

ORDINANCE NO. 2022-600

1 **An ordinance of the City of Gainesville, Florida, amending Section 17-33 – 17-**
2 **34 of the Code of Ordinances by amending the residency prohibition for**
3 **persons convicted of certain sex offenses; providing a severability clause;**
4 **providing a repealing clause; and providing an immediate effective date.**
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7 **WHEREAS**, the city commission reaffirms the findings set forth in relation to the
8 adoption of Ordinance No. 050115 on November 28, 2005; and

9 **WHEREAS**, the city commission remains concerned about the alarmingly high rate of
10 recidivism for released sexual offenders, especially for persons who commit crimes against
11 children; and

12 **WHEREAS**, the “City of Gainesville Sexual Offender and Sexual Predator Ordinance”
13 (sections 17-30 – 17-35) is a non-punitive, civil regulations aimed at reducing the risk to children
14 posed by recidivist sexual offenders; and

15 **WHEREAS**, the city commission is aware that similar residency prohibitions enacted in
16 other jurisdictions have been challenged as ex post facto provisions, despite the express non-
17 punitive intent of the body enacting the prohibitions; and

18 **WHEREAS**, the “City of Gainesville Sexual Offender and Sexual Predator Ordinance”
19 (sections 17-30 – 17-35) is patterned after Florida Statutes section 775.215 (formerly section
20 794.065), except that the statutory provision is limited to a one-thousand foot residency
21 prohibition, and applies to the residence of persons whose offenses occurred on or after the
22 effective date of the statute; and

23 **WHEREAS**, Florida Constitution Article VIII, section 2(b), and Florida Statutes section
24 166.021 provide the city commission with the authority to protect the health, safety, and welfare
25 of the city’s residents; and

1 **WHEREAS**, at least 10 days' notice has been given by publication in a newspaper of
2 general circulation notifying the public of this proposed ordinance and of public hearings to be
3 held by the City Commission of the City of Gainesville; and

4 **WHEREAS**, public hearings were held pursuant to the notice described above at which
5 hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.

6 **NOW, THEREFORE**, BE IT ORDAINED BY THE CITY COMMISSION OF THE
7 CITY OF GAINESVILLE, FLORIDA:

8 **Section 1.** Sections 17-33 – 17-34 of the Code of Ordinances of the City of Gainesville is
9 amended to read as follows:

10 **Sec. 17-33. - Sexual offender and sexual predator residence prohibitions; Penalties;**

11 **Exception.**

12 (a) It is unlawful for any person who has been found guilty of, or plead guilty, or no
13 contest to, a violation of F.S. §§ 794.011, 800.04, 827.071 or 847.0145, or any equivalent
14 violation from another jurisdiction that would be a felony if committed in this state, in which the
15 victim of the offense was less than 16 years of age regardless of whether adjudication has been
16 withheld, to establish a permanent residence or temporary residence within ~~2,500~~ 1,000 feet of
17 any school, day care center, or park. This section applies to any person whose violation of any
18 of the aforementioned statutory provisions occurred on or after November 28, 2005.

19 (b) For purposes of determining the minimum distance separation, the requirement
20 shall be measured by following a straight line from the outer property line of the permanent
21 residence or temporary residence to the nearest outer property line of a school, day care center,
22 or park.

23 (c) Exceptions. A person who maintains a permanent or temporary residence within

1 ~~2,500~~ 1,000 feet of any school, day care center, or park, does not commit a violation of this
2 section if any of the following apply:

3 (1) The person established continuous permanent residence prior to November
4 28, 2005.

5 (2) The school or day care center located within ~~2,500~~ 1,000 feet of the
6 person's permanent residence was first licensed to operate after the person established the
7 continuous permanent residence.

8 (3) The person was a minor when the specified offense was committed and
9 was not convicted as an adult for that offense.

10 (4) The person is a minor.

11 Any person who qualifies for an exception pursuant to subsections (c)(1) or (2) above,
12 becomes fully subject to this article upon any change of address.

13 (d) Penalties. A person who violates this section shall be punished as provided in
14 section 1-9 of this Code.

15 **Sec. 17-34. - Property owners prohibited from renting real property to certain sexual**
16 **offenders and sexual predators; Penalties.**

17 (a) It is unlawful for a property owner to let or rent any place, structure, or part
18 thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent
19 residence or temporary residence by any person prohibited from establishing such permanent
20 residence or temporary residence pursuant to section 17-33, if such place, structure, or part
21 thereof, trailer or other conveyance, is located within ~~2,500~~ 1,000 feet of any school, day care
22 center, or park, unless the property owner can establish that, prior to rental or lease, he or she
23 used reasonable due diligence and was unable to determine that the prospective tenant was

1 subject to the restrictions described in section 17-33.

2 (b) A property owner's failure to comply with provisions of this section shall constitute
3 a violation of this section and shall subject the property owner to civil citation as provided in
4 section 2-339 of this Code.

5 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
6 this ordinance become and be made a part of the Code of Ordinances of the City of Gainesville,
7 Florida, and that the sections and paragraphs of this ordinance may be renumbered or relettered
8 in order to accomplish such intentions.

9 **Section 3.** If any word, phrase, clause, paragraph, section, or provision of this ordinance
10 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
11 finding will not affect the other provisions or applications of this ordinance that can be given
12 effect without the invalid or unconstitutional provision or application, and to this end the
13 provisions of this ordinance are declared severable.

14 **Section 4.** All ordinances or parts of ordinances in conflict herewith are to the extent of
15 such conflict hereby repealed.

16 **Section 5.** This ordinance shall become effective immediately upon adoption.

17 **PASSED AND ADOPTED** this ____ day of _____, 2022.

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LAUREN POE
MAYOR

Attest:

Approved as to form and legality:

OMICHELE D. GAINNEY
CITY CLERK

DANIEL M. NEE
INTERIM CITY ATTORNEY

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2 This ordinance passed on first reading this ____ day of _____, 2022.

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4 This ordinance passed on second reading this ____ day of _____ 2022.

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