

NESCOPECK TOWNSHIP

LUZERNE COUNTY, PENNSYLVANIA

ORDINANCE NO. _____

PUBLIC NUISANCES

AN ORDINANCE OF NESCOPECK TOWNSHIP, LUZERNE COUNTY, PENNSYLVANIA, PROVIDING FOR THE CONTROL OF PUBLIC NUISANCES, PROVIDING FOR THE CORRECTION, REPAIR, VACATION OR DEMOLITION OF THE SAME; AND PRESCRIBING PENALTIES FOR VIOLATIONS.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Nescopeck, Luzerne County, Pennsylvania, as follows:

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SECTION 1 - SHORT TITLE

This Ordinance shall be known and may be cited as *THE NESCOPECK TOWNSHIP NUISANCE ORDINANCE*.

SECTION 2 - PURPOSE; AUTHORITY; STATE PROTECTED AGRICULTURAL OPERATIONS; APPLICATION

201. Purpose.

The purpose of this Ordinance is to regulate the accumulation and storage of junk and/or rubbish; the accumulation and storage of junk and/or unregistered vehicles and equipment; to prohibit the existence of dangerous buildings and structures; and to abate other public nuisances in order to prevent the blight and deterioration of property, to protect property values within the Township and to abate public health hazards, and otherwise protect the general health, safety and welfare of the citizens of Nescopeck Township.

202. Authority.

This Ordinance is ordained and enacted under the authority granted by Section 1529 and Section 1601 of the Pennsylvania Second Class Township Code.

203. State Protected Agricultural Operations.

Nothing in this Ordinance is intended to preclude the rights and protections of bona fide agricultural operations afforded by the Pennsylvania Right to Farm Law, as amended; the Pennsylvania Agricultural Securities Area Law, as amended; and other applicable state statutes.

204. Application.

This Ordinance shall apply uniformly to all persons, business organizations, nonprofit organizations, and all other legal entities; and, it shall apply uniformly to all property and all property owners within the Township.

SECTION 3 - WORD USAGE AND DEFINITIONS

301. Word Usage.

- A. Unless otherwise specifically defined below, words or phrases used herein shall be interpreted so as to have the same meaning as in common usage and so as to give the ordinance its most reasonable application consistent with its intent.
- B. The word *shall* is always mandatory and not merely directory.
- C. Words used in the present tense include the future and past, words in the plural number include the singular, words in the singular number include the words in the plural, and words either in the feminine, masculine or

neuter shall include words of the other two genders.

302. Definitions.

- A. Abandoned or Junked Vehicle: Any vehicle not stored in a fully enclosed building which is not in good operating and road-worthy condition (see definition).
- B. Agricultural Use: An enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry. It includes necessary structures within the limits of the parcel and the storage of equipment necessary for production. It excludes agricultural products processing operations; riding academies, livery or boarding stables and dog or other animal kennels.
- C. Antique Vehicle - Any vehicle twenty-five (25) years or older which has been restored to good operating and road-worthy condition. (See definition of *good operating and road-worthy condition*.)
- D. Attractive Public Nuisance - A condition of property which may reasonably be construed to be a source of danger to the persons who may reside or otherwise be on the premises, or who may, by reason of something which may be expected to attract them, come to the premises.
- E. Building - Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, services, goods or materials of any kind or nature, including, but not limited to, dwellings, dwelling units, mobile homes, garages, barns, stables, sheds, plants, factories, warehouses and similar structures.
- F. Burning - Any process which involves the use of an open flame or intense heat including but not limited to, uncontained fires, contained fires, any manufacturing and commercial process involving burning, and incinerators.
- G. Contained Fire - Any fire contained in a fireplace designed for outdoor cooking or in a fireproof container.
- H. Contracting Business - An active, ongoing business legally operating which involves the performance of services related to the construction of buildings, erection of structures, the preparation of the land for buildings and structures, the installation of community facilities such as roads, water systems and sewage disposal systems, or the provision of transportation services.
- I. Dangerous Premises - Any building, structure or property which has any or all of the following defects:
 - 1. Any structure which shows damage or deterioration to the supporting member or members, or damage or deterioration to the non-supporting enclosing or outside walls or coverings so as to be dangerous to life, safety, or the general health and welfare of the occupants or the public;
 - 2. Any structure which has been damaged by fire, wind or other causes so as to be dangerous to life, safety, or the general health and welfare of the occupants or the public;
 - 3. Any structure which is so damaged, dilapidated, decayed, unsafe, unsanitary, vermin infested or which so

utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease, so as to cause injury to the health, safety or general welfare of those living therein or to the public;

