

Bill No. 3281-07

No. 39-07-OR

## AN ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending and supplementing the Allegheny County Code of Ordinances, Division 2, entitled "County Government Operations," by the addition of a new Chapter 275, entitled "Residence Requirements; Registered Sex Offenders," in order to augment the provisions of Pennsylvania's Megan's Law and better provide for the safety of the County's residents.

**WHEREAS**, the Pennsylvania State Legislature adopted requirements for the registration of sexual offenders ("Megan's Law"); and the requirements are set forth at 42 Pa C.S.A. §9791, *et. seq.*; and

**WHEREAS**, the General Assembly, in enacting Megan's Law, made the following six legislative findings, all of which have been supported by Council's own consideration of this bill:

- (1) If the public is provided adequate notice and information about sexually violent predators and certain other offenders, the community can develop constructive plans to prepare themselves and their children for the offender's release. This allows communities to meet with law enforcement to prepare and obtain information about the rights and responsibilities of the community and to provide education and counseling to their children;
- (2) These sexually violent predators pose a high risk of engaging in further offenses even after being released from incarceration or commitments and that protection of the public from this type of offender is a paramount governmental interest;
- (3) The penal and mental health components of our justice system are largely hidden from public view and lack of information from either may result in failure of both systems to meet this paramount concern of public safety;
- (4) Overly restrictive confidentiality and liability laws governing the release of information about sexually violent predators have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks to public safety;
- (5) Persons found to have committed such an offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government;

- (6) Release of information about sexually violent predators to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals; and

**WHEREAS**, elected community representatives from municipalities within the County have indicated that significant demands are being made on their police and other resources by citizens concerned about Megan's Law registrants' activities near schools, parks, and other areas in which children congregate, that they themselves are concerned about the activities of Megan's Law registrants near these areas and the accompanying law enforcement demands, particularly in the wake of findings that Pennsylvania's Megan's Law registry does not fully account for all individuals who are legally required to register, and that they have considered the merits of enacting sex offender residency restrictions; and

**WHEREAS**, the Attorney General of the Commonwealth issued a report in the summer of 2007 indicating that hundreds of offenders who are statutorily required to register under the terms of Megan's Law have not done so, and recommended, among other things, that Megan's Law registrations should be periodically updated throughout an offender's contact with the criminal justice system, that the technology for enforcing Megan's Law should be improved and adequate staff devoted to the process of enhancing enforcement; and

**WHEREAS**, research conducted in 2000 (*Sexual Abuse: A Journal of Research and Treatment*, S. Ahlmeyer, P. Heil, B. McKee and K. English) based upon polygraph testing of imprisoned sex offenders with fewer than two officially known victims found that these offenders actually had an average of 110 victims and 318 offenses, and a different polygraph study conducted in 1999 (*The impact of polygraphy on admissions of crossover offending behavior in adult sexual offenders*, S. Ahlmeyer, K. English and D. Simons) found that a sample of imprisoned sex offenders committed sex crimes for an average of 16 years before being caught; and

**WHEREAS**, R.K. Hanson and A. Harris in their 1998 work, *Dynamic predictors of sexual recidivism*, found that repeat sex offenders were less likely to show remorse or concern for their victims, tended to see themselves as being at little risk for committing new offenses, and were more likely to put themselves in situations that increased their risk of committing a new offense, and noted that sex offenders are "...at most risk of reoffending when they become sexually preoccupied, have access to victims, fail to acknowledge their recidivism risk, and show sharp mood increases, particularly anger;" and

**WHEREAS**, the United States Department of Justice, in its 2003 publication "*Recidivism of Sex Offenders Released From Prison in 1994*," found that, compared to non-sex offenders, released sex offenders are 4 times more likely to be rearrested for a new sex crime; and

**WHEREAS**, in the same study, the Department found that of the children allegedly molested by child molesters after their release from prison, 79% were aged 13 or younger; and

**WHEREAS**, the Minnesota Department of Corrections has determined that, after an 8.4 year follow up period, 12% of released sex offenders had been rearrested for a new sex offense, and consistent with other research on sexual offending, found that the victim was an acquaintance of the offender in 57% of the cases and a stranger in only 11%; and

**WHEREAS**, the Arizona Department of Corrections has determined that 70% of sex offenders released from prison to state supervision were eventually returned to prison with a new felony conviction for a sex crime; and

**WHEREAS**, other statistical measures examined by the Council are in general accord with the findings summarized herein with regard to recidivism rates among sex offenders, familiarity with their victims, and victim ages; and

**WHEREAS**, White Oak Borough became the first of the over 130 municipalities within Allegheny County to pass a residency restriction within the last six months, and it appears that other municipalities are considering the possibility as well; and

**WHEREAS**, Council further finds that a Countywide residency restriction is in full accord with the General Assembly's findings, the statistical information reviewed, and the expressions of concern by members of the public and local elected officials, that such a restriction specifically serves the paramount governmental interest of protecting the County's residents from these types of offenders, and that such a restriction is in no way a punitive measure but rather is a rational means of protecting the safety of the County's residents through the creation of a regulatory system; and

