

ORDINANCE NO. 2023- \_\_\_\_\_

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA, AMENDING SECTION 306.06 (RESIDENCY RESTRICTIONS FOR REGISTERED SEX OFFENDERS) AND CREATING SECTION 306.065 (PROHIBITIONS, EXCEPTIONS AND PENALTIES) OF CHAPTER 306 (MISCELLANEOUS OFFENSES AND PROGRAMS) OF THE CODE OF INDIAN RIVER COUNTY IN ORDER TO UPDATE TERMS AND DEFINITIONS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Board of County Commissioners wishes to update the terms used in the Indian River County Code of Ordinances pertaining to sex offenders to better align with State statute,

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:**

**Section 1. Enactment Authority.**

Article VIII, section 1 of the Florida Constitution and chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county. The Indian River County Board of County Commissioners specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County.

**Section 2. Amendment of Chapter 306 (Miscellaneous Offenses and Programs).**

New language indicated by underline, and deleted language indicated by ~~strike through~~.

Chapter 306 (Miscellaneous Offenses and Programs) of the Code of Indian River County, Florida is hereby amended to read as follows:

**CHAPTER 306 – MISCELLANEOUS OFFENSES AND PROGRAMS**

\* \* \*

**Section 306.06. – Residency restrictions for registered sex offenders.**

~~For purposes of this section, "person" means a person who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor and is required by Florida Statutes to register their residence with the sheriff.~~

- ~~(1) A person shall not reside within two thousand five hundred (2,500) feet of the real property comprising a public or nonpublic elementary or secondary school, public park or licensed child care facility.~~
- ~~(2) A person who resides within two thousand five hundred (2,500) feet of the real property comprising a public or nonpublic elementary or secondary school, public park or licensed child care facility, commits a misdemeanor.~~
- ~~(3) A person residing within two thousand five hundred (2,500) feet of the real property comprising a public or nonpublic elementary or secondary school, public park or licensed child care facility does not commit a violation of this section if any of the following apply:~~
  - ~~a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.~~
  - ~~b. The person is subject to an order of commitment under F.S. Ch. 394.~~
  - ~~c. The person has established a residence prior to the February 7, 2006, or a school or child care facility is newly located on or after February 7, 2006.~~
  - ~~d. The person is a minor or a ward under a guardianship.~~
  - ~~e. A state of emergency has been declared and the public or nonpublic elementary or secondary school, public park or registered child care facility has been designated as an emergency shelter.~~
    - ~~1. If a person seeks shelter in a facility that has been designated as an emergency shelter, the person shall notify the official in charge of the shelter that he or she is a person required to register their residence under Florida Law. If sufficient space permits, the persons may be kept in a separate room at the shelter. Failure to notify the official in charge of the shelter of a person's requirement to register their residence shall be a violation of this section.~~

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section and section 306.065, except where the context clearly indicates a different meaning:

- (1) *Conviction* means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.
- (2) *Licensed childcare facility* means any child care facility licensed by the state pursuant to F.S. Ch. 402.
- (3) *Park* means a publicly owned or operated area used or available for the public's use as a recreational facility, including, by way of example and not limitation, ball fields,

outdoor play equipment (playground), pools, linear parks, nature preserves and beaches.

- (4) Permanent residence means a place where a person abides, lodges, or resides for five or more consecutive days, and which includes motor vehicles, trailers, mobile homes, manufactured homes, vessels, live-aboard vessels and houseboats.
- (5) School means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public-school level authorized under rules of the State Board of Education pursuant to F.S. 1003.01.
- (6) Sexual offender shall have the meaning ascribed to such term in F.S. § 943.0435.
- (7) Sexual predator shall have the meaning ascribed to such term in F.S. § 775.21.
- (8) Temporary residence means a place where a person abides, lodges, or resides for a period of five days or more in the aggregate, during any calendar year, and which is not the person's permanent residence, or place where a person routinely abides, lodges or resides for a period of five or more consecutive or non-consecutive days in any month, which is not the person's permanent residence, and which includes, motor vehicles, trailers, mobile homes, manufactured homes, vessels, live-aboard vessels, and houseboats.
- (9) Transient residence means a county where a person lives, remains, or is located for a period of 3 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

#### **Section 306.065. Prohibitions, exceptions and penalties.**

- (1) A sexual offender or sexual predator shall not reside or establish a permanent, temporary, or transient residence within 2,500 feet of the real property comprising of any public or non-public elementary, middle, secondary or high school, public park, or licensed child care facility.
- (2) For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of the public or private elementary, middle, secondary or High school, park or licensed child care facility.
- (3) A sexual offender or sexual predator residing within 2,500 feet of the real property comprising of a public or non-public elementary, middle, secondary school or high school, public park or licensed child care facility does not commit a violation of this section if any of the following apply:
  - a) The public or private elementary, middle, secondary or high school, public park or licensed day care facility within 2,500 feet of the sexual offender's or sexual predator's permanent or temporary residence was opened and/or established

after the sexual offender or sexual predator established the permanent or temporary residence.

- b) The sexual offender or sexual predator is subject to an order of commitment under F.S. Ch. 394.
- c) The sexual offender or sexual predator is a minor or a ward under a guardianship.
- d) A state of emergency has been declared and the public or nonpublic elementary or secondary school, public park or registered child care facility has been designated as an emergency shelter.
  - 1. If a sexual offender or sexual predator seeks shelter in a facility that has been designated as an emergency shelter, the person shall notify the official in charge of the shelter that he or she is a person required to register their residence under Florida Law. If sufficient space permits, the persons may be kept in a separate room at the shelter. Failure to notify the official in charge of the shelter of a person's requirement to register their residence shall be a violation of this section.
- (4) This ordinance does not apply to a sexual offender or sexual predator who registered a permanent residence prior to February 7, 2006, and has continuously resided at that address.
- (5) A sexual offender or sexual predator who violates this section shall be guilty of a second-degree misdemeanor and shall be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed 60 days, or by both fine and imprisonment.

\* \* \*

**Section 3. Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 4. Severability.** If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

**Section 5. Codification.** It is the intention of the Board of County Commissioners that the provision of this ordinance shall become and be made part of the Indian River County Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

**Section 6. Effective Date.** This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the \_\_\_\_ day of March, 2023, for a public hearing to be held on the 28<sup>th</sup> day of March, 2023, at which time it was moved for adoption by Commissioner \_\_\_\_\_, seconded by Commissioner, \_\_\_\_\_ and adopted by the following vote:

|                                 |       |
|---------------------------------|-------|
| Chairman Joseph H. Earman       | _____ |
| Vice-Chairman Susan Adams       | _____ |
| Commissioner Joseph E. Flescher | _____ |
| Commissioner Deryl Loar         | _____ |
| Commissioner Laura Moss         | _____ |

The Chairman thereupon declared the ordinance duly passed and adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**BOARD OF COUNTY COMMISSIONERS  
OF INDIAN RIVER COUNTY, FLORIDA**

By: \_\_\_\_\_  
Joseph H. Earman, Chairman

**ATTEST:     Jeffrey R. Smith, Clerk  
                  and Comptroller**

By: \_\_\_\_\_  
Deputy Clerk

EFFECTIVE DATE: This Ordinance was filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 2023