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ORDINANCE 15-05

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING CHAPTER 18 "ENVIRONMENT" OF THE CITY'S CODE OF ORDINANCES BY CREATING ARTICLE VII "SEXUAL OFFENDERS AND SEXUAL PREDATORS" AND SECTION 18-200, "SEXUAL OFFENDER AND SEXUAL PREDATOR RESIDENCY PROHIBITION"; PROVIDING RESIDENCY RESTRICTIONS WITHIN THE CITY FOR SEXUAL OFFENDERS AND SEXUAL PREDATORS; PROVIDING APPLICABILITY AND EXCEPTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, attacks on children by registered sex offenders within the State of Florida has shed light upon the necessity of providing greater protection to children from the risks posed by registered sex offenders; and

WHEREAS, the City Council of the City of Marco Island is deeply concerned about the health, safety and protection of its children; and

WHEREAS, the City Council believes it is of utmost importance to provide Marco Island's children with safe areas in which to live and play, and therefore, the City Council desires to establish a policy that will provide greater protection to children against the dangers posed by registered sex offenders; and

WHEREAS, Article VIII, Section 2(b) of the Florida Constitution and § 166.021, Florida Statutes, grant the City authority to adopt such provisions in order to protect the health, safety and welfare of its residents; and

WHEREAS, the U.S. Department of Justice conducted a study titled Recidivism of Sex Offenders Released from Prison in 1994 (November 2003), and the Center for Sex Offender Management (along with the Office of Justice Programs, National Institute of Corrections, and the State Justice Institute) published a study entitled Recidivism of Sex Offenders (May 2001), and both studies suggested that there is an increased risk of recidivism for persons convicted of sexual offenses; and

WHEREAS, Florida's 3rd District Court Of Appeals issued an opinion in the case of *Exile v. Miami Dade County*, 35 So. 2d 118 (3rd DCA 2010) in which the Court upheld residency restrictions that included a 2,500 foot distance requirement adopted by Miami-Dade County, and found the restrictions to be valid; and

WHEREAS, the 8th Circuit United States Court of Appeals issued an opinion in the case of *Doe v. Miller*, 2005 WL 991635 (8th Cir. April 29, 2005) in which the Court upheld similar residency restrictions adopted by the State of Iowa, and found the restrictions to be valid; and

47 **WHEREAS**, the City Council finds that the creation of a Sexual Offender and Sexual
48 Predator Residency Prohibition section in the City Code of Ordinances to prohibit convicted sex
49 offenders from living within two thousand five hundred (2,500) feet of specified locations in the
50 City of Marco Island is in the best interest of the health, safety and welfare of the residents and
51 citizens of the City.

52
53 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**
54 **OF MARCO ISLAND, FLORIDA:**

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56 **SECTION 1. Recitals.**

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58 The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true, correct
59 and reflective of the legislative intent underlying this Ordinance.

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61 **SECTION 2. City Code Chapter 18 Amended.** The Code of Ordinances, Marco Island,
62 Florida, is hereby amended by amending Chapter 18 "Environment" to create Article VII, entitled
63 "Sexual Offenders and Sexual Predators" and Section 18-200, entitled "Sexual Offender and Sexual
64 Predator Residency Prohibition", which shall read as follows:

65
66 **ARTICLE VII. SEXUAL OFFENDERS AND SEXUAL PREDATORS**

67 **Section 18-200 Sexual Offender and Sexual Predator Residency Prohibition.**

68 (a) Findings and intent.

69 (1) Repeat sexual offenders, sexual offenders who use physical violence and sexual
70 offenders who prey on children are sexual predators who present an extreme threat to the
71 public safety. Sexual offenders are extremely likely to use physical violence and to repeat
72 their offenses, and most sexual offenders commit many offenses, have many more victims
73 than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the
74 cost of sexual offender victimization to society at large, while incalculable, clearly
75 exorbitant.

76 (2) It is the intent of this Article to serve the City's compelling interest to promote, protect
77 and improve the health, safety and welfare of the citizens of the City by creating areas
78 around locations where children regularly gather and can be stalked or observed in
79 concentrated numbers wherein certain sexual offenders and sexual predators are prohibited
80 from establishing temporary or permanent residence.

81 (b) Definitions. The following words, terms and phrases, when used in this article, shall have the
82 meanings ascribed to them in this section, except where the context clearly indicates a different
83 meaning.

84 "Reside" or "residence" means to have a place of permanent residence or temporary
85 residence.

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

88 "Sexual Offender" shall have the meaning ascribed to such term in Section 943.0435,
89 Florida Statutes.

