months, or by both such fine and imprisonment.~~

177 ~~(e) Each day a violation of this section article continues, following the two-week notice~~
178 ~~provided in subsection (a) above, constitutes a separate violation of this article.~~

179 **Secs. 14-85—14-89. - Reserved.**

180 * * *

181 **Section 3. Codification.** This Ordinance shall be codified in accordance with the
182 foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall
183 become and be made a part of the Town of Lauderdale-By-The-Sea Code of Ordinances; and that the
184 sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be
185 changed to “section”, “article” or such other appropriate word or phrase in order to accomplish such
186 intentions.

187 **Section 4. Severability.** If any section, sentence, clause, or phrase of this Ordinance is
188 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall
189 in no way affect the validity of the remaining portions of this Ordinance.

190 **Section 5. Conflicting Ordinances.** All prior ordinances or resolutions or parts thereof in
191 conflict herewith are hereby repealed to the extent of such conflict.