**WHEREAS**, Council additionally finds that a Countywide residency restriction for convicted sex offenders should be enacted so as not to impinge upon any individual's ability to travel within or through Allegheny County nor to completely eliminate the ability of any such individual to reside within the County, and should not in any way distinguish between residents and nonresidents of the County, Commonwealth of Pennsylvania, or any other state or local unit of government; and

**WHEREAS**, Council finds that individual offenders' due process rights are amply served by the court proceedings in which the offender was convicted of an offense giving rise to the registration requirements of Megan's Law and any subsequent hearings, including but not limited to parole proceedings; and

**WHEREAS**, Megan's Law requires that persons convicted of various offenses, and persons adjudicated as a sexually violent predator, must register with the Pennsylvania State Police for certain prescribed time periods in accordance with a registration procedure as set forth in Megan's Law; and

**WHEREAS**, Megan's Law does not contain any restrictions with respect to where persons convicted of the crimes subject to registration or persons adjudicated as sexually violent predators may reside; and

**WHEREAS**, the Allegheny County Council finds that the danger of recidivism posed by persons convicted of the crimes identified in Megan's Law and persons adjudicated as sexually violent predators is of paramount concern to the County's residents; and

**WHEREAS**, the Council further finds that residency restrictions for such persons provides additional protection for children and places where children congregate;

***The Council of the County of Allegheny hereby enacts as follows:***

***SECTION 1.***

The Allegheny County Code of Ordinances, Division 2, entitled "County Government Operations," is hereby amended by the addition of a new Chapter 275, entitled "Residence Requirements; Registered Sex Offenders," as follows:

**§275-01. Definitions.**

For the purposes of this Chapter, the following words shall be defined as provided in this Section, unless the context clearly indicates otherwise:

- A. Child Care Facility. A day care center licensed by the Pennsylvania Department of Public Welfare.
- B. Community Center. A building and related facilities used for educational, social cultural or recreational activities located within Allegheny County and owned or operated by Allegheny County or a municipality or school district.
- C. Permanent Residence. A place where a person lives, abides, lodges, or resides for fourteen (14) or more consecutive days in any calendar year.
- D. Public Park or Recreational Facility. Any recreational facility, playground or park, owned or operated by Allegheny County.
- E. School. Shall mean any institution operating primarily as a public or private school which provides preschool or kindergarten through twelfth grade education services to any person under the age of eighteen (18) years. The term shall not be deemed to include any daycare facility providing incidental educational services.
- F. Sex Offender. Shall mean any person, over the age of eighteen (18) years of age, who has been convicted of any crime requiring registration of any type under the terms of Megan's Law, 42 P.S. §9791 *et. seq.*, which include, but are not limited to, kidnapping, luring a child into a motor vehicle, institutional sexual assault, indecent assault, incest, prostitution, receiving sexual materials, sexual abuse of children, unlawful contact with minors, sexual exploitation of children, rape, involuntary deviate sexual intercourse, sexual assault, aggravated indecent

assault, and individuals convicted of any attempt to commit any of the offenses enumerated therein.

- G. Temporary Residence. A place where a person lives, abides, lodges, or resides for a period of less than fourteen (14) days in the aggregate during any calendar year, which is not the person's permanent address or place where the person routinely lives, abides, lodges, or resides and which is not the person's Permanent Residence.

**§275-02. Residency Restriction/Prohibition.**

- A. It shall be unlawful for any Sex Offender to establish a Permanent Residence or Temporary Residence within 2,500 feet of any Child Care Facility, Community Center, Public Park or Recreational Facility, or School for the duration of his or her registration under the terms of Megan's Law, 42 P.S. §9791 *et. seq.*.
- B. For the purpose of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the Permanent Residence or the Temporary Residence of the Sex Offender to the nearest outer property line of a Child Care Facility, Community Center, Public Park or Recreational Facility, or School.

**§275-03. Notice to Move.**

- A. Upon determining that a Sex Offender resides in a Permanent Residence or Temporary Residence within 2,500 feet of any Child Care Facility, Community Center, Public Park or Recreation Facility or School, the Allegheny County Police or other designated enforcement entity shall provide written notice of the violation to the Sex Offender.
- B. Any Sex Offender who resides in a Permanent Residence or Temporary Residence within 2,500 feet of any Child Care Facility, Community Center, Public Park or Recreation Facility or School shall, within forty-five (45) days of receipt of written notice of the Sex Offender's non-compliance with this Chapter, move from said location to a new location, provided that said new location may not be within 2,500 feet of any Child Care Facility, Community Center, Public Park or Recreation Facility or School within the County.
- C. Each day beyond the forty-five (45) days the Sex Offender continues to reside within 2,500 feet of a Child Care Facility, Community Center, Public Park or Recreation Facility or School shall constitute a separate violation of the terms of this Chapter, subject to the limitations contained within §275-04. Each day that a Sex Offender shall move from one location in Allegheny County to another that is within 2,500 feet of any Child Care Facility, Community Center, Public Park or Recreation Facility or School shall also constitute a separate violation of the terms of this Chapter.

