

# Sexually Violent Predator Residency Restrictions

## ORDINANCE 2007-8An Ordinance of the City of Hazleton, Luzerne County, Pennsylvania Establishing Sexually Violent Predator Restrictions and Penalties for Violations

WHEREAS, the Pennsylvania State Legislature adopted requirements for the registration of sexual offenders and sexually violent predators (commonly known as Megan's Law II), as set forth at 42 Pa.C.S.A. §9791, et seq. (hereinafter "Megan's Law II" or "the statute");

WHEREAS, Megan's Law II requires that persons convicted of various offenses and persons adjudicated to be sexually violent predators must register with the Pennsylvania State Police, which registration procedure is set forth in the Statute;

WHEREAS, Megan's Law II does not contain any restrictions with regard to where persons convicted of the crimes enumerated therein, subject to registration or persons adjudicated to be sexually violent offenders may reside;

WHEREAS, Council for the City of Hazleton (hereinafter "City Council") finds that there is a danger of recidivism posed by persons convicted of the crimes and subject to registration requirements in Megan's Law II and persons adjudicated as sexually violent predators and that the danger of recidivism is of paramount concern to the City of Hazleton;

WHEREAS, City Council finds that persons convicted of the crimes and subject to the registration requirements referenced in Megan's Law II, or who have been adjudicated as sexually violent predators, have a reduced expectation of privacy and finds further that residency restrictions for such persons provides additional protection for children in the community;

WHEREAS, City Council has reviewed the findings of the Pennsylvania Legislature with regard to Megan's Law II, and the findings of other jurisdictions that have adopted similar laws imposing registration requirements and residency restrictions upon sexually violent predators; and

WHEREAS, City Council wishes to enact this law for protection of children in the community and to protect and promote the health, safety, comfort, convenience and general welfare of the public.

NOW, THEREFORE, be it hereby ORDAINED and ENACTED as follows:

### 1. Definitions

- a) Child Care Facility. Any day care center, child care facility or any other child care service facility or home day care facility for children, whether the facility is licensed pursuant to the laws of the Commonwealth of Pennsylvania or exempt from licensing or unlicensed.
- b) Common Open Space. The area of land and/or water restricted from future development for the purpose of protecting natural features or for providing recreational opportunities for residents of the City of Hazleton, which said Open Space is regulated, maintained and/or owned by the City of Hazleton.
- c) Community Center. Any building(s) and all related facilities used for educational, social, cultural or recreational activities.
- d) Public Park or Recreational Facility. Any recreational facility, playground or park, owned or operated by the City of Hazleton or any other governmental agency, including, but not limited to any school district, the County of Luzerne or the Commonwealth of Pennsylvania.
- e) Residence. A "Permanent Residence" is a place where a person lives, lodges, resides, stays, dwells, or inhabits, or maintains his/her abode for fourteen (14) or more consecutive or non-consecutive days during any calendar year.  
  
A "Temporary Residence" is a place where a person lives, lodges, resides, stays, dwells, or inhabits, or maintains his/her abode for less than fourteen (14) days during any calendar year, if the person is able to identify a different address or addresses that constitute the person's PERMANENT RESIDENCE.
- f) School. Shall mean any public or private school which provides education services to a minor or minors.
- g) Library. Shall mean any public or private library which provides services to a minor or minors.

h) Sexually Violent Predator. Any person eighteen (18) years of age or older, who has been convicted of an offense set forth in Section 9795.1 of Megan's Law II (relating to registration), which includes, but is 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 any attempt to commit any of the enumerated offenses, and who is determined to be a sexually violent predator under Section 9795.4 of Megan's Law II (relating to assessments) due to a mental abnormality (as defined in Section 9792 of Megan's Law II) or personality disorder that makes the person likely to engage in predatory sexually violent offenses. The term includes an individual determined to be a sexually violent predator where the determination occurred in the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation or by court martial.

