

ORDINANCE NO. 3 of 2019

BE IT ENACTED AND ORDAINED BY THE BOROUGH OF WHITE HAVEN, LUZERNE COUNTY, PENNSYLVANIA, and it is hereby enacted and ordained by authority of the same, that:

Chapter 7, Conduct, Part 10, Nuisances, is added as follows:

Part 10
Nuisances

§ 1001 Definitions and interpretation.

A. The word “nuisance,” as used in this chapter, shall mean any use of property within the Borough, or any condition upon property within the Borough that, other than infrequently, causes or results in:

(1) Annoyance or discomfort to reasonable persons beyond the boundaries of that property;

(2) Interference with the health or safety of persons beyond the boundaries of that property or of persons who might reasonably be expected to enter upon or be in property; and

(3) Disturbance to or interference with the peaceful use of the property of others within the Borough, in any case taking into consideration the location of the use or conditions and the nature and condition of the surrounding neighborhood.

B. The following words, terms and phrases, when used in this chapter, unless the context clearly indicates otherwise, shall have the following meanings respectively ascribed to them:

AIR CONTAMINATION SOURCE -Any source from or by reason of which there is emitted into the outdoor atmosphere smoke or odors, regardless of who the person may be who owns or operates the building, premises or other property in or on which such source is located or the facility, equipment or other property by which the emission is caused or from which the emission comes.

ODOR -That property of a substance which affects the sense of smell.

C. Specifically, the word “nuisance” shall include but shall not be limited to the following:

(1) Offensive Odors Prohibited- No person shall cause, suffer, allow or permit the emission of any noxious or offensive odor from an air contamination source.

(2) Maintaining or permitting the maintenance of any of the following dangerous conditions, structures or premises:

- (a) Open wells or cisterns;
- (b) Open excavations;
- (c) Unfinished buildings, foundations or other structures;
- (d) Buildings or structures damaged or partially destroyed or in a state of disrepair or danger;
- (e) Dangerous placement or storage of more than 5 vehicles, materials or equipment;
- (f) Lakes, ponds or swimming ponds not properly safeguarded;
- (g) Stagnant water in pools in which mosquitoes, flies or insects multiply.
- (h) Odor-that property of a substance which affects the sense of smell.

(3) Carrying on construction work in such a manner that dirt is carried by wind onto adjacent properties or that mud is tracked or drained into streets adjacent to the project.

(4) Washing, tracking or otherwise depositing dirt, mud, soil, stone or debris upon or onto the pavement of any street, without removing the materials before 5:00 p.m. of the day on which the material was deposited.

(5) Using any property or operating any business or other activity so as to permit or cause smoke, soot, cinders, fly ash, dust, mud, dirt, acid, noxious or offensive fumes, gases or odors to be discharged into the air, or to be carried off the premises, or to cause any water to become polluted by sewage, industrial wastes, acid or other substance, or to cause a glare from lights, or noise of such character as to cause annoyance to residents or interference with the normal use of adjacent properties.

§ 1002 Unlawful to create or maintain nuisance.

It shall be unlawful for any person to create, continue, cause, maintain or permit to exist any nuisance at any place within the Borough.

§ 1003 Removal or abatement of nuisances.

A. If Code Enforcement or a Police Officer determine that a nuisance or dangerous structure exists, it may direct that notice be given to the owner or occupier of the property upon which the nuisance exists, any other person having an interest not of record in the property (if known), and the person causing the nuisance or dangerous structure to exist if different from the persons mentioned, to remove the nuisance or dangerous structure within 30 days after the date of the notice.

B. The notice shall contain the following information:

(1) The names and addresses of the owners of record and the occupier of the property, any other person having any interest of record in the property, any other person having an interest not of record in the property (if known), and the person causing the nuisance or dangerous structure if different from those mentioned.

(2) A brief description of the property sufficient to identify it.

(3) A description of the acts or conditions constituting the nuisance or dangerous structure.

(4) Advice that if the nuisance or dangerous structure is not removed, it may be removed by the Borough, and the cost of removal, together with a penalty of 10% of the costs, will be collected in the manner provided by law for the collection of municipal claims or by action of assumpsit.

C. The notice shall be given to persons by certified mail, return receipt requested, at the address to which real estate tax bills are sent, in the case of owners; at the property, in the case of an occupier who is not an owner; in the case of other persons having an interest of record, at the address set forth in the record; in the case of other known persons having an interest not of record, to the address that may be known; and by posting a copy at a conspicuous place on the property, the mailing and posting to take place on the date of the notice.

D. Code Enforcement or a Police Officer may defer the time in which Borough personnel are to act to remove the nuisance or dangerous structure to a set future time in order to allow the owner or other persons having any interest in the property further opportunity to remove the nuisance or dangerous structure. Code Enforcement or a Police Officer may extend the time, if, in its opinion, good cause for an extension exists.

E. At any time prior to the arrival of Borough personnel or a contractor to remove the nuisances or dangerous structure, under the provisions of this section, the owner or occupier of, or any person having an interest in, the subject premises, or a person acting in his behalf, may remove the nuisance or dangerous structure at his own expense and then all further proceedings shall terminate. First, however, they shall have been paid to the Borough any costs incurred by the Borough in the proceedings to date, including by way of example and not limitation, the amounts due any contractor by reason of the Borough's cancellation of the contract with the contractor and, in addition, a bond issued by a surety or bonding company licensed to do business in Pennsylvania in which the Borough is obligee in such amount as Council may determine in order to guarantee to the Borough the costs of removing the nuisance or dangerous structure in the event the owner or person fails to do so within such time as may be allowed by Council, posted with the Borough, if Council so directs.

