

CHAPTER 7

CONDUCT

Part 1

Offenses against Peace and Order

- §101. Disorderly Conduct Defined and Prohibited
- §102. Public Drunkenness Prohibited.
- §103. Obstruction of Travel, Lounging, Loitering or Loafing on Sidewalks, Street Corners or Public Passageways Prohibited.
- §104. Unlawful to Aid or Abet any other Person in Commission of Certain Offenses.
- §105. Penalty for Violation

Part 2

Prohibition of Consumption and Possession of Intoxicants in Public Places

- §201. Definitions
- §202. Consumption
- §203. Possession
- §204. Exceptions
- §205. Repealer
- §206. Severability
- §207. Penalty

Part 3

Establishment of a Curfew

- §301. Definitions and Interpretation
- §302. Purposes
- §303. Curfew; Exceptions
- §304. Parents not to Permit Violation
- §305. Procedure upon Violation
- §306. Procedure in Case of repeated Violations or other Factors Interfering with Enforcement
- §307. Police Discretion in Age Determination
- §308. Repealer
- §309. Severability
- §310. Penalties

Part 4
Regulations for Protection of Public Property

- §401. Definition and Interpretation
- §402. Tampering with Public Property on Streets, Alleys or Public Ground Prohibited.
- §403. Tampering with Stakes, Posts and Monuments Prohibited
- §404. Tampering with Warning Lamps, Signs or Barricades Prohibited
- §405. Removal of Material from Streets, Alleys, or Public Grounds Prohibited
- §406. Deposit of Harmful Substances on Streets, Alleys, Sidewalks or Public Grounds Prohibited
- §407. Exceptions
- §408. Repealer
- §409. Severability
- §410. Penalties

Part 5
Prohibition of Throwing Objects in Streets

- §501. Prohibited Acts
- §502. Repealer
- §503. Severability
- §504. Penalties

Part 6
Prohibition of Discharging a Firearm

- §601. Discharge of Firearms Prohibited.
- §602. Use of Air Rifles, Bow and Arrows, or Similar Devices Restricted.
- §603. Exceptions
- §604. Repealer
- §605. Severability
- §606. Penalties

Part 7
Prohibition of Distribution of Lewd Material

- §701. Definitions
- §702. Disseminating and/or Promoting Lewd Material
- §703. Repealer
- §704. Severability
- §705. Penalties

Part 8
Sexually Violent Predator

- §801. Legislative Intent
- §802. Definitions
- §803. Residency Restriction/Prohibition
- §804. Notice to Move
- §805. Exceptions
- §806. Penalties
- §807. Enforcement
- §808. Publication
- §809. Inclusion in Code
- §810. Severability
- §811. Repeal
- §812. Effective Date

Part 9
Noise Regulations

- §901. Purpose and Scope
- §902. Application
- §903. Exemptions
- §904. Definitions
- §905. Enforcement
- §906. Administration
- §907. Noise Limitations
- §908. Use of Property
- §909. Test Procedures
- §910. Penalties
- §911. Severability
- §912. Repealer

CHAPTER 7

CONDUCT

Part 1

Offenses against Peace and Order

§101. Disorderly Conduct Defined and Prohibited.

(a) Offense defined – A person is guilty of disorderly conduct if with intent to cause a public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she:

- (1) engages in fighting or threatening, or in violent or tumultuous behavior;
- (2) makes unreasonable noise;
- (3) uses obscene language, or makes an obscene gesture; or
- (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

(b) Public – means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are sidewalks, highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

Editorial Note: As enacted, this section was “Disorderly Conduct.” The preamble to Ord. No. 2-1987 stated that council was desirous of providing for the peace and good order of the Borough. Section 6 of the Part stated that it was the intention of the council and it was ordained that the provisions of the Part were to become and be made part of this Code of Parts and that the section of the Part might be renumbered to accomplish that intention; Section 7 of the Part repealed all inconsistent Parts.

§102. Public Drunkenness Prohibited. Public drunkenness is prohibited. A person is guilty of public drunkenness if he or she appears in any public place manifestly under the influence of alcohol to the degree that he or she may endanger himself or herself, or other persons or property, or annoy persons in his vicinity.

§103. Obstruction of Travel, Lounging, Loitering or Loafing on Sidewalks, Street Corners or Public Passageways Prohibited. Any person who shall unnecessarily and willfully obstruct or interfere with the travel upon any foot pavements, sidewalks or passageway to any public place, or shall lounge, loiter or loaf thereupon or therein or upon any street corners, shall be guilty of disorderly conduct and shall be subject to the penalties provided in Section 105.

§104. Unlawful to Aid or Abet any other Person in Commission of Certain Offenses.

Any person who shall aid, assist, encourage or abet any other person in the commission of any of the offenses prohibited by Section 101, Section 102 or Section 103 or who shall incite said commission, shall be guilty of disorderly conduct and shall be subject to the penalties provided in Section 105.

§105. Penalty for Violation. Any person who violates any provisions of this part shall, upon conviction thereof, be punishable by a fine not more than Three Hundred (\$300) Dollars and cost of prosecution, or in default of payment of the fine and costs, by imprisonment in the county jail for a period not to exceed 30 days.

Part 2

Prohibition of Consumption and Possession of Intoxicants in Public Places

§201. Definitions. Unless the context otherwise requires, the following words or phrases shall be construed according to the definitions set forth below:

(a) Alcoholic Beverages – means any spirits, wine, beer, ale or other liquid containing more than one-half of one percent ($\frac{1}{2}$ of 1%) of alcohol by volume which is fit for beverage purposes.