4. Any building, structure or property which because of its location or due to an accumulation of garbage or rubbish is unsanitary, or otherwise dangerous, to the health or safety of the occupants or the public;
 5. Any building, structure or property which can be construed as an attractive public nuisance.
- J. Dwelling - A structure or portion thereof which is used exclusively for human habitation.
- K. Dwelling Unit - One (1) or more rooms in a dwelling structure, including a kitchen, sleeping facilities, bath and toilet, designed as a household unit for extended periods of occupancy for living and sleeping purposes by not more than one (1) family at a time.
- L. Emergency Case - A violation which poses an imminent threat to the public health, safety or welfare and which requires immediate action to eliminate such imminent threat.
- M. Enforcement Officer - The individual(s), agency or firm appointed by the Nescopeck Township Board of Supervisors to enforce the provisions of this Ordinance.
- N. Fire - The phenomenon of rapid self-sustaining chemical reaction (oxidation) usually accompanied by the evolution of light and heat.
- O. Garbage - Animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
- P. Good Operating and Road-Worthy Condition: A vehicle having both a current and valid registration and current and valid inspection sticker as required by the motor vehicle laws of the Commonwealth of Pennsylvania, or if lacking a registration and/or inspection sticker, is in full and complete working order and condition, but for not having said current registration and inspection sticker could be safely and legally operated on a public roadway. Registrations and inspections which have been expired for less than ninety (90) days shall be considered current for the purposes of this definition.
- Q. Junk: Any scrap, waste, refuse, reclaimable material or debris, vehicles, appliances, equipment or machinery, or parts thereof, whether or not stored or used in conjunction with dismantling, processing, salvage, storage, baling, disposal or other use or disposition. Junk shall include, but shall not be limited to:
1. Scrap iron, tin, brass, copper, lead, zinc and all other metals and alloys; bones, rags, paper, cloth, rubber, rope, and similar materials; old or used, or parts of machinery, vehicles, tools, appliances, furniture, plumbing, heating and other fixtures, pipe and pipe fittings;
 2. Used lumber, boxes, crates and pallets;
 3. Used tires;
 4. Other worn, deteriorated, or obsolete manufactured goods which are unusable;
 5. Mobile/manufactured homes that are not in habitable condition; and,

6. Abandoned or junked vehicles.

Junk shall not include:

1. Any solid or liquid waste the disposal of which is regulated by the Pennsylvania Department of Environmental Protection.
 2. Agricultural vehicles and implements such as tractors, mowers, etc. for use as parts for equipment and machinery used as part of an active, on-going agricultural operation provided such equipment is stored on the premises of the operation, can be legitimately used for parts.
 3. Construction and contractors equipment for use as parts for equipment and machinery used as part of an active, on-going contracting business legally operating in accord with the Township Zoning Ordinance, provided such equipment is stored on the premises of the operation, can be legitimately used for parts, and is adequately screened.
- R. Junk Yard: An area of land, with or without buildings, used for the storage, outside a completely enclosed building, of junk as defined by this Ordinance, with or without the dismantling, processing, salvage, sale or other use or disposition of the same. Vehicle sales lots managed by licensed vehicle dealers operated in accord with the Township Zoning Ordinance shall not be considered junk yards. The following shall also be considered junk yards:
1. The outside storage or deposit on a lot of two (2) or more abandoned or junked vehicles; and,
 2. The outside storage or deposit on a lot of one (1) or more mobile/manufactured homes that are not in habitable condition.
- S. Lot: A designated parcel, tract or area of land, regardless of size, established by a plat or other legal means, and intended for transfer of ownership, use, lease or improvements or for development, regardless of how or if it is conveyed.
- T. Nuisance - Any unreasonable, unwarrantable or unlawful course of conduct or use of private or public property which causes or may cause injury, damage, hurt, inconvenience, interference, or discomfort to others in the legitimate use and enjoyment of their rights of person or property.
- U. Occupant - The person owning, leasing, renting, occupying or having charge, care, custody or control of any premises in Nescopeck Township.
- V. Outside Storage - Not contained in a building fully enclosed with completed walls and roof.
- W. Owner - The person who, alone or jointly or severally with others is the owner of record of the premises as filed with the Luzerne County Recorder of Deeds. In the case where an owner is represented by an agent, including but not limited to a manager, executor, executrix, administrator, administratrix, or guardian of the estate of the owner, such person thus representing the actual owner shall be bound to comply with the provisions of this Ordinance and with rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.
- X. Person - An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization or other legal entity.
- Y. Property - A piece, parcel, lot or tract of land.

