

**BOROUGH OF WIND GAP
COUNTY OF NORTHAMPTON
COMMONWEALTH OF
PENNSYLVANIA
ORDINANCE NO. 481**

**AN ORDINANCE OF THE BOROUGH OF WIND GAP, NORTHAMPTON
COUNTY, PENNSYLVANIA, REPEALING ORDINANCE NO. 455 AND
COMPLETELY RESTATING AND READOPTING A NUISANCE
ORDINANCE PROHIBITING AND/OR REGULATING VARIOUS NUISANCES
AND PROVIDING FOR PENALTIES AND ENFORCEMENT**

WHEREAS, the Borough of Wind Gap is a duly organized and existing municipality and political subdivision within the County of Northampton, Commonwealth of Pennsylvania with offices located at 29 Mechanic Street, Wind Gap, Northampton County, PA 18091; and,

WHEREAS, pursuant to the Borough Code, the Borough of Wind Gap has the power to prohibit, remove and/or regulate nuisances along with the authority to make regulations for safety, comfort and general welfare of the Borough and its residents (See Act 43 of 2012, including inter alia Article XII Sections 1202 (3), (4), (5), (8), (9), (10), (12), (15), (16), (21) and Article XXXIII Section 3321; and,

WHEREAS, the Borough has decided that various conduct and activities constitutes nuisances which need to be prohibited, regulated and/or restricted as such activities constitute an unreasonable or significant interference with the public health, the public safety, the public peace, the public comfort and/or the public convenience.

WHEREAS, the present Borough Ordinance prohibiting and/or regulating nuisances (Ordinance No. 455) needs to be updated; and, it is the intent to repeal said ordinance and completely readopt a new ordinance and restate various nuisances provisions outlined in the instant ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, AND IT IS HEREBY ORDAINED AND ENACTED, by the Council of the Borough of Wind Gap, County of Northampton and Commonwealth of Pennsylvania, as follows:

SECTION 1. General Intent.

The conditions in the following sections (and subsections) are hereby declared by the Council of the Borough of Wind Gap to be against the public health, safety, welfare and good order.

SECTION 2. Definitions.

- BOROUGH - The Borough of Wind Gap
- BUILDING – See STRUCTURE
- CODE OFFICIAL - The official who is charged with the administration and enforcement of this ordinance, or any duly authorized representative. The Code Official, or any duly authorized representative, shall have all authority necessary to enforce the provisions of this act, including instituting summary citation proceedings.
- EXTERIOR PROPERTY AREAS - The open space on the premises and on adjoining property under the care, custody, charge or control of owners, lessees or operators of such premises.
- FALLOW FIELD: a field or area that is generally left unseeded, uncultivated and/or unplowed and is otherwise not generally maintained by weed or brush cutting.
- FERAL CATS/DOGS - A feral cat/dog is an animal that does not have ownership identification and lives at large within the borough. It is distinguished from a stray cat/dog, which is a pet cat or pet dog that has been lost or abandoned. While feral cats/dogs are generally born in the wild, the offspring of a stray cat/dog can be considered feral if born in the wild.
- GARBAGE - The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food and any other type of waste or refuse whether solid, liquid, semi-solid or gaseous.
- INFESTATION - The presence within or contiguous to a structure or premises of insects, rats, vermin or other pests.

- MOTOR VEHICLE NUISANCE - A motor vehicle nuisance shall include any motor vehicle which is unable to move under its own power and has any of the following physical defects:
 - a) Broken windshields, mirrors or other glass with sharp edges.
 - b) One or more flat or open tires or tubes which could permit vermin harborage.
 - c) Missing doors, windows, hoods, trunks, or other body parts which could permit animal and/or vermin harborage.
 - d) Any body parts with sharp edges including holes resulting from rust.
 - e) Missing tires resulting in unsafe suspension of the motor vehicle.
 - f) Upholstery which is torn or open which could permit animal and/or vermin harborage.
 - g) Broken headlamps or tail lamps with sharp edges.
 - h) Disassembled chassis parts apart from the motor vehicle stored in a disorderly fashion or loose in or on the vehicle.
 - i) Protruding sharp objects from the chassis.
 - j) Broken vehicle frames suspended from the ground in an unstable manner.
 - k) Leaking or damaged oil pan or gas tank which could cause fire or explosion.
 - l) Exposed battery containing acid.
 - m) Inoperable locking mechanism for doors or trunks.
 - n) Open or damaged floor boards including trunk and fire wall.
 - o) Damaged bumpers pulled away from the perimeter of vehicle.
 - p) Broken grill with protruding edges.
 - q) Loose or damaged metal trim and clips, broken communications equipment and antenna
 - r) Suspended on unstable supports.
 - s) Such other defects which could threaten the health, safety and welfare of the citizens of the borough.