(b) Container – means any bottle, can or other vessel in which alcoholic beverages are contained.

§202. Consumption. No person shall consume any alcoholic beverage in any quantity upon any street, avenue, alley, sidewalk, stairway, thoroughfare, or other public property within the Borough of White Haven, nor shall any person consume any alcoholic beverage within five feet (5') of any public way or thoroughfare while on a private stairway, doorway or other private property open to public view without the express or implied permission of the owner, his or her agent or other party in lawful possession thereof.

§203. Possession. No person shall possess any container of alcoholic beverage whether wrapped or unwrapped which has been opened or on which the seal has been broken in any manner on any public street, avenue, alley, thoroughfare or other public property within the Borough of White Haven, nor shall any person possess any container of alcoholic beverage within five feet (5') of any public way or thoroughfare while on a private stairway, doorway, or other private property open to public view without the express or implied permission of the owner, his or her agent, or other person in lawful possession thereof.

§204. Exceptions. Provided however, that the provisions of Sections 202 and 203 above shall not apply to interior points of any private dwelling, habitat or building, not to the consumption or possession by persons in the areas herein designated of any duly prescribed and dispensed medication having alcoholic content as set forth in Section 201 hereof; and provided further that the provision of said Sections 202 and 203 above shall not apply to the premises duly licensed by the Pennsylvania Liquor Control Board and to the persons then and there patrons of said licensee.

§205. Repealer. All Parts which are inconsistent herewith are hereby repealed.

§206. Severability. If any sentence, clause, section, or part of this Part 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 Part. It is hereby declared as the intent of the Borough Council that this Part would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein.

§207. Penalty. Any person who violates any of the provisions of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600.00), and in default of payment to be imprisoned for a period not to exceed thirty (30) days.

Part 3
Establishment of a Curfew

§301. Definitions and Interpretation. As used in this Part, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

(a) Minor – means a person or individual who has not yet attained the age of eighteen (18) years.

(b) Parent – means any natural parent of a minor, as herein defined, or a guardian, or any adult person responsible for the care and custody of a minor. When used in this Part, “parent” shall mean one or both parents.

(c) Public Place – means any public street, alley, sidewalk, park, playground, public building or vacant lot in the Borough of White Haven.

(d) Remain – means to stay behind, to tarry and to stay unnecessarily upon the streets, including the congregating of groups (or of interacting minors) totaling four or more persons in which any minor involved would not be using the streets, for emergencies or ordinary purposes such as mere passage of going home.

In this Part, the singular shall include the plural, the plural shall include the singular; and the masculine shall include the feminine and the neuter.

§302. Purposes. This is a curfew Part prescribing, in accordance with prevailing community standards, regulations for the conduct of minors on streets at night, for the protection of younger children in the Borough of White Haven from each other and from other persons on the streets during nighttime hours, for the enforcement of parental control and responsibility for their children, for the protection of the public from nocturnal mischief by minors and for the reduction of the incident of juvenile criminal activity, all for the good of minors, for the furtherance of family responsibility, and for the public good, safety and welfare.

§303. Curfew; Exceptions. It shall be unlawful for any minor to be or remain in or upon any public highway, park, street, sidewalk or other public place within the Borough, or in any enclosure or vehicle which is on or in close proximity to any such public place within the Borough, between the hours of 11 P.M. and 6 A.M. on the following day. Exceptions to the above are the following:

(a) Minor accompanied by parent, guardian, or other person having legal care or custody of such minor.

(b) Minor possessing a written statement dated that day and signed by parent, guardian, or other person having the legal care or custody of such minor, which statement specifies the time, place, purpose and necessity of the minor being in a public place contrary to this Part.

(c) Minor lawfully employed making it necessary to be on or in highways, streets, parks, etc., as stated above and possessing a current letter certifying the same and signed by an employer, parent or guardian.

(d) Minor on an emergency errand.

(e) Minor traveling to and from church, school or municipal activity with parental permission statement as set forth in subsection (b) above.

§304. Parents not to Permit Violation. It is hereby made unlawful for any parent, guardian, or the person having the legal care or custody of a minor to allow or permit such minor to violate any of the provisions of this Part without legal justification therefor.

§305. Procedure upon Violation. Any minor found upon the streets, alleys, parks, sidewalks, or public places within the Borough in violation of Section 303 shall be taken into custody by the Borough Police, be delivered to the minor's parent(s), guardian, or a person having legal custody of said minor, and be given a copy of this Part. A report shall be filed and kept in a book for that specific purpose. If said parent, guardian or person having the legal custody of said minor so offending shall, upon the second offense, be called along with offender and be so advised once again as to the penalty provisions contained in this Part. Upon third violation, said parent, guardian or person will be cited for the violation.

§306. Procedure in Case of repeated Violations or other Factors Interfering with Enforcement. Any minor who shall violate this Part more than three (3) times may, at the discretion of the proper Borough officials, be reported to a society or organization the purpose of which is to take charge of incorrigibles and delinquents, and proceeding shall then be taken in the proper court for the permanent welfare of such minor and a like procedure may be taken in cases where the arrest of the parent is not effective, or where for any other reason the provisions of Section 303 of this Part cannot be made effective by the imposition of fines and penalties.

§307. Police Discretion in Age Determination. The police officers of the Borough in taking minors into custody shall use their discretion in determining age and in doubtful cases may require positive proof of age. Until such proof is furnished, the officer's judgment shall prevail.

§308. Repealer. All Parts which are inconsistent herewith are hereby repealed.