## 2. Residency Restriction/Prohibition

a) It shall be unlawful for any sexually violent predator to establish a permanent or temporary residence within one thousand (1,000) feet of any school, library, child care facility, common open space, community center, public park or recreational facility.

b) For the purpose of determining the distance, it shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence of the sexually violent predator to the nearest outer property line of a school, library, child care facility, common open space, community center, public park or recreational facility.

## 3. Notice to Move.

a) Upon the discovery of a violation of the Residency Restriction/Prohibition, the Hazleton City Police Department shall issue a written Notice of Violation by both regular mail and by certified mail, return receipt, to the sexually violent predator.

b) A sexually violent predator who receives a Notice of Violation shall within forty-five (45) days of receipt of the Notice, move to a new residence that is not within one thousand (1,000) feet of any school, library, child care facility, common open space, community center, park or recreational facility.

c) The Notice of Violation shall be deemed to be received on the date reflected on the certified mail receipt, or if the certified mail is not accepted or signed-for, then fifteen (15) days from the date of mailing the regular mail.

d) Each day beyond the forty-five (45) days that a sexually violent predator fails to move to a new residence that is in compliance with this Ordinance shall constitute a separate and continuing violation of this Ordinance.

## 4. Exceptions.

a) This Ordinance shall not apply to any person who lawfully established residence prior to the effective date hereof, unless such person is convicted of the crimes enumerated in Megan's Law II subsequent to the effective date of this Ordinance. If a sexually violent predator is convicted of the crimes enumerated in Megan's Law II or becomes subject to the registration requirements of Megan's Law II subsequent to the effective date of this Ordinance, then this Ordinance shall become applicable to that sexually violent predator upon the date the sexually violent predator is convicted of the new offense(s).

b) This Ordinance shall not be applicable to a sexually violent predator who lawfully established residence prior to the establishment of a school, library, child care facility, common open space, community center, public park or recreational facility within one thousand (1,000) feet of that person's permanent or temporary residence, unless that person is subsequently convicted of the crimes or subsequently subject to the registration requirements set forth in Megan's Law II. If the sexually violent predator re-offends and is convicted under the crimes enumerated in Megan's Law II after the establishment of a school, library, child care facility, common open space, community center, public park or recreational facility, then this Ordinance shall be applicable to the sexually violent predator on the date the sexually violent predator is convicted of the new offense(s).

c) The provisions of this Ordinance shall not be applicable to persons incarcerated in any facilities owned, maintained and/or operated by the County of Luzerne or Commonwealth of Pennsylvania.

5. Penalties. Any person who is found to have violated this Ordinance shall, upon conviction, before a Magisterial District Justice, be sentenced to a term of imprisonment up to ninety (90) days and shall be fined not more than One Thousand (\$1,000.00) Dollars for each violation, plus the costs of prosecution, court costs and the reasonable administrative costs and attorney's fees of the City. Each day that the sexually violent predator fails to move after the forty-five (45) days Notice period shall constitute a new violation and shall be subject to the assessment of a separate fine.

6. Enforcement. The Hazleton City Police Department shall be charged with the enforcement of this Ordinance.

7. Publication. The City of Hazleton shall have prepared and retained at City Hall a map of the City of Hazleton depicting the areas where sexually violent predators are restricted from residing.

8. Inclusion in Code. It is the intent of City Council that the provisions of this Ordinance shall become and be made a part of the Code of the City of Hazleton and the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section" or "article" or such other appropriate word or phrase in order to accomplish the intention of City Council.

9. Severability. The provisions of this Ordinance are severable. If any section, clause, sentence, part or provision hereof shall be determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not impair or affect any remaining provisions of the Ordinance, it being the intention of City Council that it would have adopted the Ordinance even if any illegal, invalid or unconstitutional provision(s) had not been included.

10. Repeal. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

11. Effective Date. This Ordinance shall take effect in five (5) calendar days after the enactment hereof.

ORDAINED AND ENACTED by Council this 21st day of May, 2007.