90 "Sexual Predator" shall have the meaning ascribed to such term in Section 775.21, Florida
91 Statutes.

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

97 (c) *Sexual Offender and Sexual Predator Residency Prohibition.*

98 (1) It is unlawful for any person who has been convicted of a violation of Section 794.011
99 (sexual battery), 800.04 (lewd and lascivious acts on/in presence of persons under age 16),
100 827.071 (sexual performance by a child), 847.0135(5) (sexual acts transmitted over
101 computer) or 847.0145 (selling or buying of minors for portrayal in sexually explicit
102 conduct), Florida Statutes, or a similar law of another jurisdiction within the United States,
103 in which the victim or apparent victim of the offense was less than sixteen (16) years of age,
104 to reside within 2,500 feet of any school, child care facility, park, playground or designated
105 public school bus stop.

106 (2) For purposes of determining the minimum distance separation, the requirement shall be
107 measured by following a straight line from the outer property line of the permanent
108 residence or temporary residence to the nearest outer property line of a school, child care
109 facility, park, playground or designated public school bus stop.

110 (d) *Penalties.* A person who violates Section 18-200(c)(1) shall be punished by a fine not to exceed
111 \$500.00 or by imprisonment for a term not to exceed 60 days, or by both such fine and
112 imprisonment.

113 (e) *Exceptions.*

114 (1) A person residing within 2,500 feet of any school, child care facility, park, playground or
115 designated public school bus stop does not commit a violation of Section 18-200(c)(1) if any
116 of the following apply:

117 a. The person established the permanent residence prior to the effective date of this
118 Ordinance (April 20, 2015).

119 b. The person was a minor when the person committed the offense and was not
120 convicted as an adult.

121 c. The school, child care facility, park, playground or designated public school bus
122 stop within 2,500 feet of the person's permanent residence was opened after the
123 person established the permanent residence.

124 (2) The exceptions in Section 18-200(e)(1)(a) and (1)(c) shall not apply to a Sexual Offender
125 or Sexual Predator who is convicted of a subsequent sexual offense as an adult after residing
126 at a registered residence within 2,500 feet of school, child care facility, park, playground or
127 designated public school bus stop.

128 (f) Property Owner Violation. It shall be a violation of the City Code for a landlord or owner of
129 residential property in the City to rent or lease a residence to a Sexual Offender or Sexual Predator,
130 if the Sexual Offender or Sexual Predator intends to reside at the property and if the property is
131 located within two thousand five hundred (2,500) feet of a school, child care facility, park,
132 playground or designated public school bus stop, unless the landlord or owner can establish that,
133 prior to entry of a lease, he or she used reasonable due diligence and was unable to determine that
134 the tenant is a Sexual Offender or Sexual Predator. Any person violating this subsection (f) is
135 subject to the code enforcement procedures set forth in the City of Marco Island Code Compliance
136 Ordinance.

137 **SECTION 3. Codification.**

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139 It is the intention of the City Council, and it is hereby ordained that the amendments to the
140 City of Marco Island Code of Ordinances made by this Ordinance shall constitute a new Article VII
141 to Chapter 18 of the City of Marco Island Code of Ordinances, and that the sections of this
142 Ordinance may be renumbered and re-lettered as necessary, and that the word "Ordinance" may be
143 changed to "Section, "Article" or other appropriate word.

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145 **SECTION 4. Conflicts.**

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147 All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict
148 with the provisions of this Ordinance are hereby superseded and resolved to the extent of any
149 conflict in favor of the provisions of this Ordinance.

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151 **SECTION 5. Severability.**

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153 (a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason held
154 to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not
155 affect the validity of the other or remaining terms, sections, clauses, sentences, or phrases portions
156 of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or
157 unenforceable term, provision, clause, sentence, or section did not exist.

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160 (b) That in interpreting this Ordinance, underlined words indicate additions to existing text,
161 and ~~stricken through~~ words include deletions from existing text. Asterisks (* * * *) indicate a
162 deletion from the Ordinance of text, which exists in the Code of Ordinances. It is intended that the

163 text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall
164 remain unchanged from the language existing prior to adoption of this Ordinance.

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166 **SECTION 6. Effective Date.**

167 This Ordinance shall become effective upon adoption on second reading by the City
168 Council.
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171 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 20th day
172 of April 2015.
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175 **CITY OF MARCO ISLAND, FLORIDA**

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178 By: 
179 Larry Sacher, Chairman

180 Attest:

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182 
183 Laura M. Litzan, City Clerk

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185 Reviewed for legal sufficiency:

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188 Alan L. Gabriel, City Attorney
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