§309. Severability. If any sentence, clause, section, or part of this Part 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 Part. It is hereby declared as the intent of the Borough Council that this Part would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

§310. Penalties. Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600.00), and in default of payment, to imprisonment for a term not to exceed thirty (30) days.

Part 4
Regulations for Protection of Public Property

§401. Definition and Interpretation. As used in this Part, the term "Person" includes any individual, corporation, partnership, association, firm, or other legal entity. The singular shall include the plural; the plural shall include the singular; and the masculine shall include the feminine and the neuter.

§402. Tampering with Public Property on Streets, Alleys or Public Ground Prohibited. No person shall destroy, injure, tamper with or deface any public property of the Borough, or any grass, walk, lamp, ornamental work, building or street light on or in any of the streets, alleys, sidewalks, or public grounds in the Borough.

§403. Tampering with Stakes, Posts and Monuments Prohibited. No person shall in any manner interfere or tamper with, or pull, drive, change, alter, or destroy any stake, post, monument, or other marking made, placed or set, or hereafter made, placed or set, or caused to be done by the authorities of the Borough, to evidence the location, elevation, line, grade, corner, or angle of any public street, alley, sidewalk, curb, gutter, drain, or other public work, or thing.

§404. Tampering with Warning Lamps, Signs or Barricades Prohibited. No person shall destroy, remove, deface, obliterate or cover up any lamp, sign or barricade erected as a warning of danger by the authorities of the Borough or by any person doing work by permission of the authorities of the Borough on any of the streets, alleys, sidewalks, or bridges in the Borough or on any public grounds of the Borough.

§405. Removal of Material from Streets, Alleys, or Public Grounds Prohibited. No person shall take any earth, stone, or other material from any street, alley, or public grounds in the Borough.

§406. Deposit of Harmful Substances on Streets, Alleys, Sidewalks or Public Grounds Prohibited. No person shall pour, throw or deposit any harmful or destructive substance or matter on any street, alley, sidewalk, or public grounds in the Borough.

§407. Exceptions. This Part shall not apply to normal activities in connection with construction, maintenance and repair of streets, alleys, sidewalks, and public grounds and the structures and fixtures located thereon or therein, or to incidental results of work done thereon or therein upon permit from or by authority of the Borough.

§408. Repealer. All Parts which are inconsistent herewith are hereby repealed.

§409. Severability. If any sentence, clause, section, or part of this Part 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 Part. It is hereby declared as the intent of the Borough Council that is Part would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not be included herein.

§410. Penalties. Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600.00), and in default of payment, to imprisonment for a term not to exceed thirty (30) days. Everyday that a violation of this Part continues shall constitute a separate offense.

Part 5

Prohibition of Throwing Objects in Streets

§501. Prohibited Acts. The throwing, kicking, or knocking, of any ball, snowball, stone or any other missile or object upon or into any of the public streets, alleys, or sidewalks in the Borough is hereby prohibited.

§502. Repealer. All Parts which are inconsistent herewith are hereby repealed.

§503. Severability. If any sentence, clause, section, or part of this Part 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 Part. It is hereby declared as the intent of the Borough Council that is Part would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not be included herein.

§504. Penalties. Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600.00), and in default of payment, to imprisonment for a term not to exceed thirty (30) days.

Part 6
Prohibition of Discharging a Firearm

§601. Discharge of Firearms Prohibited. Except in necessary defense of person and property and except as provided in Section 603 of this Part, it shall be unlawful for any person to use, fire, or discharge any gun or other firearm within the Borough.

§602. Use of Air Rifles, Bow and Arrows, or Similar Devices Restricted. It shall be unlawful for any person to discharge any air rifle, air pistol, spring gun, spring pistol, B-B gun, bow and arrow, or similar device, or any implement that is not a firearm but which impels a pellet of any kind with a force that can reasonably be expected to cause bodily harm, at any place within the Borough, except as provided in Section 603 of this Part, and except on a target range which is properly constructed to trap or stop the projectile as ascertained by the police.

§603. Exceptions. This Part shall not apply to:

(a) Persons licensed to hunt in this Commonwealth while actually engaged in hunting where permitted under the laws of the Commonwealth of Pennsylvania;

(b) Members of any organization incorporated under the laws of this Commonwealth engaged in target shooting upon the grounds or property belonging to or under the control of such organization; and

(c) Any law enforcement officers when used in the discharge of their official duties.

§604. Repealer. All Parts which are inconsistent herewith are hereby repealed.

§605. Severability. If any sentence, clause, section, or part of this Part 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 Part. It is hereby declared as the intent of the Borough Council that is Part would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not be included herein.

§606. Penalties. Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600.00), and in default of payment, to imprisonment for a term not to exceed thirty (30) days.

Part 7
Prohibition of Distribution of Lewd Material

§701. Definitions. As used in this Part, the following terms shall have the meanings indicated:

(a) Audience – means one or more persons who are permitted to view a performance for valuable consideration or in or from a public place.

(b) Display Publicly – means exposing, placing, posting, exhibiting, or in any other fashion displaying in any location whether public or private, material or a performance in such a manner that it may be readily seen and its content or character distinguished by viewing it in or from a public place or vehicle.

(c) Disseminate – means manufacture, issue, publish, sell, lend, distribute, transmit, broadcast, exhibit or present material or to offer or agree to do the same, or to have in one's possession with intent to do the same.

(d) Lewd Material – means any material or performance in which all of the following elements are present:

(1) Considered as a whole, by the average person, applying the contemporary community standards of the Borough, it appeals to the prurient interest in sex; and

(2) It depicts, describes or represents in a patently offensive way, sexual conduct, as hereinafter defined; and

(3) Taken as a whole, it lacks serious literary, artistic, political, educational or scientific values.

