

ORDINANCE NO: 08-10

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO "PARK AND RECREATION DEPARTMENT RULES AND REGULATIONS"; ADOPTING COUNTY AMENDED PARKS CODE, BY ADOPTING THE CREATION OF ARTICLE III TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR ALL PERSONS WORKING OR VOLUNTEERING ON VILLAGE PARK PROPERTY; PROHIBITING SEXUAL OFFENDERS, SEXUAL PREDATORS, CERTAIN VIOLENT FELONS, AND CERTAIN CONTROLLED SUBSTANCE TRAFFICKERS AND NON-LEGAL IMMIGRANTS FROM WORKING OR VOLUNTEERING ON PARK PROPERTY OWNED OR OPERATED BY THE VILLAGE OF PALMETTO BAY; PROVIDING AUTHORITY FOR ENFORCEMENT BY CIVIL PENALTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and Village Council are concerned about the security and safety of children visiting Village parks; and

WHEREAS, Palmetto Bay is known as the Village of Parks, there is a strong likelihood that children visiting County-owned or operated parks will come into direct contact with persons working or volunteering on County-owned or operated parks; and

WHEREAS, the County currently requires criminal background checks only of staff Members and volunteers of fairs, carnivals, and Programming Partners operating on County-owned or operated park property; and

WHEREAS, requiring criminal background checks of most persons working or volunteering on County-owned or operated park property would reduce the incidence of direct contact between children and sexual predators or violent felons,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA:

Section 1. Section 26-33 of the Miami-Dade County Code (the "Code"), as adopted by the Village of Palmetto Bay, is hereby deleted in its entirety:

~~[[Sec. 26-33. The Shannon Melendi Act.~~

~~A. All Programming Partner staff and volunteers who will have direct contact with program participants, at their expense, must show proof of official statewide background checks (either through the Department of Law Enforcement or the Miami Dade Police) for substance abuse, family violence and crimes of moral turpitude. The Department will seek a cooperative agreement with the Miami Dade Police Department to provide such services as a discount for Partners. All Programming Partner staff must show proof of legal immigrant status in the United States. The Programming Partner shall keep records of all background checks and proof of legal immigrant status.~~

~~B. All Programming Partner staff and permanent volunteer coaches shall wear a picture identification at all times while on County property and at all times when in direct contact with program participants.~~

~~C. All fair and carnival employees or agents who will have direct contact with children under the age of 18 in a Miami Dade County park, shall, at their expense, show proof of official statewide background checks (either through the Florida Department of Law Enforcement or the Miami Dade Police) for substance abuse, family violence and crimes of moral turpitude. All fair and carnival employees or agents working in a Miami Dade County park must show either proof of U.S. citizenship or legal immigrant status in the United States. The employer of any fair or carnival employee serving in a Miami Dade County park shall keep records of all background checks and proof of legal immigrant status.~~

~~D. All fair and carnival employees or agents who will have direct contact with children under the age of 18 in a Miami Dade County park shall wear a picture identification at all times while on County property and at all times when in direct contact with program participants.}}~~

Section 2. Article III of Chapter 26 of the County Code is hereby created, and adopted by the Village of Palmetto Bay as follows:

Chapter 26 PARK AND RECREATION DEPARTMENT RULES AND REGULATIONS

* * *

ARTICLE III. THE SHANNON MELENDI ACT

Sec. 26-37. Definitions.

As used in this article the following terms shall have the following meanings:

