



City of Gainesville Agenda Report

File #: 2022-600

Agenda Date: November 29, 2022

Department: City Attorney

Title: Amending the “City of Gainesville Sexual Offender and Sexual Predator Ordinance” Residency Prohibition Regarding Applicability and Geographic Area 2022-600 (B)

Description: Ordinance No. 2022-600: An ordinance of the City of Gainesville, Florida, amending Section 17-33 – 17-34 of the Code of Ordinances by amending the residency prohibition for persons convicted of certain sex offenses; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

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 designated park. The Ordinance mirrors the residency prohibition provided in Florida Statutes section 775.215, with two basic distinctions. The state residency prohibition provides for a 1,000 foot radius, rather than 2,500 feet, and the state residency prohibition 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 prohibit 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. The City’s Ordinance was adopted pursuant to specific findings that it is a non-punitive,

civil regulation aimed at reducing the risk to children posed by recidivist sexual offenders. Florida Constitution Article VIII, section 2(b), and Florida Statutes section 166.021 provide the city commission with the authority to protect the health, safety, and welfare of the city's residents. However, even a successful defense of the City's Ordinance may be costly in terms of resources, and the differing application of the statute and ordinance may be confusing to some individuals.

This proposed amendment was discussed by the City Commission at the October 6, 2022 City Commission meeting, where direction was given to draft and present the amendment for adoption.

Strategic Connection:

Fiscal Note:

Recommendation:

The City Commission adopt the proposed ordinance.