(e) Material – means any printed matter, visual representation, or sound recording, including, but not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, three-dimensional forms, sculptures, and phonograph, tape or wire recordings.

(f) Nudity – means uncovered, or less than opaquely covered, post-pubertal human genitals or pubic area, the post-pubertal human female breast below a point immediately above the top of the areola or the covered human male genitals in a discernibly turgid state. For the purpose of this definition, a female breast is considered uncovered if the nipple only and the areola only are covered.

(g) Pander – means advertising or propagandizing in connection with the sale of material, the offering of a service, or the presentation or exhibition of a performance by appealing to the prurient interest of potential customers.

(h) Performance – means any live or reproduced exhibition including but not limited to any play, motion picture film, dance or appearance presented to or performed before any audience.

(i) Prurient Interest – means a desire or craving for sexual stimulation or gratification. In determining prurient interest, the material or performance shall be judged with reference to average persons, unless it appears from the character of the material or performance that it is designed to appeal to the prurient interest of a particular group of persons, including but not limited to, homosexuals or sado-masochists. In that case, it shall be judged with reference to the particular group for which it was designed.

(j) Public Place or Vehicle – means any street, alley, park, boulevard, school or other public property or any dance hall, rental hall, theater, amusement park, liquor establishment, store, depot, place of public accommodation, or other private property in the Borough of White Haven generally frequented by the public for the purposes of education, recreation, amusement, entertainment, sport, shopping or travel; or any vehicle for public transportation, owned or operated by the government, either directly or through a public corporation or authority, or owned or operated by any non-governmental agency for the use, enjoyment, or transportation of the general public.

(k) Sado-Masochistic Abuse – means flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing or bizarre costume, or the condition of such person being fettered, bound or otherwise physically restrained, in an apparent act of sexual stimulation or gratification.

(l) Sexual Conduct includes–

(1) masturbation;

(2) sexual intercourse, whether genital-genital, oral-genital, oral-anal, or anal-genital;

(3) any erotic fondling or touching of the covered or uncovered genitals, buttocks, pubic area, or any part of the breasts of the female, whether the conduct described in subsection 1 through 3 is engaged in alone or between members of the same or opposite sex, or between humans and animals or humans and inanimate objects;

(4) actual or simulated display or exhibition of the human pubic area or genitals or any part thereof;

(5) sexual excitement, as hereinafter defined; or

(6) sado-masochistic abuse as herein defined.

(m) Sexual Excitement – means the facial expression, movements, utterance or any other physical responses of a human male or female, whether alone or with others, whether clothed or not, who is in an apparent state of sexual stimulation or arousal, or

experiencing the physical or sensual reaction of humans engaging in or witnessing sexual conduct.

As used in this Part, the masculine shall include the feminine and the neuter.

§702. Disseminating and/or Promoting Lewd Material. It shall be unlawful for any person, to disseminate and/or promote and/or display publicly lewd material in the Borough of White Haven. A person shall be guilty of the offense of disseminating and/or promoting and/or displaying publicly lewd material, if, knowing its content and character he or she:

(a) Disseminates or causes to be disseminated any lewd material in or from a public place or vehicle, or for valuable consideration; or has in his or her possession any lewd material with intent to so disseminate; or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him or her, for such dissemination of lewd material; or

(b) Sells an admission ticket, or pass to premises where there is being exhibited or is about to be exhibited material or a performance which contains lewd material; or

(c) Admits, by accepting a ticket or pass, a person to premises where there is being exhibited or is about to be exhibited material or a performance which contains lewd material; or

(d) Produces, presents, directs, or knowingly allows the use of any business, building, vehicle or place, owned, leased, conducted or managed by him or her to be used for a performance which contains lewd material before an audience; or

(e) Participates in that portion of a live performance before an audience which makes the performance contain lewd material; or

(f) Panders, displays publicly, or disseminates door to door, any lewd material, or causes such pandering, public display, or door to door dissemination.

§703. Repealer. All Parts or parts of Parts which are inconsistent herewith are hereby repealed.

§704. Severability. If any sentence, clause, section, or part of this Part 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 Part. It is hereby declared as the intent of the Borough Council that is Part would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not be included herein.

§705. Penalties. Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600.00), and in default of payment, to imprisonment for a term not to exceed thirty (30) days.

Part 8
Sexually Violent Predator

§801. Legislative Intent. The following is the legislative intent of Borough Council in adopting this Part:

WHEREAS, the Pennsylvania State Legislature adopted requirements for the registration of sexual offenders and sexually violent predators (commonly known as Megan's Law II), as set forth at 42 Pa. C.S.A. at §9791, et seq. (hereinafter "Megan's Law II or "the statute");

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

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

WHEREAS, the Borough Council finds that there is a danger of recidivism posed by persons convicted of the crimes and subject to registration requirements in Megan's Law II and persons adjudicated as sexually violent predators and that the danger of recidivism is of paramount concern to the Borough of White Haven;

WHEREAS, the Borough Council finds that persons convicted of the crimes and subject to the registration requirements referenced in Megan's Law II, or who have been adjudicated as sexually violent predators, have a reduced expectation of privacy and finds further that residency restrictions for such persons provides additional protection for children in the community;

WHEREAS, the Borough Council has reviewed the findings of the Pennsylvania Legislature with regard to Megan's Law II, and the findings of other jurisdictions that have adopted similar laws imposing registration requirements and residency restrictions upon sexually violent predators; and

WHEREAS, Borough Council wishes to enact this law for protection of children in the community and to protect and promote the health, safety, comfort, convenience and general welfare of the public.