- Z. Rubbish - Combustible and non combustible waste materials including but not limited to, garbage, junk, residue from the burning of wood, coal, coke, and other combustible material, paper, rags, cartons, boxes, wood, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust, and similar materials.
- AA. Screened - Visually shielded or obscured from any adjoining or neighboring property, any public or private road right-of-way, or any other premises, and which is accomplished by fencing, topography, berms, natural and planted vegetation or other means approved by the Township.
- BB. Township - The Township of Nescopeck, Luzerne County, Pennsylvania.
- CC. Uncontained Fire - Any fire except a *contained fire*.
- DD. Unregistered Vehicle - Any motor vehicle or trailer that does not display a license plate with a current registration sticker and does not have a valid State safety inspection sticker. This term shall not apply to vehicles (such as licensed antique vehicles) for which State regulations do not require an inspection sticker. The term also shall not include motor vehicles displaying a license and inspection stickers that have each expired less than ninety (90) days prior to the first inspection and notice under this ordinance.
- EE. Vehicle - Any device in, upon or by which any person or property is or may be transported or drawn upon a public highway or upon any land, including, but not limited to, automobiles, trucks, vans, buses, utility trailers, tractors, truck tractors, recreational vehicles, motor homes, travel trailers, motorcycles, machinery, trailers, farm machinery and implements, and other wheeled equipment; boats; and aircraft.
- FF. Vehicle or Equipment Repair Operation - An establishment engaged in the service and/or repair of any motor vehicle as its principal use, including but not limited to auto body shops, repair garages, truck repair garages and agriculture equipment repair.
- GG. Vegetation - Any grass, weed, vegetable, crop, shrub, or other plant.
- HH. Vermin Infested - The presence, within or upon a premises, of any insects, rodents or other pests which constitute a public nuisance.
- II. Waste - Any garbage, refuse, industrial, lunchroom or office waste or other material including solid, liquid, semi-solid or contained gaseous material, resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities. The term shall also include any garbage, refuse, other discarded material or other waste. Including solid, liquid, semi-solid or containing gaseous materials resulting from industrial and mining operations, local facilities or any other by-product or effluent from an industrial, mining or agricultural water supply treatment facility, waste water treatment facility or air pollution control facility or any other material defined by the Pennsylvania Department of Environmental Protection as solid, liquid, municipal, medical, industrial, toxic or hazardous waste.

SECTION 4 - RESPONSIBILITY; VIOLATION; NUISANCES DECLARED

401. Responsibility.

It shall be the responsibility of the property owner of the premises upon which any public nuisance, as described in this Ordinance, is situated and/or occurring, jointly with the owner of any junk, rubbish, structure, building or other item which constitutes such public nuisance, to provide for the removal or abatement of any such public nuisance and the remediation of any environmental problems associated with the activity or property condition which

constitutes the public nuisance.

402. Violation.

Any owner of property upon which a public nuisance is located or taking place, and/or any person who or which owns junk, rubbish, structures or buildings which constitute a public nuisance, and/or any person who or which owns or is engaged in conduct, which constitutes a public nuisance, shall be deemed to be in violation of this Ordinance, and shall be subject to the penalties and remedies prescribed herein.

403. Nuisances Declared.

The following are hereby declared to be public nuisances and shall be removed, disposed of, or corrected as herein provided:

A. Junk - Any junk not stored in accord with this Ordinance, in a junkyard lawfully permitted in accord with the Township Zoning Ordinance, or in a fully enclosed building.

B. Vehicles - The outside storage or deposit on a lot of:

1. Two (2) or more abandoned or junked vehicles.
2. One (1) or more mobile/manufactured homes that are not in habitable condition.

This Section 403 shall not apply to the temporary (not more than sixty [60] days) storage of up to eight (8) vehicles on the property of any Township-designated fire company or other emergency service provider.

C. Unsanitary or Dangerous Material - The accumulation of junk, ashes, garbage and/or rubbish or other material which is unsanitary, unsafe, unsecured or otherwise dangerous or detrimental to the health, safety, or general welfare of the occupants of the premises or the public.

D. Dangerous Premises - Maintaining or causing to be maintained in violation of the Township Deteriorated Properties and Dangerous Conditions Ordinance any dangerous premises, including, but not limited to, abandoned or unoccupied dwellings or buildings in a state of dilapidation or disrepair.

E. Wells; Cisterns - Permitting or allowing any well, cistern, or similar structure to be, or remain uncovered.

F. Vegetation; Trees

1. Permitting the growth of any vegetation which presents a public safety hazard by limiting the vision or right-of-way of travelers on any public road. This shall not affect any requirement for screening provided in accord with any other Nescopeck Township ordinances.
2. Permitting the growth of any trees, vegetation or other appendages of or to any premises kept or maintained or which are permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, or injurious to the public.

G. Noise - Any noise source which due to intensity, frequency, duration, location, lack of shielding or other reason which causes injury, damage, hurt, inconvenience, or discomfort to others in the legitimate use and enjoyment of their rights of person or property.

H. Light - Any light source which due to intensity, frequency, duration, location, lack of shielding or other reason causes any direct or sky-reflected glare visible at the property line of the property on which the light source is

located; or which causes any safety hazard to any driver on any public or private road.

I. Streets, Ditches, Rights-of-way or Other Public Places -

1. All obstructions caused or permitted on any street, ditch, right-of-way to the danger or annoyance of the public.
2. All snow, ice accumulation, stones, rubbish, mud, dirt, vegetable matter or other article thrown or placed by any person on or in any street, ditch, right-of-way or other public place which in any way may cause any injury to the public.
3. Plowing or otherwise disturbing the soil within the public street right-of-way.
4. Placing a vehicle or other obstruction on or along any street of the Township so as to interfere with vehicular or pedestrian traffic, unless it should become necessary to drive or place the vehicle in such position to load or unload materials, merchandise or furniture, and then such vehicle shall only be permitted to remain for such lengths of time as is necessary to load or unload the same.

