

Sex Offender Residency Update

Middletown Borough Council's Public Safety Committee met on Thursday May 16 for the purposes of evaluating a proposal from the public to establish sex offender residency restrictions in the Borough.

At the meeting, a number of citizens and professionals gave testimony for the need to establish restrictions. There was also discussion related to a decision by the U.S. District Court or the Western District of Pennsylvania known Fross vs. County of Allegheny.

Despite potential legal challenges, it was recommended that the full Borough Council consider advertising a 1500-foot residency restriction at the May Borough Council meeting, to be held on May 26, 2009.

In addition, it was recommended that Council consider adopting a separate Resolution urging the Commonwealth to clearly authorize local towns and boroughs to adopt such residency restrictions.

On May 26, 2009, the Borough Council approved the enclosed Resolution.
On June 9, 2009, the Borough Council approved the enclosed Ordinance.

If you have any questions, please contact the Borough Manager's Office at 948-3050.

www.middletownborough.com

**RESOLUTION NO 513
FOR THE YEAR 2009**

**A RESOLUTION OF THE BOROUGH COUNCIL OF THE
BOROUGH OF MIDDLETOWN, DAUPHIN COUNTY,
REQUESTING PENNSYLVANIA'S LEGISLATORS CHANGE
STATE LAW TO PERMIT LOCAL CONTROL OVER
RESIDENCY ISSUES FOR MEGAN'S LAW II REGISTRANTS
AND FOR PERSONS ADJUDICATED AS SEXUALLY VIOLENT
PREDATORS**

WHEREAS, The Pennsylvania State Legislature adopted requirements for the registration of sexual offenders (commonly known as *Megan's Law II*), as set forth in 42 Pa. C.S.A. §9791, et seq.; and

WHEREAS, Megan's Law II requires that persons convicted of various offenses and persons adjudicated as sexually violent predators must register with the Pennsylvania State Police for periods not less than ten (10) years, which registration procedure is set forth in the statute; and

WHEREAS, Megan's Law II is silent on whether or not local municipalities have any rights or powers regarding where those individuals required to register under Megan's Law II may reside in the municipality; and

WHEREAS, several communities have passed zoning ordinances which regulate where those individuals required to register under Megan's Law II may reside in the community, including Allegheny County, PA; and

WHEREAS, the Allegheny County ordinance was challenged in the U.S. District Court for the Western District of Pennsylvania in Fross vs. County of Allegheny; and

WHEREAS, the U.S. District Court for the Western District found that the Allegheny County ordinance was preempted by state law and was, therefore, invalid and unenforceable, calling all other similar municipal ordinances into question; and

WHEREAS, Borough Council finds that the danger of recidivism posed by persons convicted of the crimes identified in Megan's Law II and by persons adjudicated as sexually violent predators is of paramount concern to the Borough of Middletown in that it poses a significant danger to the health, safety and welfare of the Borough residents and children; and

WHEREAS, Borough Council believes that the Commonwealth of Pennsylvania currently has no laws which adequately prohibit or restrict convicted violent sexual predators and other certain offenders from residing or living near areas where children regularly meet and congregate. Further, because of the Court's determination in the Fross case, the power of the local municipality to control residency through the exercise of its zoning power has been eliminated; and

WHEREAS, Borough Council of the Borough of Middletown disagrees with the determination of the U.S. District Court for the Western District of Pennsylvania in Fross vs. County of Allegheny and believes that local municipalities should have the authority to regulate residency of persons convicted of the crimes identified in Megan's Law II, as well as persons adjudicated as sexually violent predators.

NOW THEREFORE, be it hereby:


RESOLVED THAT: The Borough Council of the Borough of Middletown requests that the Legislature of the Commonwealth of Pennsylvania explicitly grant local municipalities power and authority to regulate the residency of individuals convicted of the crimes identified in Megan's Law II and of persons adjudicated as sexually violent predators in order that the Borough can protect its citizens from these individuals; and

FURTHER RESOLVED THAT: A copy of this Resolution be transmitted to every legislator in the House and Senate of the Commonwealth of Pennsylvania so that they may be aware of this issue and work to resolve it for the benefit of their constituents; and

FURTHER RESOLVED THAT: A copy of this Resolution be transmitted to the Pennsylvania League of Cities and Municipalities and the Pennsylvania State Association of Boroughs so that they may inform their members of this action.

ADOPTED this 26th day of May, 2009.