§802. Definitions. Unless the context otherwise requires, the following words or phrases shall be construed according to the definitions set forth below:

- (a) Child Care Facility. A licensed day care center, child care facility or any other child care service facility or home day care facility for children, whether the facility is licensed pursuant to the laws of the

Commonwealth of Pennsylvania or exempt from licensing or unlicensed.

- (b) Common Open Space. 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 White Haven, which said Open Space is regulated, maintained and/or owned by the Borough of White Haven.
- (c) Community Center. Any building and all related facilities used for educational, social, cultural, or recreational activities.
- (d) Public Park or Recreational Facility. Any recreational facility, playground or park, owned or operated by the Borough of White Haven or any other governmental agency, including, but not limited to, any school district, the County of Luzerne or the Commonwealth of Pennsylvania.
- (e) Residence. A "Permanent Residence" is a place where a person lives, lodges, resides, stays, dwells, or inhabits, or maintains his/her abode for fourteen (14) or more consecutive or non-consecutive days during any calendar year.

A "Temporary Residence" is a place where a person lives, lodges, resides, stays, dwells, or inhabits, or maintains his/her abode for less than fourteen (14) days during any calendar year, if the person is able to identify a different address or addresses that constitute the person's permanent residence.

- (f) School. Shall mean any public or private school which provides education services to a minor or minors.
- (g) Library. Shall mean any public or private library which provides service to a minor or minors.
- (h) Sexually Violent Predator. Any person eighteen (18) years of age or older, who has been convicted of an offense set forth in section 9795.1 of Megan's Law II (relating to registration), which includes, but is not limited to, kidnapping, luring a child into a motor vehicle, institutional sexual assault, indecent assault, incest, prostitution, receiving sexual materials, sexual abuse of children, unlawful contact with minors, sexual exploitation of children, rape, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, and any attempt to commit any of the enumerated offenses, and who is determined to be a sexually violent predator under section 9795.4 of Megan's Law II (relating to assessments) due to a mental abnormality (as defined in section 9792 of Megan's Law II) or personality disorder that makes the person likely to engage in predatory sexually violent offenses. The term includes an individual determined to be a sexually violent predator where the determination occurred in the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation or by court martial. (Ordinance No. 3 of 2007, 9/10/07, Section 1).

§803. Residency Restriction/Prohibition.

(a) It shall be unlawful for any sexually violent predator to establish a permanent or temporary residence within 500 feet of any school, library, child care facility, common open space, community center, public park or recreational facilities.

(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, library, child care facility, common open space, community center, public park or recreational facilities. (Ordinance No. 3 of 2007, 9/10/07, Section 2).

§804. Notice to Move. Upon the discovery of a violation of the Residency Restriction/Prohibition, the White Haven Borough Police Department shall issue a written Notice of Violation by both regular mail and by certified mail, return receipt to the sexually violent predator. A sexually violent predator who receives a Notice of Violation shall within forty-five (45) days of receipt of the Notice, move to a new residence that is not within 500 feet of any school, library, child care facility, common open space, community center, park or recreational facility. The Notice of Violation shall be deemed to be received on the date reflected on the certified mail receipt, or if the certified mail is not accepted or signed-for, then fifteen (15) days from the date of mailing the regular mail. Each day beyond the forty-five (45) days that a sexually violent predator fails to move to a new residence that is in compliance with this Part shall constitute a separate and continuing violation of this Part. (Ordinance No. 3 of 2007, 9/10/07, Section 3).

§805. Exceptions. This Part shall not apply to any person who lawfully established residence prior to the effective date hereof, unless such person is convicted of the crimes enumerated in Megan's Law II subsequent to the effective date of this Part. If a sexually violent predator is convicted of the crimes enumerated in Megan's Law II or becomes subject to the registration requirements of Megan's Law II subsequent to the effective date of this Part, then this Part shall become applicable to that sexually violent predator upon the date that the sexually violent predator is convicted of the new offense(s). This Part shall not be applicable to a sexually violent predator who lawfully established residence prior to the establishment of a school, library, child care facility, common open space, community center, public park or recreational facility within 500 feet of that person's permanent or temporary residence, unless that person is subsequently convicted of the crimes or subsequently subject to the registration requirements set forth in Megan's Law II. If the sexually violent predator re-offends and is convicted under the crimes enumerated in Megan's Law II after the establishment of a school, library, child care facility, common open space, community center, public park or recreational facility, then this Part shall be applicable to the sexually violent predator on the date that the sexually violent predator is convicted of the new offense(s). The provisions of this Part shall not be applicable to persons incarcerated in any facilities owned, maintained and/or operated

by the County of Luzerne or Commonwealth of Pennsylvania. (Ordinance No. 3 of 2007, 9/10/07, Section 4).

§806. Penalties. Any person who violates the provisions of this Part shall, upon conviction, before a Magisterial District Judge, be sentenced to a term of imprisonment up to ninety (90) days and shall be fined not more than one thousand (\$1,000) dollars for each violation, plus the costs of prosecution, court costs and the reasonable administrative costs and attorney's fees of the Borough. Each day that the sexually violent predator fails to move after the forty-five (45) days Notice period shall constitute a new violation and shall be subject to the assessment of a separate fine. (Ordinance No. 3 of 2007, 9/10/07, Section 5).

§807. Enforcement. The White Haven Borough Police Department shall be charged with the enforcement of this Part. (Ordinance No. 3 of 2007, 9/10/07, Section 6).

