



City of Gainesville Agenda Report

File #: 2022-600

Agenda Date: October 6, 2022

Department: City Attorney

Title: Discussion regarding “City of Gainesville Sexual Offender and Sexual Predator Ordinance” residency restriction 2022-600 (NB)

Description: The “City of Gainesville Sexual Offender and Sexual Predator Ordinance” mirrors the residency restriction provided in Florida Statutes section 775.215, with two basic distinctions. The State residency restriction provides for a 1,000 foot radius, rather than 2,500 feet, and the State residency restriction only applies to individuals whose offenses occurred on or after October 1, 2004 (the effective date of the statute), while the City’s Ordinance has no such “as applied” date. Should the City amend the ordinance to provide that it applies only to individuals whose offenses occurred after the City’s November 28, 2005 effective date, in a fashion similar to the State statute?

Explanation:

On November 28, 2005, the City of Gainesville adopted and implemented the “City of Gainesville Sexual Offender and Sexual Predator Ordinance” (the “Ordinance”) codified in Chapter 17, Article III, ordinance sections 17-30 through 17-35. The Ordinance prohibits any individual who has been found guilty, or pled guilty or no contest, to a violation of Florida Statutes sections 794.011, 800.04, 827.071, or 847.0145 (sexual offenses involving children less than 16 years of age) from establishing permanent or temporary residence within 2,500 feet of any school, day care center, or park. The Ordinance mirrors the residency restriction provided in Florida Statutes section 775.215, with two basic distinctions. The State residency restriction provides for a 1,000 foot radius, rather than 2,500 feet, and the State residency restriction only applies to individuals whose offenses occurred on or after October 1, 2004 (the effective date of the statute), while the City’s Ordinance has no such “as applied” date. A review of the legislative history reveals that the State Legislature included the “as applied” date in order to avoid criticism of the regulation as being an unconstitutional ex post facto (having retroactive force or effect) punishment.

Presently, the City is facing litigation from an individual whose relevant conviction occurred in 1997, and who seeks to reside with his wife within 1,000 feet of a day care center. The City’s Ordinance applies to prevent his residency at this address. The State statute does not apply due to the date of his conviction. The individual is claiming that the City Ordinance violates the constitutional prohibition on ex post facto

punishment. The City's defense lies in the argument that the City's Ordinance is not punitive in nature, but, rather, a legitimate, nonpunitive civil regulation designed to protect children.

Prior to engaging in potentially costly litigation, City staff seeks direction as to whether the City Commission prefers to amend the ordinance to provide that it applies only to individuals whose offenses occurred after the City's November 28, 2005 effective date, in a fashion similar to the State statute. To do so would effectively moot the current litigation, and clear the way for the plaintiff to reside at his chosen location despite the 1997 conviction. If the City's Ordinance is not amended, the City Attorney's Office will proceed with defending the application of the City's Ordinance as a valid, nonpunitive regulation.

Strategic Connection:

Fiscal Note:

Recommendation:

The City Commission: 1) discuss the current ordinance and related issues; and 2) provide direction as appropriate.