ATTEST:


Secretary

**BOROUGH COUNCIL OF THE
BOROUGH OF MIDDLETOWN**

By: 

President

**ORDINANCE NO. 1252
FOR THE YEAR 2009**

**AN ORDINANCE OF THE BOROUGH OF MIDDLETOWN,
DAUPHIN COUNTY, ESTABLISHING A NEW CHAPTER 133,
MEGAN'S LAW REGISTRANT RESIDENCY, TO ADOPT
REGULATIONS REGARDING CONVICTED SEXUAL
OFFENDERS & THEIR RESIDENCY WITHIN THE BOROUGH
OF MIDDLETOWN**

WHEREAS, the Commonwealth of Pennsylvania had adopted certain requirements for the registration of adult sexual violent offenders after conviction, commonly known as Megan's Law II, as more fully set forth in 42 PA.C.S.A. §9791, et. seq.; and

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

WHEREAS, Megan's Law II, in it's Legislative Findings, recognizes that 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; and

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

WHEREAS, the Borough Code permits Council to adopt such Ordinances as may be necessary for the proper management, care and control of the Borough, including the maintenance of peace, good government, safety and welfare of the Borough; and

WHEREAS, Borough Council wishes to help insure the public safety of those of its citizens most susceptible to becoming crime victims by creating residency requirements for certain types of offenders; and

WHEREAS, Borough Council believes that it is in the best interests of the Borough and its residents to adopt regulations regarding convicted sexual offenders, so as to protect the health, safety and welfare of Borough residents, especially minors.

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

Section 1.

CHAPTER 133, MEGAN'S LAW REGISTRANT RESIDENCY

§133-1 Title

This chapter shall be known and may be cited as the "Megan's Law Registrant Residency Ordinance."

§133-2 Definitions

- A. Child Care Facility – a licensed day care center, child care facility or any other child care service facility exempt from licensing pursuant to the laws of the Commonwealth of Pennsylvania.
- B. Community Center – a building and its related facilities used for educational, social, cultural or recreational activities, which is operated by a not-for-profit entity.
- C. Public Park or Recreational Facility – any land, or tract of land, or facility used for passive or active recreation, including any playground, park, skate park, athletic field, swimming pool, and any other facility owned or operated by the Borough or any other governmental agency or not-for-profit organization, including Dauphin County or the Commonwealth of Pennsylvania.
- D. Residence – a location where an individual resides or is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year.
- E. School – any educational building or facility, whether public or private, that provides educational services, including secondary schools, trade or professional institutions or institutions of higher education.
- F. Sex Offender – any individual required to register under Section 9795.1 (a), (b) (1) or (2).

§133-3 Sex Offender Residency Restrictions Established

- A. It shall be unlawful for any sex offender or other person who has been convicted of a violation which requires registration in another jurisdiction, to reside, lodge, abide or live within 500 feet of any school, child care facility, community center, public park, recreational facility or library in the Borough.
- B. For the purpose of determining the minimum distance separation, the requirements shall be measured by following a straight line from the outer property line of the permanent residence of the sex offender to the nearest outer property line of a school, child care facility, community center, public park, recreational facility or library.

§133-4 Exceptions to Residency Restrictions

This Ordinance shall not apply to any person or sex offender who has:

- A. Established a residence at a location that may be in violation of §133-3 above prior to the date of adoption of this Ordinance; or
 - B. Established a residence not in violation of §133-3 above but which becomes in violation of §133-3 because a school, child care facility, community center, park, recreational facility or library is established subsequent to the establishment of the sex offender's residence; or
 - C. Established a residence that is in violation of §133-3 above prior to any obligation of the sex offender to register under Megan's Law II.
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§133-5 Penalties

Any person who violates the provisions of this Ordinance shall, upon conviction before a Magisterial District Justice, be sentenced to a term of imprisonment of not more than 90 days and shall be fined not more than \$1,000 for each violation, plus the cost of prosecution and reasonable attorney's fees.

§133-6 Publication

The Borough Manager shall prepare and place at the Borough Zoning Office, a map of the Borough of Middletown depicting the areas where sex offenders are restricted from residing pursuant to the terms of this Ordinance.

Section 2. Severability Clause

The provisions of this Ordinance are severable. If any section, clause, sentence, part or provision shall be determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not impair or effect any remaining provisions of the Ordinance, it being the intention of the Borough Council that it would have adopted the Ordinance even if the offending language had not been included.

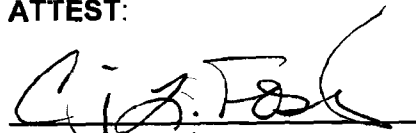
Section 3. Effective Date

This Ordinance shall be effective 10 days after it has been approved by the Mayor, or in default thereof, 10 days after it is deemed approved by operation of law.

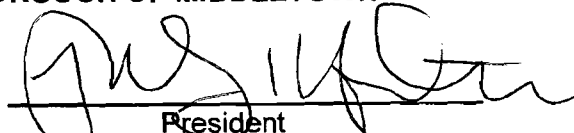
ADOPTED this 9th day of June, 2009.

**BOROUGH COUNCIL OF THE
BOROUGH OF MIDDLETOWN**


ATTEST:


Secretary

By:


President

AND NOW this 9th day of June, 2009 the foregoing Ordinance is hereby approved.


Mayor