§808. Publication. The Borough Administration is herein directed by the Borough of White Haven Council to have prepared and placed at the Borough of White Haven building during regular business hours a map of the Borough of White Haven depicting the area where sexually violent offenders are restricted from residing on a permanent or temporary basis. (Ordinance No. 3 of 2007, 9/10/07, Section 7).

§809. Inclusion in Code. It is the intent of the Borough Council of the Borough of White Haven that the provisions of this Part shall become and be made a part of the Code to the Borough of White Haven and the sections of this Part may be renumbered or re-lettered and word "Part" may be changed to "section" or "article" or such other appropriate work or phrase in order to accomplish the intention of the Borough Council. (Ordinance No. 3 of 2007, 9/10/07, Section 8).

§810. Severability. The provisions of this Part are severable. If any section, clause, sentence, part or provision hereof shall be determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not impair or affect any remaining provisions of the Part, it being the intention of Borough Council that it would have adopted the Part even if any illegal, invalid or unconstitutional provision(s) had not been included. (Ordinance No. 3 of 2007, 9/10/07, Section 9).

§811. Repeal. All Parts or parts of Parts inconsistent herewith are hereby repealed. (Ordinance No. 3 of 2007, 9/10/07, Section 10).

§812. Effective Date. This Part shall take effect in five (5) calendar days after the enactment hereof. (Ordinance No. 3 of 2007, 9/10/07, Section 11).

EDITORIAL NOTE: This Part was adopted by Borough Council on September 10, 2007 as Ordinance No. 3 of 2007. This Ordinance became effective on September 15, 2007. The Legislative Intent Section of this Part was found in the "Whereas" portion of the Ordinance.

Part 9
Noise Regulations

§901. Purpose and Scope. It is the purpose and scope of this Part to provide regulations defining the maximum sound levels that vehicles, appliances and equipment shall be allowed to produce at specified distances from these devices, and also to provide for the prohibition of other kinds of prohibited noises. These regulations and prohibitions are intended to protect the physical, mental and social well-being of the residents of the Borough of White Haven.

§902. Application. This Part shall apply:

- (a) To all types of vehicles, appliances and equipment whether privately or publicly owned.
- (b) To sounds of any time duration.
- (c) To both the owner and operator of vehicles, appliances, equipment, devices, animals or any other object creating noises.

§903. Exemptions. The following devices are exempt from the provisions of these regulations:

- (a) Aircraft (except model aircraft).
- (b) Police, fire, ambulance and other governmental vehicles.
- (c) Back-up alarm devices on trucks and other equipment when installed and operated in accordance with Society of Automotive Engineers recommended practice J 994, "CRITERIA FOR BACK-UP ALARM DEVICES."
- (d) Governmental warning devices (i.e., civil defense fire siren).

§904. Definitions. All acoustical terminology shall be contained in ANSI S1.1 "Acoustical Terminology."

- (a) ANSI – means the American National Standards Institute or its successors.
- (b) Appliance – means any device or combination of devices used or capable of being used as a means of accomplishing a desired end, such as a window air conditioning unit.
- (c) Day – means the twenty-four (24) hour period starting at local midnight.
- (d) Day-Time – means 6:00 A.M. to 6:00 P.M.

- (e) Decibel (dB) – means a unit of sound level which is a division of logarithmic scale used to express the ratio of the sound intensity of the source to the intensity of an arbitrarily chosen reference intensity. The ratio is expressed on the decibel scale by multiplying its “base ten logarithm” by ten.
- (f) Equipment – means any devices or combination of devices to accomplish a desired end, such as a chain saw, bulldozer, etc.
- (g) Excessive Noise – excessive noise is that sound which is:
- (1) Injurious or which unreasonably interferes with the comfortable enjoyment of life and property. Measured noise levels in excess of limits established in these regulations or those specified in valid permits are declared to be excessive noise.
 - (2) Annoying to a person of ordinary sensibilities.
- (h) Fluctuating Noise – a fluctuating noise is a noise whose sound level varies significantly with time.
- (i) Impulsive Noise – impulsive noise is characterized by brief excursions of sound level. The duration of a single impulse is usually less than one second.
- (j) Intermittent Noise – an intermittent noise is a noise whose sound level exceeds the ambient noise levels at least twice during the period of observation, which is one minute or more. The period of time during which the level of the noise remains at an essentially constant value different from that of the ambient is on the order of one second or more.
- (k) Noise – means any sound emitted by a person, animal, vehicle, appliance, equipment or other device and its environmental interaction.
- (l) Person – either the owner or operator of vehicles, appliances, equipment or devices.
- (m) Period of Observation – means the time interval during which acoustical data are obtained. The period of observation is determined by the characteristics of the noise being measured and the instrumentation being used. The period of observation must be at least as long as the response time of the instrumentation. The greater the variance in individual sound level, the longer must be the observation time for a given expected accuracy of measurement.
- (n) SAE – means the Society of Automotive Engineers.
- (o) Sound Level (Noise Level) – airborne sound levels are expressed in dB and obtained by the use of specific frequency dependent weighting networks, as specified

in the referenced standards. The specific weighting network used must be indicated by the proper notation. If the A-weighting is employed, the sound level is identified as dB(A).

(p) Sound Level Meter – a sound level meter is an instrument, or combination of instruments, which meets or exceeds the requirements for an ANSI Type S1A or Type S2A Sound Level Meter

(q) Steady Noise – a noise whose level remains essentially constant (i.e., fluctuations are less than five (5) dB) during the period of observation is a steady noise.