- t) The terms, conditions and provisions of Borough Ordinance No. 456 are hereby incorporated by reference. If there is any conflict between the terms, conditions and provisions (including the penalty provisions) of that ordinance and those of the instant ordinance, the more stringent standard or penalty shall apply.
- OPERATOR - Any person who has charge, care, control or custody of a building, structure or premises which is leased or offered for occupancy to tenants.
 - OWNER - Any person, agent or operator having a legal or equitable interest in the property; or recorded in the official records of the county as holding title to the property; or otherwise having the charge, care, custody or control of the property, including any designated representative and/or the guardian of the estate of any such person and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.
 - PERSON - An individual, corporation, partnership, limited liability partnership, limited liability company, association, joint venture, firm or any other group or entity.
 - PREMISES - A lot, plot, piece or parcel of land, including the buildings or structures thereon.
 - RUBBISH - Combustible and noncombustible waste materials except garbage. The term shall include the residue from burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.
 - STRUCTURE (OR BUILDING) - That which is built or constructed including without limitation, because of enumeration, buildings for any occupancy or use whatsoever, fences, signs, billboards, fire escapes, chute escapes, railings, water tanks, towers, open-grade steps, sidewalks or stairways, tents or anything erected and framed of component parts which is fastened, anchored or rests on a permanent foundation or rests on or is attached to the ground.

SECTION 3. Maintenance of Premises, Buildings, Structures, and Exterior Property Areas:

- a. Sanitation - All exterior property areas and premises shall be maintained in a clean, safe and sanitary condition, free from any accumulation of rubbish or garbage.
- b. Containers. - The operator of every establishment producing garbage, a vegetable waste or other putrescible material shall provide, and at all times cause to be used, leak proof approved containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.
- c. Grading and drainage. - All premises shall be graded and maintained so as to prevent the accumulation of stagnant water thereon, or with any structure located thereon. Stagnant water shall be determined as any accumulation that has not disbursed within seven (7) calendar days of the last recorded local rainfall.
Exception: Water retention areas and/or reservoirs approved by the Code Official.
- d. Insect and rat control. - An owner of a structure or property shall be responsible for the extermination of insects, rats, vermin or other pests in all exterior areas of the premises, except that the occupant shall be responsible for such extermination in the exterior areas of the premises of a single- family dwelling. Whenever infestation exists in the premises of other than a single- family dwelling, extermination shall be the responsibility of the owner.
- e. Weeds. - All premises and exterior property shall be maintained free from weeds or plant growth in excess of six (6") inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, trees or shrubs; provided further, however, that this term shall not include cultivated flowers and gardens, or any grasses, annual plants and vegetation within wetlands, storm water facilities, reservoirs, basins, or a fallow field.
- f. Motor vehicles in residential areas. - Not more than one currently unregistered and/or uninspected motor vehicle shall be parked on any property in a residential district, and said vehicle shall not at any time be in a state of disassembly, disrepair, nor shall it be in the process of being stripped or dismantled. A vehicle of any type shall not at any time undergo major overhaul, including body work, in a residential district unless said work is performed inside a structure or similarly enclosed area designed and approved for such purposes. In addition, not more than one currently unregistered and/or uninspected motor vehicle shall be parked on any property in a residential district if such motor vehicle constitutes a motor

vehicle nuisance.

g. Premises in the Borough (already defined to include buildings and structures thereon) and to also include (for purposes of this subsection) exterior property areas shall be maintained such that such premises shall not create any of the following:

- i) The physical condition or use of any premises regarded as a public nuisance at common law.
- ii) Any physical condition, use or occupancy of any premises appurtenances considered an attractive nuisance to children including, but not limited to, abandoned wells, shafts, basements, excavations and unsafe fences or structures.
- iii) Any premises which has unsanitary sewage or plumbing facilities.
- iv) Any premises designated as unsafe for human habitation or use.
- v) Any premises which is capable of being a fire or explosion hazard or are unsafe or unsecure as to endanger life, limb or property.
- vi) Any premises from which the plumbing, heating and/or facilities required by the Uniform Construction Code have been removed or from which utilities have been disconnected, destroyed or rendered ineffective or the required precautions against trespassers have not been provided.
- vii) Any premises which is unsanitary or which is littered with waste, rubbish or garbage or which has an uncontrolled growth of weeds.
- viii) Any structure or building that is in a state of dilapidation, deterioration or decay, has faulty construction or is overcrowded, open, vacant or abandoned, or damaged by fire to the extent as not to provide shelter, in danger of collapse or failure and dangerous to anyone on or near the premises.
- ix) Any premises on which feral cats or feral dogs are permitted to live or roam at large.
- x) This list is merely illustrative and is not exhaustive

SECTION 4. Cutting of weeds, grass and excessive vegetation.