J. Drainage; Waterways

1. Draining or flowing, or allowing to drain or flow, by pipe or other channel, whether natural or artificial, any foul or offensive water or drainage from sinks, bathtubs, wash stands, lavatories, water closets, swimming pools, privies, or cesspools of any kind or nature whatsoever, or any foul or offensive water or foul or offensive drainage of any kind, from property along any public highway, road, street, avenue, lane or alley: or from any property into or upon any adjoining property.
2. The pollution, or the existence of a condition or conditions which cause or threaten the pollution of any surface waters or groundwater in the Township.
3. Throwing, spreading or depositing in any watercourse, drainage way, channel or gutter, and permitting it to remain there, any stone, soil, vegetation or any other material which interferes with the flow of water unless a permit has been issued by the applicable state agency. .

K. Open Excavations - Allowing or permitting any excavation, material excavated or obstruction on or adjoining any highway, street, or road, to remain opened or exposed without the same being secured by a barricade, temporary fence, or other protective materials.

L. Merchandise and Advertising Matter - The distribution, throwing upon doorsteps, into doorways, or vestibules, placing upon doorknobs or fences, casting into yards or anywhere else, handbills, advertising and printed matter of any nature whatsoever without prior authorization by the Township and only in accord with all applicable Township ordinances.

M. Burning - Engaging in, allowing or permitting any burning in violation of this Ordinance.

N. Explosive Substances - All houses or buildings used for special storage of powder, dynamite or other explosive substances, except those maintained pursuant to a permit issued by competent authority.

O. Animals - All stables, cattle yards, hog, sheep or cow pens or yards for poultry or other animals permitted by the owner thereof or the person responsible therefor to be in such a condition as to become offensive, annoying or injurious to the public, except as may be protected by the Pennsylvania Right to Farm Law.

- P. Others - Any other such action, non-action, situation or physical object which by its nature is deemed by the Board of Supervisors to constitute a public nuisance under the terms of this Ordinance.

SECTION 5 - JUNKYARDS; VEHICLE OR EQUIPMENT REPAIR OPERATION

It shall be considered a public nuisance and a violation of this Ordinance to accumulate junk, unless such material is located in a junkyard permitted by the Township Zoning Ordinance, in a fully enclosed building, or in accord with this Ordinance.

501. Junkyards.

It shall be the ultimate responsibility of the property owner of the premises upon which any junk is situated and the owner of any such junk to comply with this Ordinance; and to provide for the removal of such junk and remediation of any environmental problems associated with any junk. All existing and proposed junk yards shall be established, maintained, and operated in accord with the following standards:

- A. Federal and State Regulations - Any junk yard located adjacent to a Federal Aid Highway shall comply with all regulations of the Federal Highway Administration, and all junk yards shall meet the licensing and screening requirements of the Commonwealth of Pennsylvania.
- B. Fencing - All junk yards shall be completely enclosed by a chain link fence not less than eight (8) feet in height. All gates shall be closed and locked when closed for business. All fences and gates shall be maintained in good repair and in such a manner as not to become unsightly. There shall be no advertising of any kind placed on the fence. The foregoing fencing provisions shall be applicable only to that portion of the premises being immediately used for the storage of junk and shall not be applicable to the balance of the property owned or used by said junk yard operator so long as said remaining portion of land is not being used for the storage of junk as defined in this Ordinance.
- C. Screening - All junk yards shall be screened, to the satisfaction of the Board of Supervisors, from any adjoining or neighboring property, any public road right-of-way, or any other premises; and, natural vegetative cover shall be maintained in all required setback areas. Vegetative plantings of sufficient height and density, berms, topography or fencing of such design may be used to effect the required screening as determined by the Board of Supervisors. All screening shall be maintained in such fashion as to continue to provide the required screening.
- D. Setbacks - The fence enclosing any junk yard and any structures associated with the junk yard shall be located not less than one hundred (100) feet from any public road right-of-way, one hundred (100) feet to any property line or one hundred and fifty (150) feet from any principal residential or commercial structures existing at the time of adoption of this Ordinance. The requirements of this Section D shall not apply to junk yards existing prior to the effective date of this Ordinance and which fully complied with prior Township regulations applicable to junk yards. However, the expansion of any such existing junk yard into an area already not used for the storage of junk shall comply with this Section D.
- E. Dumping - The area used for a junk yard shall not be used as a dump area for any garbage or waste as defined by this Ordinance.
- F. Burning - No burning whatsoever shall be permitted on the premises.
- G. Water Bodies - No junk yard shall be located less than two hundred (200) feet from any body of water, stream, wetland or well.