(r) Vehicle – any device, or combination of devices, used for or capable of being used for transporting person or property. Vehicles include, but are not limited to, the following: automobiles, trucks, buses, motorcycles, motorized bicycles, snowmobiles, scooters, all-terrain vehicles, go-carts, racers and like devices, farm machinery, industrial machinery, highway graders, trailers, graders and semi-trailers.

§905. Enforcement.

(a) Abatement. Any emission of noise from any source in excess of the limitation established in or pursuant to his Part herein described shall be deemed and is hereby declared to be a public nuisance and may be abated, in addition to the administrative proceedings, fines and penalties here in provided. Such abatement may be made by any Police Officer or the Zoning/Code Enforcement Officer, or may be made by order of the Court of Common Pleas of Luzerne County on complaint or petition filed on behalf of the Borough of White Haven.

(b) Nothing in this Part shall be construed to impair any cause of action, or legal remedy thereof, of any person or the public for injury or damage arising from the emission or release into the atmosphere or ground from any source whatever of noise in such place or manner, or at such levels which may give rise to such cause of action.

(c) The Zoning/Code Enforcement Officer or Police Officer of the Borough of White Haven shall:

(1) Be qualified by training and experience to perform the necessary measurements and procedures required to determine violations of the provisions of this Part.

(2) File complaints with the District Justice to prosecute violations of this Part.

(3) Investigate complaints of violations of this Part and make inspections and observations of noise conditions.

(4) Be authorized to issue a warning to persons considered in violation of these regulations, a warning which may allow an appropriate time not to exceed thirty (30) calendar days for correction to bring the offending vehicles(s), appliance(s), equipment or other device(s) within the provisions of these regulations before enforcement by prosecution.

§906. Administration. The Borough of White Haven shall:

(a) Have available in convenient form as in a unit the provisions of this Part and the recommended practices, rules, regulations and standards which have been adopted. A copy of the information sources shall be kept on file in the White Haven Borough offices.

(b) Prepare and maintain records of all orders issued by the Zoning/Code Enforcement Officer and Police Officers.

(c) Issue all standards, permits, certificates, notices, or other matters required under the provisions of this Part and will notify all persons concerned of any decisions rendered and provide such persons with an opportunity to be heard as herein set forth.

§907. Noise Limitations.

(a) General. No person shall make, permit or cause to be made, any excessive noise of any kind by crying, calling or shouting, or by any means of any whistle, rattle, bell, gong, clapper, hammer, drum, horn, hand organ, mechanically-operated piano, other musical instrument, wind instrument, mechanical device, radio, phonograph, sound amplifying or other similar electronic device unless said person has obtained a special permits from the Zoning/Code Enforcement Officer as provided in this Part.

(b) Musical Instruments. No person shall use or perform any hand organ or other musical instrument or device, for pay or in expectation of payment, in any public way or public open space of the Borough of White Haven before 6:00 A.M. or after 6:00 P.M. of the day unless said person has obtained a special permit from the Zoning/Code Enforcement Officer.

(c) Noise from Premises. No person owning, or in possession or control of any building or premises, shall use the same, permit the use of the same, or rent the same to be used for any business or employment or residential use, or for the purpose of pleasure or recreation, if such use shall, by its boisterous nature, disturb or destroy the peace of the neighborhood as measured at the property line in which such building or premise is situated, or be dangerous or detrimental to health.

(d) Equipment Noise. It shall be unlawful for any person to use any pile driver, shovel, hammer, derrick, hoist, tractor, roller or other mechanical equipment operated by fuel or electric power in building or construction operations from 9:00 P.M. to 6:00 A.M. of the following day, except for emergency work on public improvements,

work of public service utilities, and municipal services unless such equipment has been manufactured or modified for sound control and meets the provisions of this Part.

(e) Noise in Handling Refuse Cans. No person shall make any unnecessary noise in the handling of ash, trash and garbage cans, whether in loading or unloading, whether full or empty.

(f) Noise in Vicinity of Hospitals, Schools and Churches. No person shall make any unnecessary noise in the vicinity of any hospital, or church during hours of public worship, or school during school hours.

(g) Unlawful to Keep Noisy Animals. No person shall keep, or permit to be kept, harbor, or otherwise maintain any animal which shall disturb the quiet of any public street or other public place, or of any neighborhood. Provided, however, that a noisy animal shall be defined as one or more animals which makes noises habitually, so as to constitute annoyance to a person of ordinary sensibilities.

(h) Noise by Peddlers. No peddler or other person who plies a trade or calling of any nature on the streets of the Borough of White Haven shall use any horn, bell, or other sound instrument to make any noise tending to disturb the peace and quiet of the neighborhood, for the purpose of directing attention to his wares, trade or calling.

(i) Use of Horns and Other Devices on Vehicles. No person, operating any vehicle, other than police, fire, public service or ambulance operators shall sound any horn, bell, gong, siren, or whistle, except for the ordinary horn installed on such vehicle by the manufacturer, or sound any type of horn except when reasonably necessary to prevent accidents or otherwise comply with the law of motor vehicles.

(j) The operational performance standards established by this Part shall not apply to any public performance being conducted in accordance with provisions of a special permit obtained from the Zoning/Code Enforcement Officer for the conduct thereof.

(k) Vehicles. No person shall operate either a motor vehicle of a type subject to registration, except in police, fire equipment, ambulances or other government emergency vehicles at any time or under any condition of grade, load, acceleration or deceleration in such manner as to exceed the following noise limits for the category of minor vehicles based on a distance of fifty feet (50') from the center of the lane traveled on within the speed limit specified in this section under test procedures established by Section 909 of this Part.