The Borough of Wind Gap herein incorporates by reference its Weed Ordinance No. 402 as fully as though the same was herein reiterated at length and

appeared at large hereto. If there is any conflict between the terms, conditions and provisions (including the penalty provisions) of that ordinance and those of the instant ordinance, the more stringent standard or penalty shall apply.

SECTION 5. Water and Other Debris.

No person shall discharge or deposit water (or other liquid), leaves, grass, sticks, wood, stones, rocks, dirt or debris of any type into or onto any street, right-of-way, alley, curb, sidewalk, gutter, culvert or drain.

SECTION 6. Dogs and cats.

No person shall own or control within the Borough any dog(s) or cat(s) as to either cause unsanitary or unhealthy conditions or noxious or foul odors or allow conditions to exist that would cause the animals to be improperly fed or watered or fail to receive proper health care or create conditions for the breeding or existence of feral dogs or feral cats.

SECTION 7. Other animals.

No person shall own or control within the Borough any chickens, fowls, pigs, hogs, pigeons, cows, horses, or any other type of livestock or any other wild or domesticated animals.

SECTION 8. Noise, odors, fumes, dust and vibrations.

Section 509 – Dust, Dirt, Smoke, Vapors, Gases and Odor control, Section 515 - Noise Control and Section 516 - Vibration Control of the Borough Zoning Ordinance is hereby incorporated by reference as fully as though the same were reiterated at length and appeared at large hereto.

SECTION 9. Air and water pollution.

No person shall engage in any activity that is not compliance with the air pollution law and/or water pollution laws of the Commonwealth of Pennsylvania, the United States of America and any standards or regulations promulgated pursuant to such laws.

SECTION 10. Flammables, explosives and chemicals.

No person shall engage in any activity in which flammables, explosives, chemicals or fireworks are manufactured, produced, used or stored (whether indoors or outdoors) or disposed in such a fashion as to cause or create a hazard or the risk of a

fire or an explosion within the Borough of Wind Gap.

SECTION 11. Radioactive or nuclear materials.

No person shall engage in the manufacture, production, use, storage (whether indoors or outdoors) or disposal of any radioactive or nuclear materials in any form and for any other purpose whatsoever, except those necessary for medical or dental health care radiology and/or radiography.

SECTION 12. Radioactive or nuclear power generation, transmission or distribution.

No person shall engage in the manufacture, production, use, storage (whether indoors or outdoors) or disposal of any radioactive or nuclear materials in any form for electrical, heating, gas or other power or utility generation, transmission or distribution.

SECTION 13. Other dangerous, hazardous or illegal materials.

No person shall engage in any activity that involves the manufacture, production, use, storage (whether indoors or outdoors) or disposal of any other dangerous or hazardous materials, flammables, explosives, chemicals, illegal drugs or controlled substances or other products.

SECTION 14. Dump or Landfill.

No person shall engage in any activity that constitutes a dump or landfill.

SECTION 15. Lighting.

Section 510 - Light, Glare and Heat Control of the Borough Zoning Ordinance is hereby incorporated by reference as fully as though the same was reiterated at length and appeared at large hereto.

SECTION 16. Unlawful Acts

It shall be unlawful for any person to allow any condition to exist, or cause any condition to exist, or to fail to take any action that is contrary to or in conflict with or in violation of any of the provisions of this ordinance.

SECTION 17. Duties and powers of Code Official.

- a. General. The Code Official shall enforce all provisions of this ordinance.
- b. Notices and orders. The Code Official shall issue all necessary notices and orders to abate illegal or unsafe conditions to ensure compliance with this

ordinance's requirements for the safety, health and general welfare of the public.

- c. Inspections. In order to safeguard the safety, health and welfare of the public, the Code Official is authorized to enter any building, structure, premises or exterior property area at any reasonable time for the purpose of making inspections and performing duties under this ordinance.
- d. Right of entry. If any owner, occupant or other person in charge of a building, structure, premises or exterior property area subject to the provision of this ordinance refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to any part of the building, structure or premises where an inspection authorized by this ordinance is sought, the Borough of Wind Gap shall be permitted to seek, in a court of competent jurisdiction, an order that such owner, occupant or other person in charge shall cease and desist with such interference.
- e. Access by owner or operator. Every occupant of a building, structure, premises or exterior property area shall give the owner or operator thereof, or agent or employee, access to any part of such building, structure, premise or exterior property area, at reasonable times, for the purpose of making such inspection maintenance, repairs or alterations as are necessary to comply with the provision of this ordinance.
- f. Notice to owner or to person or persons responsible. Whenever the Code Official determines that there has been a violation of this ordinance or has reasonable grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible therefore in the manner described below.