**§275-04. Exceptions.**

This Chapter shall not apply:

- A. To any person who has established Permanent Residence prior to the enactment of this Chapter; or
- B. To any person who has established a Permanent or Temporary Residence for which a lease or other rental contract was executed prior to the enactment of this Chapter only for the duration of the term of that lease or rental contract; or
- C. If the Child Care Facility, Community Center, Public Park or Recreation Facility or School within 2,500 feet of the Sex Offender's Permanent Residence or Temporary Residence was established subsequent to the establishment of the Sex Offender's Permanent Residence or Temporary Residence.

**§275-05. Exemptions.**

The provisions of this Chapter shall not be applicable to persons incarcerated or present due to an order issued by a court of competent jurisdiction in any facilities owned, maintained and/or operated by Allegheny County or the Commonwealth of Pennsylvania or providing inpatient drug rehabilitation or other services for the County or Commonwealth pursuant to an in-force contract.

**§275-06. Address Verification.**

- A. At least once every six months, the Allegheny County Police shall cross reference Allegheny County's Real Estate database with the Pennsylvania State Police Megan's Law listings of Sex Offenders residing within Allegheny County in order to verify Sex Offenders' addresses. In every instance in which the Sex Offender's address from the State Police listings does not match the owner information contained within the County's real estate website, the County Police shall determine the reason for this discrepancy.
- B. The Allegheny County Police or other designated enforcement entity shall, at least once every calendar year, visit the addresses for each Sex Offender residing within Allegheny County from the State Police listings. During the course of this visit, the County Police or other designated enforcement entity shall verify:
  - 1. That the Sex Offender continues to reside at that address; and
  - 2. That the address meets all minimum distance requirements set forth in this Chapter.

- C. The Allegheny County Police or other designated enforcement entity shall, immediately in response to any complaint indicating that a Sex Offender is residing in Allegheny County in violation of the terms of this Chapter, visit that Sex Offender. During the course of this visit, the County Police shall verify:
1. That the Sex Offender continues to reside at that address; and
  2. That the Sex Offender's actual address matches the address contained within the State Police's Megan's Law listings; and
  3. That the address meets all minimum distance requirements set forth in this Chapter.

**§275-07. Penalties.**

Any person who violates the provisions of this Chapter shall, upon conviction before a District Judge, be guilty of a summary offense and sentenced to a term of imprisonment of up to forty five (45) days for each violation and shall be fined not more than Five Hundred Dollars (\$500.00) for each violation, plus the costs of prosecution.

**§275-08. Enforcement.**

The Allegheny County Police Department shall be charged with the enforcement of this Chapter. The Superintendent of the County Police may, upon receipt of a written request by any law enforcement or probation oversight entity operating within Allegheny County, designate such entity to enforce the provisions of this Chapter allowing for such designation. Such designation shall not be effective until written notice is provided to the requesting entity, and copies of such notice shall be provided to the County Manager and Council within fourteen (14) days of issuance.

**§275-09. Publication.**

The Allegheny County Manager shall, by March 1, 2008, have prepared and placed on the Allegheny County website a map of Allegheny County depicting the areas where Sex Offenders are restricted from residing in a Permanent Residence or Temporary Residence.

***SECTION 2. Effective Date.***

This terms §275-09 shall take effect upon final approval of this Ordinance. The remaining provisions of this Ordinance shall take effect on March 1, 2008.

***SECTION 3. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.***

***PRIMARY SPONSOR: COUNCIL MEMBER GASTGEB***

***COSPONSORS: COUNCIL MEMBERS BURN, CALDWELL, CLEARY, DROZD, FINNERTY, MACEY, MARTONI, REA, & ROBINSON***



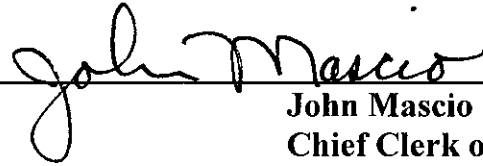
Enacted in Council, this 23<sup>rd</sup> day of October, 2007,

Council Agenda No. 3281-07.



**Rich Fitzgerald**  
President of Council

Attest:

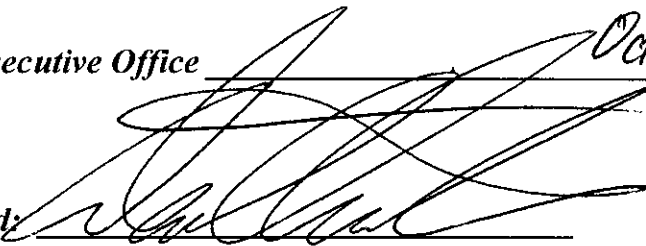


**John Mascio**  
Chief Clerk of Council

Chief Executive Office

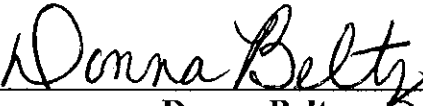
October 29, 2007

Approved:



**Dan Onorato**  
Chief Executive

Attest:



**Donna Beltz**  
Executive's Secretary