- A. Community-based Organization (CBO) shall refer to any not-for-profit agency, group, organization, society, association, partnership, or individual whose primary purpose is to provide a community service to improve or enhance the well-being of the community of the Village of Palmetto Bay at large or to improve or enhance the wellbeing of certain individuals within this community who have special needs.
- B. Child Event Worker shall refer to any full- or part-time employee, agent, volunteer, independent contractor, or employee or volunteer of an independent contractor of a carnival or fair that hosts amusement rides in a park owned or operated by Village of Palmetto Bay. The following persons shall be exempted from this definition:
- (1) Law enforcement personnel;
 - (2) Emergency or fire rescue personnel;
 - (3) Persons conducting deliveries; and
 - (4) Military recruitment personnel.
- C. Conviction shall refer to a determination of guilt of a criminal charge which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.
- D. Park vendor shall refer to any full- or part-time employee, agent, volunteer, independent contractor, or employee or volunteer of an independent contractor that has a contract with, or permit from, the Village of Palmetto Bay to rent or sell food, beverages, sporting equipment, or any other goods or services in a park owned or operated by the Village. The following persons and events shall be exempted from this definition:
- (1) Law enforcement personnel;
 - (2) Emergency or fire rescue personnel;
 - (3) Persons conducting deliveries;
 - (4) International or national sporting events;

- (5) One-day events; and
 - (6) Carnivals, festivals, trade shows, and fairs that do not host amusement rides.
- E. Professional Background Screener shall refer to any person, company, organization or agency which, for monetary fees, dues, or on a not-for-profit basis, regularly engages in whole or in part in the practice of researching and assembling criminal history information on specific persons for the purpose of furnishing criminal history reports to third parties.
- F. Programming Partner shall refer to any Not-For-Profit Program Service Provider that is selected by the Department under Article II of this chapter and the accompanying Administrative Order to provide programs in Village Park and Recreation Facilities.
- G. Sexual Offender shall include any individual who meets the criteria of a "sexual predator" as defined in Section 775.21(4) of the Florida Statutes, or a "sexual offender" as defined in Section 943.0435 of the Florida Statutes, or who is listed on the National Sex Offender Public Website owned or operated by the United States Department of Justice.
- H. Violent felony shall refer to the following felonies: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.
- I. Volunteer shall refer to any individual performing volunteer duties for a CBO, for a Programming Partner, for the Village's Park and Recreation Department, as a child event worker, or as a park vendor for more than three (3) days in any six (6) month period. Students volunteering in order to fulfill high school graduation requirements shall be exempted from this definition.

Sec. 26-38. Background checks Required for Child Event Workers, Park Vendors, and Programming Partner or Community-Based Organization (CBO) Employees and Volunteers.

- A. Upon adoption of this ordinance, employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall secure a nationwide criminal background check of all existing child event workers, park vendors, employees, and volunteers whose duties require physical presence on park property owned or operated by the Village. In addition, prior to employing, or allowing to volunteer, a person whose duties would require physical presence on park property owned or operated by the Village, employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall secure a nationwide criminal background check of all such prospective child event workers, park vendors, employees or volunteers.

The nationwide criminal background checks shall be conducted by a Professional Background Screener and shall include a report as to whether each child event worker, park vendor, staff member or volunteer is listed on the National Sex Offender Public Registry, and a comprehensive report and analysis, obtained from no less than two (2) independent databases/sources, on the nationwide criminal history of such child event worker, park vendor, staff member or volunteer.

B. Every three (3) years thereafter, employers of park vendors, and Programming Partners and CBOs shall secure nationwide criminal background checks for existing park vendors, staff members, and volunteers whose duties require physical presence on park property owned or operated by the Village. However, employers of child event workers shall secure nationwide criminal background checks for existing child event workers whose duties require physical presence on park property owned or operated by the Village every year thereafter.

C. Any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who:

- (1) has been convicted of a violent felony or conspiracy to commit a violent felony within the past five (5) years; or
- (2) has been convicted of a felony involving the trafficking of a controlled substance within the past (5) years; or
- (3) has two (2) or more convictions for a violent felony, for conspiracy to commit a violent felony, or involving the trafficking of a controlled substance; or
- (3) is a sexual offender or a sexual predator; or
- (4) has failed to provide the employer, Programming Partner or CBO with proof of United States citizenship or legal immigration status in the United States,

shall be prohibited from working or volunteering on park property owned or operated by the Village. All child event workers, park vendors, and staff members and volunteers of a Programming Partner or CBO shall submit to their employer, to the Programming Partner, or to the CBO an affidavit affirming that no work or volunteer duties will be performed on park property owned or operated by the Village in violation of this sub-section and that any arrest will be reported to his/her employer within forty-eight (48) hours of such arrest.

