

ORDINANCE NO. 2007-1

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, CREATING CHAPTER 17 OF THE CODE OF ORDINANCES OF THE VILLAGE OF BISCAYNE PARK, ENTITLED "SEXUAL OFFENDERS AND SEXUAL PREDATORS;" SPECIFICALLY AMENDING SECTION 17-2, ENTITLED "DEFINITIONS," SECTION 17-3, ENTITLED "SECUAL OFFENDER AND SEXUAL PREDATOR RESIDENCE PROHIBITION; PENALTIES; EXCEPTIONS," AND SECTION 17-4, ENTITLED "PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO CERTAIN SEXUAL OFFENDERS AND SEXUAL PREDATORS; PENALTIES;" PROVIDING FOR DEFINITIONS OF "SEXUAL OFFENDER" AND "SEXUAL PREDATOR" THAT ARE CONSISTENT WITH SECTION 943.0435, FLORIDA STATUTES, AND SECTION 775.21, FLORIDA STATUTES; PROVIDING A TIMEFRAME IN WHICH A SEXUAL OFFENDER OR SEXUAL PREDATOR MUST VACATE A PREMISES AFTER BEING NOTIFIED OF A VIOLATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Village Commission of the Village of Biscayne Park (hereinafter referred to as "Village"), in an effort to control and monitor the actions of sexual offenders and sexual predators within the Village limits, enacted Ordinance No. 2005-06 on September 13, 2005; and

WHEREAS, the Village Commission now seeks to modify the Code of Ordinance provisions established by Ordinance No. 2005-06 in order to better protect the health, safety and welfare of the Village's citizens and residents; and

WHEREAS, it is the goal of the Village Commission to establish a comprehensive policy which provides the maximum protection to the citizens and residents of the Village; and

WHEREAS, the Village Commission gives great weight to the input of local law enforcement authority when considering the implementation of a policy to monitor the location of sex offenders and sexual predators within the Village; and

WHEREAS, the Village Commission deems it to be in the best interests of the Village to expand upon Chapter 17 of the Village's Code of Ordinances to provide definitions of "sexual offender" and "sexual predator" that are consistent with the Florida Statutes, and to provide further guidance for the enforcement of the aforementioned Code Sections; now, therefore

BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:

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

Section 2. The Village Commission of the Village of Biscayne Park amends Chapter 17, entitled "Sexual Offenders and Sexual Predators," of the Village of Biscayne Park Code of Ordinances by specifically amending Section 17-2, entitled "Definitions," to read as follows:

Sec. 17-2. 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:

"Permanent residence" means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.

"Sexual offender" for the purposes of this Chapter shall be defined as provided by Section 943.0435(a), Florida Statutes, as may be amended from time to time.

"Sexual predator" for the purposes of this Chapter shall be defined as a repeat sexual offender, a sexual offender who uses physical violence, a sexual offender who preys on children

or as otherwise defined by Section 775.21, Florida Statutes, also known as the Florida Sexual Predators Act, as may be amended from time to time.

"Temporary residence" means a place where the person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Section 3. The Village Commission of the Village of Biscayne Park amends Chapter 17, entitled "Sexual Offenders and Sexual Predators," of the Village of Biscayne Park Code of Ordinances by specifically amending Section 17-3, entitled "Sexual Offender and Sexual Predator Residence Prohibition; Penalties; Exceptions," to read as follows:

Sec. 17-3. Sexual offender and sexual predator residence prohibition; Penalties; Exceptions.

(a) It is unlawful for any person who has been convicted of a violation of Section 794.011, 800.04, 827.071 or 847.0145, Florida Statutes, or a similar crime in another jurisdiction, regardless of whether adjudication has been withheld, in which the victim of the offense was less than sixteen (16) years of age, to establish a permanent residence or temporary residence within two thousand five hundred (2,500) feet of any school, designated public school bus stop, child care facility, family day care home, park, playground or other place where children regularly congregate.

(b) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, designated public school bus stop, child care facility, family day care home, park, playground, or other place where children regularly congregate.

