

**BEFORE THE BOARD OF COMMISSIONERS OF
THE TOWNSHIP OF WHITEHALL**

ORDINANCE NO. 2594

BILL NO. 71-2005

**AN ORDINANCE AMENDING CHAPTER VI, ENTITLED "CONDUCT" OF
THE TOWNSHIP OF WHITEHALL CODE OF ORDINANCES TO CREATE
SECTION 6 ENTITLED "SEX OFFENDER RESIDENCY PROHIBITION;
FINDINGS AND INTENT; PENALTIES AND EXCEPTIONS" PROVIDING FOR
SEVERABILITY; AND AN EFFECTIVE DATE**

WHEREAS, the Pennsylvania Legislature enacted legislation requiring the registration of sexual offenders, now referred to as Megan's Law II by the Act of May 10, 2000, P.L. 74, No. 18, as amended 42 Pa. C.S. §§9791-9799.7; and

WHEREAS, Pennsylvania House Bill No. 1316 was introduced on April 11, 2005, which amendment provides for limitations on residence for sexually violent predators under which a sexually violent predator who committed any offense specified in §9795.1 (relating to registration) of Megan's Law II against a victim who was under fourteen (14) years of age at the time of the offense may not establish a residence within one and one-half (1 1/2) miles by the nearest public highway of any public, private or parochial school that offers instruction on any level from kindergarten through elementary school; and

WHEREAS, in an effort to protect children, Title 42, Sections 14071 and 3756 of the United States Code demonstrates a federal policy to register and monitor the location of certain sexual offenders and sexual predators; and

WHEREAS, the Board of Commissioners of the Township of Whitehall is concerned about convicted sexual offenders and sexual predators who are released from custody and repeat the unlawful acts for which they had originally been convicted; and

WHEREAS, sexual offenders have a national recidivism rate of about 70% over four (4) years, compared with a rate of approximately 46% over three (3) years for all felonies in the Commonwealth of Pennsylvania; and

WHEREAS, Pennsylvania has approximately 7,100 registered sex offenders as of December, 2004, 92 of whom are considered "sexually violent predators" according to Megan's Law; and

WHEREAS, the Board of Commissioners finds that the recidivism rate for released sexual offenders is alarmingly high, especially for those who commit crimes against children; and

WHEREAS, Whitehall Township has a compelling interest in protecting children from predatory sexual activity; and

WHEREAS, prohibiting sexual offenders and sexual predators from living within 2,500 feet of schools, childcare facilities or municipal parks or playgrounds will reduce the amount of incidental contact sexual offenders and sexual predators have with children; and

WHEREAS, reducing the amount of incidental contact sexual offenders and sexual predators have with children will decrease the opportunity and temptation for sexual offenders and sexual predators to commit new sexual offenses against children;

WHEREAS, the Board of Commissioners desires to establish a policy regulating where sexual offenders and sexual predators live in an effort to protect children of the Township from sexual abuse by sexual offenders and sexual predators; and

WHEREAS, this Ordinance is intended to be regulatory and remedial in nature and non-punitive; and

WHEREAS, twelve states have enacted some form of residency restriction applicable to sex offenders; and

WHEREAS, the United States Eighth Circuit Court of Appeals issued an Opinion in the case of Doe v. Miller, 2005 W.L. 991635 (8th Cir. April 29, 2005) and the Supreme Court of Iowa issued an Opinion in the case of State of Iowa v. Keith Frederick Seering, No. 34/03-0776 (filed July 29, 2005), in which each Court upheld similar residency restrictions and found the restrictions to be constitutional.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Commissioners of the Township of Whitehall, Lehigh County:

Section 1. The foregoing recitals are herein incorporated by reference as though more fully set forth at length.

Section 2. Chapter 6 of the Codified Ordinances of the Township of Whitehall entitled "Conduct" is hereby amended to create Section 6 entitled "Sexual Offender Residency Prohibition" to read as follows:

Section 6-1. Findings and intent.

(a) The Whitehall Board of Commissioners has reviewed the findings of the Pennsylvania Legislature when it adopted Megan's Law II as well as resource materials from the Criminal Justice Information Services Division of the Federal Bureau of Investigation and the Center for Sex Offender Management (www.csom.org) as established in June, 1997 as a collaborative effort of the Office of Justice Programs, the National Institute of Corrections and the State Justice Institute and administered by the Center for Effective Public Policy and the American Probation and Parole Association, the goal of which is to enhance public safety by

preventing further victimization through improving the management of adult and juvenile sex offenders who are in the community. The Board of Commission finds that repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(b) It is the intent of this Section to serve the Township's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the Township by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.

Section 6-2. Sexual offender and sexual predator residence prohibition; Penalties; Exceptions.

(a) It is unlawful for any person who has been convicted of a violation of Section 9795.1 of Megan's Law II, 42 P.A.C.S. §9795.1 (relating to registration), in which the victim of the offense was less than sixteen (16) years of age, to establish a permanent or temporary residence within two thousand five hundred (2,500) feet of any school, childcare facility, park or playground.

(b) For purposes 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 to nearest outer property line of a school, childcare facility, park or playground.

(c) Penalties. A person who violates this section shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or period of community service not to exceed ninety (90) days or any combination of the same as determined at the discretion of the Magistrate Judge; for a second or subsequent conviction of a violation of this section, such person shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment in the County jail not more than twelve (12) months or by both such fine and imprisonment.

(d) Exceptions. A person residing within two thousand five hundred (2,500) feet of any school, childcare facility, park or playground, does not commit a violation of this section if any of the following apply:

- (i) The person established the permanent residence prior to October 17, 2005.
- (ii) The person was a minor when he/she committed the offense and was not convicted as an adult.

- (iii) The person is a minor.
- (iv) The school, childcare facility, park or playground within two thousand five hundred (2,500) feet of the person's permanent or temporary residence was opened after the person established the residence.

Section 6-3. Notification of the Pennsylvania Board of Probation and Parole.

(a) The Board of Commissioners shall supply or cause to be supplied to the Pennsylvania Board of Probation and Parole a duly certified copy of this Ordinance to inform the state and county prison and probation and parole personnel about the limitations on residence set forth in this Ordinance.

Section 6-4. Severability.

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 65. Effective date.

This Ordinance shall become effective immediately upon adoption.

APPROVED AND ADOPTED this 17th day of October, 2005 at a regular public meeting.

**TOWNSHIP OF WHITEHALL
BOARD OF COMMISSIONERS**

ATTEST:

Bruce A Beule

Name:
Title: Secretary

BY: Kenneth S. Snyder

Name: Kenneth S. Snyder
Title: President

October 24 2005

Date

AND NOW, TO WIT, this 25th day of October, 2005, the above is approved.

BY: Glenn D. Solt

Name: Glenn D. Solt
Title: Township Executive