- H. Hazardous Fluids and Materials - In cases where the junk yard includes ten (10) or more junk vehicles or where the Board of Supervisors deems it necessary to meet the intent of this Ordinance, and to further protect ground water and surface water, all batteries, coolants, gasoline, diesel fuel, engine oil, any other petroleum products and any other noxious or potentially contaminating materials must be removed from all junk within two (2) working days after arrival to the premises and shall be disposed of in a manner meeting all state and federal requirements. Such liquids and materials, while stored on the premises, shall be kept separately in leak-proof containers at a central location on the premises.
- I. Water Quality - In cases where the junk yard includes ten (10) or more junk vehicles or where the Board of Supervisors deems it necessary to meet the intent of this Ordinance, the owner of any junk yard shall be required to monitor the ground and surface water in the vicinity of the junk yard. Water testing shall be conducted every three (3) months on any stream located on the premises or any stream within five hundred (500) feet of any area used for the storage of junk if water drainage from the junk yard area is to said stream. For each testing period two (2) samples shall be collected; one sample shall be taken from the stream at a point upstream of the junkyard drainage area and one sample shall be taken from the stream at a point below the junk yard drainage area. In addition, the well located on the premises shall also be sampled every three months. The samples shall be collected and analyzed by a certified water analysis laboratory for hydrocarbons or other parameters deemed appropriate by the Board of Supervisors, and results shall be provided to the Township. If said samples exceed the limits established by the Pennsylvania Department of Environmental Protection, the junkyard shall cease operation until such time as the source of the contamination has been identified and corrected.
- J. Fire Lanes - Fire lanes of a minimum width of twenty (20) feet shall be maintained so that no area of junk shall span a distance of more than fifty (50) feet.
- K. Hours of Operation - Any activity associated with the operation of the junk yard that produces any noise audible beyond the property line shall be conducted only between the hours of 7:00 a.m. and 8:00 p.m. During business hours, an adult attendant shall, at all times, remain on the premises.
- L. Stacking of Junk - Junk vehicles or major parts thereof shall not be stacked on top of any other junk vehicle or major part. No junk shall be stacked or piled to a height of greater than ten (10) feet.
- M. Nuisances - All premises shall, at all times, be maintained so as not to constitute a nuisance, or a menace to the health, safety, and welfare of the community or to the residents nearby, or a place for the breeding of rodents and vermin. Within two (2) days of arrival on the premises, all glass shall be removed from any broken windshield, window or mirror, and all trunk lids, appliance doors and similar closure devices shall be removed. Grass and weeds on the premises shall be kept mowed.
- N. Waste - Waste shall not be stored outside and shall not be accumulated or remain on any premises except temporarily awaiting disposal in accord with this Ordinance. No junk yard shall be operated or maintained in violation of any state or federal regulations governing the disposal of any solid or liquid waste.
- O. Fireproof Structures - Every structure erected upon the premises and used in connection therewith shall be of fireproof construction.

502. Vehicle or Equipment Repair Operation.

In recognition of the need to allow limited storage of junk or unregistered vehicles, or vehicles awaiting repair, or insurance coverage resolution at an active and bona fide vehicle or equipment repair operation, the standards in this Section 502 shall apply. Such operations shall in all other respects comply with the provisions of this Ordinance and the Township Zoning Ordinance with regard to junk and junk vehicles.

- A. Service and Repair All service and repair activities shall be conducted within in completely enclosed building where adequate measures shall be taken to minimize motor noise, fumes, and glare; except that minor servicing such as changing tires, sale of gasoline or oil, windshield washing and other similar normal activities may be conducted outside the said building.
- B. Vehicle Storage - Only vehicles with current licenses and current registration waiting to be repaired or serviced or waiting to be picked up by the vehicle owner may be stored outdoors. If a legitimate, bonafide, service station stores more than four (4) vehicles per service stall outdoors, it shall comply with the junk regulation set forth in this Ordinance. No vehicles shall be stored in any required setback areas.
- C. Tires/Parts Storage Areas - All new or used tires and parts shall be stored within a completely enclosed building or area contained by a solid fence to provide screening. Used tires and parts shall not be stored on the premises in excess of what would normally accumulate in a week of normal operation.

SECTION 6 - DANGEROUS PREMISES

Any dangerous premises, as defined in Section 3, is hereby declared to be a public nuisance, and shall be repaired, improved, vacated or demolished as required by the Township Deteriorated Properties and Dangerous Conditions Ordinance.

SECTION 7 - OPEN BURNING

701. Prohibition.

It shall be unlawful for any person to burn, ignite, incinerate, or allow to burn, ignite, or incinerate, any and all materials, the burning of which shall emit noxious fumes, smoke, ash or other material, or to cause and allow an open fire to be maintained, except in strict conformity with this Ordinance. Any person violating any provision of this Ordinance shall be subject to the penalties herein provided.

702. Extinguishment.

Any fire permitted to burn in an unsafe manner, under adverse weather conditions, unsupervised, or otherwise in violation of this Ordinance, or determined unsafe or a nuisance by the Enforcement Officer or an official of the Nescopeck Township Volunteer Fire Company shall be extinguished immediately upon demand by such Officer of official, or may be extinguished as necessary by the Township or any fire company.

703. Exemptions.

Nothing herein shall prohibit:

- A. Cooking and Heating - Any burning conducted wholly within the confines of a permanent structure intended for the habitation of human beings, and said fire or burning is used for cooking purposes or for heating said structure.
- B. Outdoor Cooking - Any burning, the sole purpose of which is to cook or prepare food, provided that said fire is confined in a fireplace, cooking grill or other container designed for outdoor cooking.
- C. Fire Fighting Training - Any burning conducted solely for the purpose of fire-fighter and/or rescue personnel training by the Nescopeck Township Fire Company.

704. Standards Applicable to All Burning.

The following standards shall apply to all fires, burning, and incineration in the Township.