- g. Manner of notice. The notice provided by the Code Official shall be in writing, include a description of the real estate sufficient for identification, include a statement of the reason or reasons why it is being issued, include a correction order allowing a reasonable time for the repairs and improvements required to bring the building, structure, premises or exterior property area into compliance with the provisions of this ordinance.
- h. The Code Official shall be permitted to investigate complaints by Borough residents (or any affected neighboring resident as the case may be) of any suspected nuisance under this ordinance provided the resident provides to the Borough his/her/its name, address and complaint in writing. The Code Official is not required to investigate anonymous complaints.

SECTION 18. Violations and penalties.

- a. Any person violating the provisions of this ordinance shall, upon conviction thereof, pay a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), plus costs, for the first offense; not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00), plus costs, for the second offense committed within a period of one (1) year; not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), plus costs, for the third offense committed within a period of one (1) year; and, not less than Seven Hundred Fifty Dollars (\$750.00) nor more than One Thousand Dollars (\$1,000.00), plus costs, for fourth and subsequent offenses committed within a period of one (1) year. "Costs" shall mean all expenses incurred by the Borough in prosecuting the case including but not limited to administration fees, filing fees, stenographic transcript charges, witness fees, whether lay or expert and reasonable attorney's fees.
- b. A violation of this Ordinance shall constitute a summary offense and prosecution for such offense shall be in accordance within the practice in summary cases with, however, the applicable fine to be imposed is as delineated in the subsection a, supra, of this section.
- c. Borough permitted to perform work. If the tenant, occupant or owner of the exterior property area permits or causes said property to be maintained in violation of this chapter, the Borough may, after providing said tenant, owner or occupant 20 days' prior written notice, correct the matter giving rise to the violation at the Borough's expense and may thereafter collect all costs and expenses, plus costs incurred in connection

with correcting the violation by filing a municipal claim or by a civil action.

d. In addition to proceeding by way of a summary offense, the Borough shall also retain the right to institute by an appropriate action or proceeding, whether at law or in equity or both, any lawsuit or injunction to prohibit, prevent, restrain, correct, abate such nuisance(s) whether in or on land, a building, structure, waterways or otherwise. These civil remedies are cumulative to the summary offense remedy noted above.

e. Any act, or failure to act, shall be considered a separate offense for each day the violation continues and may be prosecuted as such.

SECTION 19. Severability

The terms, conditions and provisions of this Ordinance are severable. If any such term, condition or provision of this Ordinance is, for any reason, found to be *unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not* affect or impair any of the remaining terms, conditions or provisions of this Ordinance; and it is hereby declared to be the intent of the Borough that this Ordinance would have been adopted and enacted had such unconstitutional, illegal or invalid term, condition or provision not been included herein.

SECTION 20. Repealer

- A. Borough Ordinance Number 455 is repealed in its entirety; however and for purposes of reference, Section 502 Nuisances of the Borough Zoning Ordinance shall be deemed to refer to this updated ordinance. Further, the terms, conditions and provisions of any other Borough ordinances that are inconsistent herewith shall be deemed vacated and/or repealed; but, any other terms, conditions and provisions of that or any other Borough ordinances that are not inconsistent herewith shall remain in full Force and effect
- B. This ordinance is not meant to supersede Chapter 85 - Nuisances of the PA Crime Code, Title 18 Pa, C.S.A. Section 6601 through and including Section 6505. The Borough police (or other appropriate officials or individuals) have the discretion to prosecute under those sections of the criminal code and request that the remedies and penalties recited therein be (if legally permitted) in addition to any prosecution under this Ordinance and the enforcement of the rights and the pursuit of the remedies under this Ordinance.

This Ordinance shall become effective as provided by law.

ORDAINED AND ENACTED into an Ordinance this 16th day of April,
2013.

ATTEST:

Louise Firestone
Louise Firestone, Secretary

BOROUGH OF WIND GAP

By: George Hinton Jr.
George Hinton Jr., President

APPROVED this 16th day of April, 2013.

ATTEST:

Louise Firestone
Louise Firestone, Secretary

By: James Shoemaker
James Shoemaker, Mayor

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