(c) Penalties. A person found to be in violation of this Section shall be subject to arrest or issued a Notice to Appear and shall appear at the prearranged court date to answer the charge. Once notified of the residency restriction, the person shall have two (2) weeks to vacate the premises. A person who fails to vacate the premises within two (2) weeks after receiving notice of the residency restriction shall be subject to arrest. A person who violates this section shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both such fine and imprisonment; for a second or subsequent conviction of a violation of this section, such person shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment in the County jail not more than twelve (12) months or by both such fine and imprisonment.

(d) Exceptions. A person residing within two thousand five hundred (2,500) feet of any school, designated public school bus stop, child care facility, family day care home, park, playground, or other place where children regularly congregate does not commit a violation of this section if any of the following apply:

- (i) The person established the permanent residence prior to July 1, 2005.
- (ii) The person was a minor when he/she committed the offense and was not convicted as an adult.
- (iii) The person is a minor.
- (iv) The school, designated public school bus stop child care facility or family day care home within two thousand five hundred (2,500) feet of the person's permanent residence was opened after the person established the permanent residence.

Section 4. The Village Commission of the Village of Biscayne Park amends Chapter 17, entitled "Sexual Offenders and Sexual Predators," of the Village of Biscayne Park Code of Ordinances by specifically amending Section 17-4, entitled "Property owners prohibited from renting real property to certain sexual offenders and sexual predators; penalties," to read as follows:

Sec. 17-4. Property owners prohibited from renting real property to certain sexual offenders and sexual predators; Penalties.

(a) It is unlawful for any property owner or property manager or his or her agent or assignee to knowingly let, or rent, or allow to be occupied free of charge any place, structure, or part thereof, trailer or other conveyance, with the knowledge, either actual or constructive, that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence of temporary residence pursuant to ~~section 17-3~~ any provision of this Code, if such place, structure, or part thereof, trailer or other conveyance, is located within two thousand five hundred (2,500) feet of any school, designated public school bus stop, child care facility, family day care home, park, playground, or other place where children regularly congregate.

(b) A property owner's or property manager's failure to comply with provisions of this section shall constitute a violation of this section, and shall subject the property owner or property manager to the code enforcement provisions and procedures of the Village Code that allow the Village to seek relief as otherwise provided by law. A property owner or property manager shall be in violation of this Code Section if they knew or should have known that an

occupant of property under their control was in violation of this Code. A property owner or property manager who is found to be in violation of this Code Section shall be issued a Notice to Appear.

Section 5. It is the intention of the Village Commission of the Village of Biscayne Park that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or such other word or phrase in order to accomplish such intention.

Section 6. Severability.

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

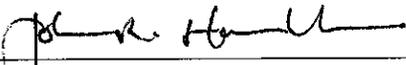
Section 7. Inclusion in Code.

It is the intention of the Village Commission of the Village of Biscayne Park, Florida, that the provisions of this Ordinance shall become and be made a part of the Village of Biscayne Park Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 8. This Ordinance shall be effective upon adoption on second reading.

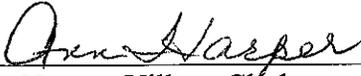
The foregoing Ordinance was offered by Commissioner Anderson, who moved its adoption. The motion was seconded by Vice Mayor Walker and upon being put to a vote, the vote was as follows:

The foregoing ordinance upon being put to a vote, the vote was as follows:



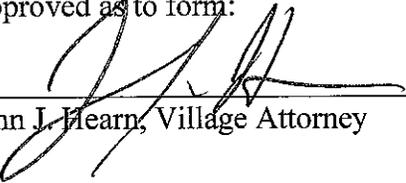
John Hornbuckle, Mayor

Attest:



Ann Harper, Village Clerk

Approved as to form:



John J. Hearn, Village Attorney

Mayor Hornbuckle: yes
Vice Mayor Walker: yes
Commissioner Mallette: ABSENT
Commissioner Morris: yes
Commissioner Anderson: yes

First reading – February 13, 2007
Second reading – March 6, 2007