- A. Prohibited Materials - All waste products shall be disposed of in accord with Pennsylvania Department of Environmental Protection Rules and Regulations; and, the burning of any of the following materials shall be prohibited in the Township:
1. Solid or liquid household waste except for readily combustible wood and paper products.
 2. Animal matter.
 3. Plastic or styrofoam.
 4. Any offal, by-products or waste materials generated by any production process.
 5. Waste oil or petroleum products unless burned for heating in a furnace manufactured to all applicable regulatory standards or burned as part of a production, manufacturing, salvage or reclamation process addressed by Section 704.B.
 6. Tires.
 7. Any other material the burning of which can produce noxious or hazardous smoke or fumes.
- B. Local, State, and Federal Regulations - All burning, including, but not limited to, burning associated with any production, manufacturing, salvage or reclamation process, shall be conducted only in accord with all applicable local, state, and federal regulations, including but not limited to, the Township Zoning Ordinance; the Air Pollution Control Act of the Commonwealth of Pennsylvania, P.L. 2119 and the provisions thereof, as well as the regulations of the Pennsylvania Department of Environmental Protection, as pertaining to said act; and the United States Environmental Protection Agency regulations; all of which are incorporated in this Ordinance by reference.
- C. Unattended Burning - No burning nor any production, manufacturing, reclamation or salvage operation involving fire, burning or incineration, shall be conducted without a responsible adult being present at all times.
- D. Public Property - No fire shall be set or maintained on any public road or public property except where a designated area has been set aside for this purpose and an appropriate container has been provided to contain such fire.
- E. Endangerment - No fire shall be set or maintained that may endanger any building or property.
- F. Fire Control Equipment - When any burning is conducted in accord with this Ordinance, the person responsible for said burning shall maintain at the site any and all equipment appropriate and adequate to contain and control the burning being conducted. Such equipment may, for example, include a charged hose, fire extinguisher, Indian tanks, shovels or rakes.

705. Outdoor Fires.

In addition to the standards contained in this Section 7, the following additional standards shall apply to all outdoor fires.

- A. Prohibition - No outdoor burning shall be permitted when drought, weather or other conditions present an unusual fire risk or when a ban on burning has been instituted by an agency of the Commonwealth of Pennsylvania. The Township Board of Supervisors in consultation with the Nescopeck Township Fire Chief, shall have the right to institute a ban on all outdoor burning in the Township when such unusual fire risk warrants a

ban. Notice of such restriction shall be given by notice in a paper of general circulation and by posting a notice at the Township office, or by giving such other notice as the Township shall deem appropriate.

- B. Setbacks - No outdoor burning shall be permitted within thirty (30) feet of any building.
- C. Contained Fires for Household Waste
1. The burning of readily combustible household waste not prohibited by this Section 7 of this Ordinance shall be conducted only in a non-combustible container in such location and of a design to prevent the spreading of the fire.
 2. Any such household waste burned must be generated only upon the premises as part of the normal residential use.
 3. Only one (1) burning container not to exceed twenty (20) cubic feet in volume shall be permitted.
 4. No contained fires shall be permitted to burn or smolder for more than two (2) hours duration or at any time between dusk and dawn.
- D. Uncontained Fires
1. No uncontained fires shall be allowed to burn or smolder between dusk and dawn.
 2. In the event it is necessary to have an uncontained fire at other than the times permitted under this Ordinance, special permission must be secured from the Board of Supervisors or the Chief of the Nescopeck Township Fire Company, and the Nescopeck Township Fire Company shall be notified of the specific time of such fires not less than twenty-four (24) hours before ignition.

706. Production; Manufacturing, Salvage, and Reclamation Operations.

In addition to the standards contained in this Section 7 and the other provisions of this Ordinance, the following additional standards shall apply to all burning associated with any commercial, production, manufacturing, salvage or reclamation process (hereinafter referred to as *process*):

- A. Enclosed Building - No open or exterior burning of any raw material, component or other substance associated with any production process shall be permitted; any burning associated with any such process shall be conducted inside a fully enclosed building.
- B. Waste Materials - No waste materials or by-products shall be burned or incinerated on any property except at a PA DEP approved solid waste disposal facility.
- C. Zoning Regulation - Any such process shall be permitted only in those areas designated by the Township Zoning Ordinance; and shall fully comply with the applicable standards contained in the Zoning Ordinance.

SECTION 8 - ENFORCEMENT OFFICER

The Board of Supervisors shall appoint an individual, agency or firm to serve as the Enforcement Officer, who shall be responsible for enforcing the terms of this Ordinance.

801. Inspections and Permission; Consultation.

- A. Inspections and Permission - The Enforcement Officer, and any other agent so authorized by the Board of

Supervisors, may inspect any premises to determine whether any violations of this Ordinance exist. Prior to entering upon any property to conduct an inspection, the Enforcement Officer shall obtain the permission of the owner or occupant for the same. If after due diligence, the Enforcement Officer is unable to obtain such permission, the Enforcement Officer shall have the authority to conduct the necessary inspection upon the issuance of a search warrant. The defendant named in the warrant shall reimburse the Board of Supervisors for cost and reasonable attorney fees expended to obtain the warrant.