	Type of Vehicle	Speed Limit of 35 MPH or less	Speed Limit of 35 MPH or less
(1)	Any motor vehicle with a manufacturer's gross combination weight rating of 10,000 lbs. or more and any combination of vehicles towed by such motor vehicle	86 dB(A)	90 dB(A)
(2)	Any other vehicle or any combination of vehicles towed by such motor vehicle	76 dB(A)	82 dB(A)
(3)	Any motorcycle or motor driven cycle	78 dB(A)	82 dB(A)

(1) This section applies to the total noise from a vehicle or a combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of this code relating to motor vehicle mufflers for noise control.

(2) No person shall modify or change the exhaust muffle, intake muffler or any other noise abatement device of a motor vehicle so that the noise level is increased above that emitted by the vehicle as originally manufactured. Procedures used to establish compliance with this paragraph shall be those used to establish compliance of a new motor vehicle with the requirements of this Part.

(3) No person shall sell or lease or offer for sale or lease a new or second-hand vehicle that produces a maximum noise exceeding the noise limit at a distance of fifty feet (50') from the centerline of travel as stated in Section 907(k) of this Part. The manufacturer, distributor, importer or designated agent shall if requested certify in writing to the Borough of White Haven that his or her vehicles sold or leased within the Borough of White Haven comply with the provisions of this Part.

(l) Equipment.

(1) No person shall operate any powered equipment or powered hand tool that produces a maximum noise level exceeding the following noise limits at a distance of fifty feet (50'), under test procedures establish by Section 909 of this Part.

	Type of Equipment	Noise Limit
(1)	Construction and industrial machinery, such as crawler-tractors, dozers, rotary drills and augers, loaders, power shovels, cranes, derricks, motor graders, paving machines, off-highway trucks, ditchers, trenchers, compactors, scrapers, pavement breakers, compressors and pneumatic power equipment, but not including pile drivers	86 dB(A)
(2)	Agricultural tractors and equipment	86 dB(A)
(3)	Powered commercial equipment of 2HP or less intended for infrequent use in residential areas, such as chain saws, pavement breakers, compressors and pneumatic power equipment, but not including pile drivers	86 dB(A)
(4)	Powered equipment intended for repetitive use in residential areas, such as lawnmowers, small lawn and garden tools, riding tractors, snow removal equipment, etc.	70 dB(A)

(2) No person shall sell or lease or offer for sale or lease new or second-hand equipment that produces a maximum noise exceeding noise limit at a distance of fifty feet (50') as stated in this Part (Subsection 1(1) above). The manufacturer, distributor, importer or designated agent shall if requested certify in writing to the Borough of White Haven that his equipment sold or leased within the Borough complies with the provisions of this Part.

§908. Use of Property.

(a) Any property use established in a zoning district as defined and designated under the provisions of the White Haven Borough Zoning Ordinance shall be such as to comply with the performance standard governing noise set forth hereinafter for the district in which such use shall be located.

(b) Noise levels shall be measured in terms of the sound level in dB(A) using equipment which meets requirements established by this Part.

(c) In all commercial and industrial zoning districts, at no point on the boundary of any residential zoning district shall the sound level of any individual operation or business, or the combined operations of any person, firm or corporation exceed the dB(A) levels shown below for the zoning district indicated from 9:00 P.M. to 6:00 A.M. of the following day, as measured under the test procedures established by Section 909(b) of this Part.

Maximum sound levels dB(A) along district boundaries as measured by conventional sound level meters on slow response:

A – scale levels

Residential
55 dB(A)

Commercial/Industrial
62 dB(A)

In commercial zoning districts, all activities involving the production, processing, cleaning, servicing, testing, repair of materials, goods or products, or any property use shall conform with the performance standards stated above, provided that performance standards shall, in every case, be applied at the boundaries of the lot on which any such activities take place, except in such cases where the maximum permitted sound levels may be exceeded at a more distant point.

In residential zoning districts, any property use shall conform with the performance standards stated above for residential district boundaries, provided that performance standards shall, in every case, be applied at the boundaries of the lot on which such use is established, except in such cases where the maximum permitted sound levels may be exceeded at a more distant point.

The maximum sound levels established in this section to be applied to the boundaries of a lot shall not apply to construction sites and emergency operations. Construction site noise levels shall be regulated by Section 907(l) of this Part.

§909. Test Procedures.

(a) Test procedures to determine whether maximum noises emitted by new motor vehicles sold or offered for sale or lease meet the noise limits stated in Section 907(k) of this Part shall be in substantial conformity with standards and recommended practice established by the SAE, Incorporated, and the Pennsylvania Department of Environmental Protection as well as the United States Environmental Protection Agency and such other and further standards as may be propounded in the Code of Recommended Practices of the Borough of White Haven.

(b) Test procedures to determine whether maximum noises emitted by powered equipment or powered hand tools, sold or leased, or offered for sale or lease, meet the noise limits stated in Section 907(l) of this Part shall be in substantial conformity with standards and recommended Practices established by the SAE, Incorporated and the Pennsylvania Department of Environmental Protection as well as the United States Environmental Protection Agency and such other and further standard as may be propounded in the Code of Recommended Practices of the borough of White Haven.

§910. Penalties. Any person, firm or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than Six Hundred Dollars (\$600.00); and in default of payment, to imprisonment for a term not to exceed thirty (30) days. Every day that a violation of the Part continues shall constitute a separate offense.

§911. Severability. If any sentence, clause, section, or part of this Part 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 Part. It is hereby declared as the intent of the Borough Council

that this Part would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

§912. Repealer. All Parts or parts of Parts which are inconsistent herewith are hereby repealed.