D. Employers of child event workers shall maintain copies of the results of the criminal background checks required by this section for a period of two (2) years from the date they were secured, and employers of park vendors, Programming Partners, and CBOs shall maintain such copies for a period of three (3) years from the date they were secured. Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall maintain the affidavits required by Section 2638(C) and the copies of the proof of United States citizenship or legal immigration status until the person is no longer a child event worker, park vendor, staff member, or volunteer.

Employers of child event workers, employers of park vendors, and Programming

Partners and CBOs shall, upon request, provide copies of these documents to the Village or to any law enforcement personnel with jurisdiction.

E. Every child event worker, park vendor, and staff member and volunteer of a Programming Partner or CBO shall wear, in a conspicuous and visible manner, an identification badge that contains his/her photograph and full name while working or volunteering on park property owned or operated by the Village, except when in costume and during a performance. The identification badge shall be of a size, design, and format approved by the Village Park and Recreation Department.

F. Penalties and Enforcement.

(1) It shall be unlawful for an employer of child event workers, an employer of park vendors, or a Programming Partner or CBO to knowingly permit or allow any child event worker, park vendor, staff member, or volunteer to work or volunteer on park property owned or operated by the Village in violation of Sec. 26-38.

(2) It shall be unlawful for any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO to work or volunteer on park property owned or operated by the Village in violation of Sec. 26-38.

(3) Any person who shall violate a provision of Sec. 26-38, or who shall knowingly or willingly provide false or erroneous information to his/her employer, or fail to comply therewith, or with any of the requirements thereof, shall upon conviction thereof in the County Court, be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment.

(4) Any person who violates or fails to comply with Sec. 26-38 may be subject to civil penalties in accordance with Chapter 8CC of this code. Each day of violation or noncompliance shall constitute a separate offense.

Sec. 26-39. The Village Park and Recreation Department Employees and Volunteers.

A. Upon adoption of this ordinance, the Village Park and Recreation Department shall secure a nationwide criminal background check of all existing employees and volunteers whose primary duties require physical presence on park property owned or operated by the Village. In addition, the Village's Parks and Recreation Department shall secure a nationwide criminal background fingerprint check prior to employing, or allowing to volunteer, a person whose primary duties would require physical presence on park property owned or operated by the Village. This nationwide criminal background fingerprint check shall be conducted through the Florida Department of Law Enforcement.

B. Every three (3) years thereafter; the Village Park and Recreation Department shall secure nationwide criminal background checks for existing employees and volunteers whose primary duties require physical presence on park property owned or operated by the Village. These nationwide criminal background checks shall be conducted by a Professional Background Screener and shall include a report as to whether each employee or volunteer is located on the National Sex Offender Public Registry, and a comprehensive report and analysis, obtained from two independent databases/sources, on the nationwide criminal history of such employee or volunteer.

C. Any employee or volunteer of the Village Park and Recreation Department who:

- (1) has been convicted of a violent felony or conspiracy to commit a violent felony within the past five (5) years; or
- (2) has been convicted of a felony involving the trafficking of a controlled substance within the past (5) years; or
- (3) has two (2) or more convictions for a violent felony, for conspiracy to commit a violent felony, or involving the trafficking of a controlled substance; or
- (4) is a sexual offender or a sexual predator; or
- (5) has failed to provide the Village Park and Recreation Department with proof of United States citizenship or legal immigration status in the United States,

shall be prohibited from working or volunteering on park property owned or operated by The Village County. All employees and volunteers of the Village Park and Recreation Department shall submit to the Village Park and Recreation Department an affidavit affirming that no work or volunteer duties will be performed on park property owned or operated by The Village County in violation of this subsection and that any arrest will be reported to his/her employer within forty-eight (48) hours of such arrest.

D. The Village Park and Recreation Department shall maintain copies of the results of the criminal background checks required by this section for a period of three (3) years from the date they were secured. The Village Park and Recreation Department shall maintain the affidavits required by Section 26-39(C) and shall maintain copies of the proof of United States citizenship or legal immigration status until the person is no longer an employee or volunteer.