- B. Consultation - The Enforcement Officer may, upon authorization of the Board of Supervisors, consult with the Township Engineer, Building Inspector or any other qualified person, in making the determination regarding a violation.

802. Notice.

Whenever an inspection discloses that a violation exists, the Enforcement Officer shall, upon authorization by the Board of Supervisors, issue a notice to the owner and/or occupant of the premises. The notice shall:

- A. Be in writing;
- B. Identify the premises and include a statement of the reasons it is being issued;
- C. State a reasonable time to rectify the conditions constituting the violation, and may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this Ordinance.
- D. Inform the owner that he has a right to a hearing in accord with Section 9 and that the notice shall automatically become an order if a written request for a hearing is not filed with the Board of Supervisors within thirty (30) days after such notice is served..
- E. Inform the owner that should he fail to comply with the order or request a hearing, the Township Supervisors will order the correction of the violation, and in accord with this Ordinance, will assess any and all costs, expenses (including, but not limited to, constable, attorney, engineering and consulting fees), and penalties incurred against the land on which the violation is located.

803. Service of Notice.

Except in emergency cases, the notice shall be sent by registered mail or by certificate of mailing, or personally delivered to, the owner, and/or the occupant of the premises. Where the owner is absent from the Township, all notices shall be deemed to be properly served upon the owner if:

- A. A copy of the notice is served upon the owner personally; or,
- B. A copy of the notice is sent by registered mail or by certificate of mailing to the last known address of the owner, regardless of receipt, and is posted in a conspicuous place on or about the premises affected by the notice; or,
- C. The owner is served with such notice by any other method authorized under the laws of the Commonwealth.

804. Placard.

The Enforcement Officer shall cause to be placed on all premises subject to a notice a placard reading substantially as follows:

This premises has been found to be a public nuisance in violation of the Nescopeck Township Nuisance Ordinance. This notice is to remain on this property or building until the public nuisance is abated in accord with the notice which has been given to the owner, occupant, lessee, mortgagee, or agent of the premises. It is unlawful to

remove this placard until compliance is made under the terms contained in the notice served on the above named party.

805. Hearing Appearance.

The Enforcement Officer shall appear at all hearings conducted in accord with Section 9 and testify as to the violation.

806. Emergency Cases. (See definition in Section 3.)

Whenever the Enforcement Officer finds that an emergency exists which requires immediate action to protect the public health, welfare or safety, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is necessary to correct the violation and eliminate the emergency. Notwithstanding the other provisions of this Ordinance, such order shall be effective immediately. The costs of such emergency correction shall be collected in the same manner as provided herein for other cases.

SECTION 9 - HEARINGS

The Board of Supervisors shall conduct hearings in accord with the Pennsylvania Local Agency Act, as amended, and the additional provisions of this Section 9.

901. Failure to Request Hearing.

Any notice served pursuant to this Ordinance shall automatically become an order if a written request for a hearing is not filed with the Board of Supervisors within thirty (30) days after such notice is served.

902. Hearing Request.

- A. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Ordinance, may request and shall be granted a hearing on the matter before the Board; provided, that such person shall file with the Board in writing a request for a hearing setting forth a brief statement of the grounds therefore within thirty (30) days after the day the notice was served in accord with Section 802.
- B. Upon receipt of such request, a time and place for such hearing shall be scheduled and advertised in accord with the Pennsylvania Sunshine Law. The Board shall commence the hearing not later than sixty (60) days after the day on which the request was received in the Township office.

903. Board Action.

- A. At such hearing the person requesting the hearing shall be given an opportunity to be heard and to show cause why the public nuisance(s) described in the notice should not be abated. Township representatives shall also offer testimony and evidence related to the notice.
- B. Within thirty (30) days of such hearing, the Board will make written findings of fact from the testimony and evidence offered at the hearing and issue a decision to:
 - 1. Sustain the notice;
 - 2. Modify the directives which are the subject of the notice and attach conditions; or,
 - 3. Withdraw the notice.

If the Board sustains or modifies such notice, it shall be deemed to be an order.

904. Appeal.

Any aggrieved party may appeal the final order to the Court of Common Pleas of Luzerne County in accordance with the provisions of the Pennsylvania Local Agency Law, as amended.

905. Fee.

The person requesting the hearing shall pay the fee for such hearing as may be established by resolution of the Board of Supervisors.

SECTION 10 - VIOLATIONS; ENFORCEMENT REMEDIES; ACTION TO ABATE NUISANCE**1001. Violations.**

Failure to comply with any provision of this Ordinance, removing a notice placard, and/or failure to comply with an order to abate a nuisance, shall be violations of this Ordinance.

1002. Judgement; Placard Removal.

- A. Judgement - Any person who has violated or permitted the violation of any provisions of this Ordinance shall upon judgment thereof by any Magisterial District Judge be sentenced to pay a fine of not more than one thousand dollars (\$1,000.00) per day of violation, together with the costs of suit, ; and, in default of payment of the fine and cost shall be subject to imprisonment for a period not exceeding thirty (30) days. Each day of violation shall constitute a separate offense, for which a summary conviction may be sought. All judgments, costs, interest and reasonable attorney fees collected for the violation of this Ordinance, shall be paid over to the Township.
- B. Placard Removal - Any person removing the notice placard provided for in Section 804 shall, upon conviction before a Magisterial District Judge, be subject to a fine not exceeding one hundred (\$100.00) dollars; and, in default of payment of the fine and cost shall be subject to imprisonment for a period not exceeding fifteen (15) days.

