

ORDINANCE NO. 2007-1

**AN ORDINANCE OF THE BOROUGH OF NESQUEHONING, CARBON COUNTY,
PENNSYLVANIA ESTABLISHING SEX OFFENDER RESIDENCY RESTRICTIONS
AND PENALTIES FOR VIOLATIONS**

WHEREAS, the Pennsylvania State Legislature adopted requirements for the registration of sexual offenders (commonly known as Megan’s Law II), and is set forth as 42 Pa. C.S.A. beginning at section 9791 et. seq.; and,

WHEREAS, Megan’s Law II, as noted previously, requires that persons convicted of various offenses, and persons adjudicated as sexually violent predators must register with the Pennsylvania State Police for periods of not less than ten (10) years, which registration procedure is set forth in the statute; 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 Council finds that the danger of recidivism posed by persons convicted of the crimes identified in Megan’s Law II and persons adjudicated as sexually violent predators is of paramount concern of the Borough of Nesquehoning; and,

WHEREAS, the Borough Council finds that persons who have committed the violations referred to in Megan’s Law II, or who have been adjudicated as sexually violent predators, have a reduced expectation of privacy and furthermore, that residency restrictions for such persons provides additional protection for children where they congregate; and,

WHEREAS, the Borough Council has reviewed the findings of the Pennsylvania Legislature when it adopted Megan’s Law II which relates, in part, to restrictions imposed upon sex offenders with respect to residency.

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

1. 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) Common Open Spaces 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 Borough of Nesquehoning, which said Open Space is regulated, maintained and/or owned by the Borough of Nesquehoning.

c) Community Center A building and related facility used for educational, social, cultural or recreational activities.

d) Permanent Residence A place where a person lives, abides, lodges or resides for fourteen (14) or more consecutive days.

e) Public Park or Recreational Facility Any recreational facility, playground or park, owned or operated by the Borough of Nesquehoning or any other governmental agency, including but not limited to, the Panther Valley School District, the County of Carbon or the Commonwealth of Pennsylvania.

f) School Shall mean any public or private entity which provides education services to a minor under the age of eighteen (18) years.

g) Sex Offender Shall mean any person, over the age of eighteen (18) years of age who has been convicted of a crime against a minor identified in Section 9795.1 of the Pa. Crimes Code and which includes but is not limited to kidnapping, luring a child into a motor vehicle, institutional sexual assault, indecent sexual assault, incest, prostitution, receiving sexual material, 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 herein.

h) 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.

2. RESIDENCY RESTRICTION/PROHIBITION

a) It shall be unlawful for any sex offender as defined about to establish a permanent or temporary residence within 1,500 feet of any school, child care facility, common open space, community center, public park or any other recreational facility.

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 temporary residence of the sex offender to the nearest outer property line of a school, child care facility, common open space, community center, public park or other recreational facility.

3. NOTICE TO MOVE

a) Any sex offender who resides on a permanent or temporary basis within 1,500 feet of any school, child care facility, common open space, community center, public park or recreational facility shall within forty-five (45) days of receipt of written notice of the sex offender's non-compliance with this Ordinance, move from said location to a new location,

but said location may not be within 1,500 feet of any school, child care facility, common open space, community center, park or other recreational facility. Furthermore, it shall be a violation each day that a sex offender shall remain in any location that is within 1,500 feet of any school, child care facility, common open space, community center public park or recreational facility.

b) Any person receiving such a notice to relocate from within 1,500 feet from a school, child care facility, common open space, community center, public park or recreational facility may appeal such notice to the Borough Council and request a hearing with Council within (5) days of receipt of said notice and requesting additional time in which to relocate or any other valid reason pertaining to the notice to relocate. Said request for a hearing shall be in writing and filed with the Borough Secretary within five (5) days of the receipt of such notice. Council shall thereafter hold a hearing within fifteen (15) days of receipt of the request for a hearing at which time the affected person will be granted an opportunity to address the Council as a whole, or a committee thereof or a hearing officer so appointed by Council to hear such a matter and thereafter report findings to Council will act upon the appeal request.

4. EXCEPTIONS

This Ordinance shall not apply to any person who established residence prior to the effective date of this Ordinance, and it shall not apply if the school, child care facility, common open space, community center, public park or recreational facility are located within 1,500 feet of the person's permanent residence after the effective date of this Ordinance. The provisions of this Ordinance shall not be applicable to persons incarcerated in any facility owned, maintained and/or operated by the County of Carbon, the Commonwealth of Pennsylvania or the United States of America.

5. PENALTIES

Any person who violates the provisions of this Ordinance shall, upon conviction before a Magisterial District Judge, be sentenced to a term of imprisonment up to ninety (90) days and/or shall be fined not more than six hundred (\$600.00) dollars for each violation, plus the costs of prosecution.

6. ENFORCEMENT

The Nesquehoning Borough Police Department shall be charged with the enforcement of this Ordinance.

7. PUBLICATION

The Borough Secretary is herein directed by the Borough Council of Nesquehoning to have prepared and place at the Borough office for Nesquehoning during regular business hours a map of the Borough of Nesquehoning depicting the areas where sex offenders are restricted from residing on a permanent or temporary basis.

8. INCLUSION IN CODE

It is the intent of the Borough Council of the Borough of Nesquehoning that the provisions of this Ordinance shall become and be made part of the Code to the Borough of Nesquehoning and the sections of this Ordinance may be re-numbered or re-lettered 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 the Borough 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 or competent jurisdiction, such decision of the court shall not impair or affect 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.

10. EFFECTIVE DATE

This Ordinance shall become effective upon adoption hereof

ORDAINED AND ENACTED this 25th day of April 2007.

BOROUGH OF NESQUEHONING

By: Frank Jacobs
President of Council

ATTEST: RoniSue Ahner
Secretary

Approved this 25th day of April, 2007.

K. Tony Walck
Mayor