E. Every employee and volunteer of the Village Park and Recreation Department shall wear, in a conspicuous and visible manner, an identification badge that contains his/her photograph and full name while working or volunteering on park property owned or operated by the Village County, except when in costume and during a performance. The identification badge shall be of a size, design, and format approved by the Village Park and Recreation Department.

F. Penalties and Enforcement.

- (1) It shall be unlawful for any volunteer of the Village Park and

Recreation Department to volunteer on park property owned or operated by the Village County in violation of Sec. 26-39.

(2) Any volunteer who shall violate a provision of Sec. 26-39, or who shall knowingly or willingly provide false or erroneous information to the Village Park and Recreation Department, or fail to comply therewith, or with any of the requirements thereof, shall upon conviction thereof in the County Court, be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment.

(3) Any volunteer who violates or fails to comply with Sec. 26-39' may be subject to civil penalties in accordance with Chapter 8CC of this code. Each day of violation or noncompliance shall constitute a separate offense.

Section 3. Section 8CC-10 of the Miami-Dade Code, as adopted by the Village of Palmetto Bay, Florida, is hereby amended to read as follows:

Sec. 8CC-10. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

The “descriptions of violations” below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this Chapter 8CC, and as elsewhere provided by the Village’s code of ordinances, regardless of whether all activities proscribed or required within that particular section are described in the “Description of Violation” column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
26-38(A)	<u>Failure to secure nationwide criminal background check of a prospective child event worker, park vendor, or employee or volunteer of a Programming Partner or CBO whose duties would require physical presence on The Village -owned or operated park property</u>	<u>500.00</u>
26-38(B)	<u>Failure to secure nationwide criminal background check of an existing park vendor, child event worker, staff member or volunteer of a Programming Partner or CBO whose duties require physical presence on The Village - owned or operated park property</u>	<u>500.00</u>

26-38(C)	<u>Permitting or performing work or volunteerism on The Village -owned or operated park property by child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who has been convicted of a violent felony or conspiracy to commit a violent felony within the past five (5) years</u>	500.00
	<u>Permitting or performing work or volunteerism on The Village -owned or operated park property by child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who has been convicted of a felony involving the trafficking of a controlled substance within the past five (5) years</u>	500.00
	<u>Permitting or performing work or volunteerism on The Village -owned or operated park property by child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who is a sexual offender or a sexual predator</u>	500.00
	<u>Permitting or performing work or volunteerism on The Village -owned or operated park property by child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who has two (2) or more convictions for a violent felony, for conspiracy to commit a violent felony, or involving the trafficking of a controlled substance.</u>	500.00
26-38(D)	<u>Failure to collect or maintain copies of criminal background checks, affidavits, or United States citizenship or legal immigration status proof of a child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO</u>	500.00
26-38(E)	<u>Failure of child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO to wear in a conspicuous and visible manner the required identification badge while working or volunteering on The Village -owned or operated park property</u>	100.00
26-39(E)	<u>Failure of Park and Recreation Department volunteer to wear in a conspicuous and visible manner the required identification badge while working or volunteering on The Village -owned or operated park property</u>	100.00

Section 4. Renumbering or Relettering. It is the intention of this Village Council, and is hereby ordained that the provisions of this ordinance shall become and made part of the Code of the Village of Palmetto Bay, Florida. The section of this ordinance may be renumbered or relettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “article,” “chapter,” or other appropriate word.

Section 5. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections,

sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Ordinances in conflict. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

Section 7. Codification. This ordinance shall be codified and included in the Code of Ordinances.

Section 8. Effective Date. This ordinance shall take effect immediately upon enactment.

PASSED AND ENACTED this 7th day of JULY 2008.

1st Reading: June 2, 2008

2nd Reading: July 7, 2008

Attest: 
Meighan Rader,
Village Clerk


Eugene P. Flinn, Jr.,
Mayor

APPROVED AS TO FORM:


Eve A. Boutsis, Office of Village Attorney
Nagin Gallop & Figueredo, P.A.

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member Shelley Stanczyk	<u>YES</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>