1003. Legal Actions.

In addition to any other remedy available at law or in equity, the Township may institute the following actions against the owner of any real property that is in serious violation of a code or for failure to correct a condition which causes the property to be regarded as a public nuisance:

- A. Personam Action - An in personam action may be initiated for a continuing violation for which the owner takes no substantial step to correct within six (6) months following receipt of an order to correct the violation, unless the order is subject to a pending appeal before the administrative agency or court.
- B. Recovery of Costs - Notwithstanding any law limiting the form of action for the recovery of penalties by the Township for the violation of a code, the Township may recover, in a single action under this Ordinance, an amount equal to any penalties imposed against the owner and any costs of remediation lawfully incurred by, or on behalf of, the Township to remedy any code violation.
- C. Asset Attachment
1. General Rule - A lien may be placed against the assets of an owner of real property that is in serious violation of a code or is regarded as a public nuisance after a judgment, decree or order is entered by a court of competent jurisdiction against the owner of the property for an adjudication under Section 1003 (relating to actions).

2. Construction - Nothing in this Ordinance shall be construed to authorize, in the case of an owner that is an association or trust, a lien on the individual assets of the general partner or trustee, except as otherwise allowed by law, limited partner, shareholder, member or beneficiary of the association or trust.

1004. Out-of-State Owners of Real Estate.

A person who lives or has a principal place of residence outside this Commonwealth, who owns property in this Commonwealth against which code violations have been cited and the person is charged under 18 Pa.C.S. (relating to crimes and offenses), and who has been properly notified of the violations may be extradited to this Commonwealth to face criminal prosecution to the full extent allowed and in the manner authorized by 42 Pa.C.S. Ch. 91 (relating to detainers and extradition).

1005. Association and Trust Owners.

Where, after reasonable efforts, service of process for a notice or citation for any code violation for any real property owned by an association or trust cannot be accomplished by handing a copy of the notice or citation to an executive officer, partner or trustee of the association or trust or to the manager, trustee or clerk in charge of the property, the delivery of the notice or citation may occur by registered, certified or United States Express mail, accompanied by a delivery confirmation:

- A. To the registered office of the association or trust.
- B. Where the association or trust does not have a registered office, to the mailing address used for real estate tax collection purposes, if accompanied by the posting of a conspicuous notice to the property and by handing a copy of the notice or citation to the person in charge of the property at that time.

1006. Abatement by Township and Recovery of Costs.

In addition to the other fines, penalties and costs which may be imposed by this Section 10, if the owner or person in control of any deteriorated or dangerous premises or condition constituting a violation of this Ordinance, fails to respond to a notice of violation directing the removal or abatement of the public nuisance or correction of the violation within the time limit prescribed by the notice, or fails to appeal to the Board of Supervisors, or fails to comply with the determination of the appeal made by the Board of Supervisors, the Enforcement Officer and/or the Board of Supervisors shall be empowered to cause such work of abatement to be commenced and/or completed by the Township, the Township may enter a municipal lien upon the premises to recover the cost and expense thereof, together with a penalty of ten (10) percent .

1007. Other Remedies.

In addition to the fines, judgments, and/or imprisonment remedies of this Section 10, the Board of Supervisors reserves the right to pursue independent and cumulative remedies at law or equity, including, but not limited to, reimbursement of all costs and reasonable attorney fees.

SECTION 11 - SEVERABILITY

If any sentence, clause, section or part 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 provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of Nescopeck Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 12 - REPEALER

All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed.

SECTION 13 - MUNICIPAL LIABILITY


Nescopeck Township, and its agents, officials and representatives shall not under any circumstances be liable or legally responsible for activities or conditions which constitute a public nuisance under the terms of this Ordinance. Any liability or damages resulting from activities or conditions constituting a public nuisance are the sole responsibility of the owner of the property, or the person or persons responsible for said activity or condition. The failure to enforce the terms of this Ordinance shall not constitute a cause of action against Nescopeck Township or its agents, officials or representatives.


SECTION 14 - EFFECTIVE DATE

This Ordinance shall become effective five (5) days after the adoption thereof.

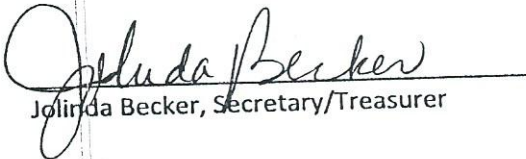
ENACTED AND ORDAINED into law by the Board of Supervisors of Nescopeck Township, Luzerne County, Pennsylvania, this 12 day of December of 2013.


Robert C. Houck, Chairman


Douglas Brown, Vice-Chairman


Michael Winder, Supervisor

ATTEST:


Jolinda Becker, Secretary/Treasurer