F. Once the Borough personnel or contractor have arrived at the subject property, there shall be no further right to remove the nuisance or dangerous structure.

G. If the owner shall fail to make payment within 45 days of the date of the notice, Council shall direct the Solicitor to collect the amount from the owner or occupier of the premises by a municipal claim, an action in assumpsit, or such other legal proceedings as may be permitted by law from time to time.

H. Whenever Code Enforcement or a Police Officer shall determine that a nuisance or a dangerous structure is such an imminent peril to the health or safety of the public or to public or private property that the time required to follow the procedures outlined above would seriously threaten the health or safety of the public or create injury to public or

private property, Code Enforcement or a Police Officer may order without delay the removal of the nuisance or dangerous structure. In doing so, Borough forces may be used or private contractors employed. All repayment and recoupment provisions contained within this ordinance shall apply for any amounts expended by the Borough in connection with the abatement of any nuisance or a dangerous structure that is deemed an imminent peril to the health or safety of the public or to public or private property.

§ 1004 Violations and penalties.

Any person, firm or corporation who shall violate any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine for 1st offense \$100.00, 2nd offense \$300.00, and 3rd and subsequent offenses not more than \$600 and/or to imprisonment for a term not to exceed 90 days. Every day that a violation of this chapter continues shall constitute a separate offense. The aggregate fine shall not exceed \$10,000.00.

§ 1005 Exceptions.

This chapter shall not be construed to be the sole means for abatement of nuisances within the Borough, and nothing shall preclude any person from proceeding individually or with other injured persons to effect the abatement of a private nuisance. Furthermore, in the exercise of the powers conferred in this chapter, the Borough may institute proceedings in equity.

These amendments shall take effect immediately upon its adoption, the date being indicated below.

ENACTED AND ORDAINED THIS 22nd DAY OF JULY, 2019, BY WHITE HAVEN BOROUGH COUNCIL.

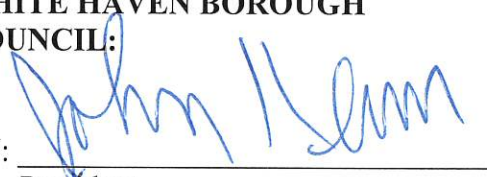
ATTEST:


Manager

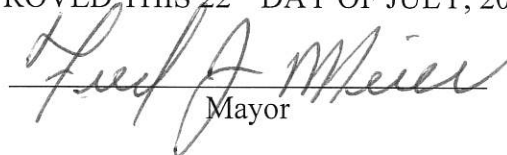
**WHITE HAVEN BOROUGH
COUNCIL:**

BY:

President



APPROVED THIS 22nd DAY OF JULY, 2019.


Mayor

J. Noise

1. Source and magnitude of noise levels expected to be generated at the site during and after construction.
2. Proposed method for control of additional noise on site during and after construction.

K. Property Values

1. Identify, measure and explain the impact of the proposed use on real estate values.
2. In an effort to measure the impact of a proposed use on property values, sale transactions of both homes located next to the proposed use, if any, and those that are away from the proposed use, but in the same community, shall be examined.
3. The data once collected shall be analyzed on a sales comparison approach before development of the proposed use and assuming post-development of the proposed use. Similarly situated uses in other areas should be examined when possible to determine what, if any, impact the proposed use will have on surrounding residential property values.

L. Land and Water Surface Use and Community Character

1. Past and present use of the site with particular attention to storage or disposal of toxic or hazardous waste.
2. Adjoining land uses and character of the area.
3. Type and concentration of existing water craft uses.

M. Critical Impact Areas - Any area, condition, or feature which is environmentally sensitive, or which, if disturbed during construction, would adversely affect the environment. Critical impact areas include, but are not limited to, stream corridors, streams, wetlands, slopes greater than 15%, highly acid or highly erodible soils, areas of high water table, and mature stands of native vegetation and aquifer recharge and discharge areas.

N. Historic Resources - Identification of structures or sites of historic significance and probable effect of the project.

O. Transportation Network - Existing network traffic volumes and capacities and need for improvements required by the project.

- P. Emergency Services – Including but not limited to the Fire Department, Ambulance and Police services existing Emergency Services capabilities of the Borough and State; and assess the impact of the proposed development on said Emergency Service agencies along with actions proposed to mitigate any burdens created by the development.
- Q. Community Facilities and Services - Existing community facilities and services and how the proposed use will affect those facilities and services, including projected needs for additional facilities and services.
- R. Economic and Social Impacts - The local economy and social structure and how the proposed use is likely to affect them.
- S. Additional Requirements - In addition to the above requirements, the Governing Body may require such other information as may be reasonably necessary for the Borough to evaluate the proposed use for its impacts upon the community, including, but not limited to:
- i. A description of alternatives to the proposed use.
 - ii. A statement of any adverse impacts which cannot be avoided.
 - iii. Environmental protection measures, procedures and schedules to minimize damage to critical impact areas during and after construction.
 - iv. A list of all licenses, permits and other approvals required by municipal, county or state law and the status of each with copies of all completed applications/submissions.
 - v. A listing of steps proposed to minimize environmental damage to the site and region during and after construction.

NOW THEREFORE, these amendments to the White Haven Borough Zoning Ordinance are hereby enacted and become effective this 25 day of March, 2019.

ATTEST:


Manager

WHITE HAVEN BOROUGH COUNCIL:


President

APPROVED BY:


Mayor