

Chapter 10

Health and Safety

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Part 1**Abandoned Vehicles****§10-101. Title.**

The short title of this Part shall be the “Nesquehoning Borough Abandoned Vehicle Ordinance.”

(*Ord. 2003-2, 2/26/2002, §1*)

§10-102. Findings.

The Council of Nesquehoning Borough, Carbon County, Pennsylvania, finds that the storage or parking of wrecked, junked, stripped, or abandoned motor vehicles on private property, or the storage, placement, or accumulation on private property of junked, wrecked, discarded, or abandoned machinery, equipment, household appliances, or other debris and waste materials of any kind of description, constitutes a nuisance and is detrimental to the public health, safety, morals, and welfare, except when such vehicles or other herein-named items are parked or stored in a building or unless the same be authorized in conjunction with a business properly operated pursuant to other laws of Nesquehoning Borough.

(*Ord. 2003-2, 2/26/2002, §2*)

§10-103. Purpose.

The purpose of this Part is to protect the health, safety, morals, and welfare of the citizens of Nesquehoning Borough by causing the removal of abandoned, illegally parked, stored, wrecked, junked, and stripped automobiles, trucks, trailers, and other vehicles from both public and private property and to abate public nuisances caused by the storage of, parking of, and accumulations of vehicles which are detrimental to the health, safety, morals, and welfare of the citizens of Nesquehoning Borough or which constitute a peril to highway and traffic safety.

(*Ord. 2003-2, 2/26/2002, §3*)

§10-104. Definitions.

As used in this Part, the following terms shall have the meanings indicated:

Abandoned, wrecked, illegally parked, junked and stripped—any automobile, truck, trailer, motorcycle, or other vehicle, as defined in the Vehicle Code, 75 Pa.C.S.A. §101 *et seq.* which:

- (1) Is inoperable and is left abandoned on a street, highway, or other public property for a period more than 48 hours.
- (2) Has remained illegally on a street, highway, or other public property for a period more than 48 hours.
- (3) Does not have a valid registration plate or a current certificate of inspection or title and is left unattended on or along a street or highway.
- (4) Has remained on private property without the consent of the owner or persons in control of the property for more than 48 hours.

(5) Is inoperable, is not a repairable vehicle, as defined herein, and has remained on private property, except in a completely enclosed structure or building, with or without the consent of the owner, for a period in excess of 7 days.

(6) Does not have a valid registration plate or a current certificate of inspection or title, is not a repairable vehicle as defined herein, and has remained on private property, except in a completely enclosed structure or building, which structure or building shall not include any carports, tents, tarpaulins, or temporary structure or building, but must be comprised of four solid walls and a roof, with or without the consent of the owner, for a period in excess of 7 days.

Illegally parked vehicle—any vehicle parked contrary to any ordinance of Nesquehoning Borough or contrary to any provision of the Pennsylvania Vehicle Code, 75 Pa.C.S.A. §101 *et seq.*

Person—a natural person, firm, co-partnership, association, or corporation.

Repairable vehicle—one that has been registered with Nesquehoning Borough as a vehicle that will be repaired, properly licensed, and inspected within 30 days from the date of registration. For any wrecked, junked, stripped, or abandoned automobile, truck, or motor vehicle on private property to be considered a repairable vehicle, an application must be made by the owner of the vehicle to the Nesquehoning Borough Police Department, accompanied by a registration fee in an amount as established from time to time by resolution of Borough Council, certifying that the owner intends to repair said vehicle within 30 days of the date of registration and will have the vehicle properly inspected, licensed, and in operating condition within the allotted time. Upon application, Nesquehoning Borough shall certify that the vehicle may be registered as a repairable vehicle. The initial 30-day period may be extended for a further 30-day period upon the payment of a fee in an amount as established from time to time by resolution of Borough Council, and written proof that the owner has made a good faith effort to repair the vehicle within the initial 30-day period but has been unable to do so because of the inability to obtain the necessary parts needed to complete repair. [Ord. 2013-1]

Vehicle—every device in, upon or by which any person or property is or may be transported or drawn.

(Ord. 2003-2, 2/26/2002, §4; as amended by Ord. 2013-1, 6/26/2013)

§10-105. Approved Storage Garage or Lots.

The Council of Nesquehoning Borough shall have the authority to designate one or more towing agents, storage garages, or lot(s) as approved for the towing and storage of impounded vehicles.

(Ord. 2003-2, 2/26/2002, §5)

§10-106. Abandoned Motor Vehicles.

1. It shall be unlawful for any person to place, deposit, park, store, or leave or permit to be placed, parked, stored, left, or deposited, any vehicle, or parts thereof, which are illegally parked or in an abandoned, wrecked, junked, or stripped condition as defined herein or which is in violation of any provision of law or any of the

ordinances of Nesquehoning Borough, on any public or private property in Nesquehoning Borough, whether vacant or occupied, or upon any public street, highway, lane, or alley within Nesquehoning Borough unless the same is authorized in conjunction with a business property operated pursuant to the zoning laws and other laws of the Borough.

2. The Nesquehoning Police Department is hereby authorized to remove, or to provide oral or written authorization for a towing agent, to remove any automobile, truck, trailer, motorcycle, van, or other vehicle from the street or highway or public or private property of the Borough and store the vehicle in the storage facility of the towing agent when such vehicle is abandoned, wrecked, junked, or stripped, as those words are defined herein, or is parked on any of the streets, highways, public or private property of and in the Borough, in violation of any provisions of law or of any ordinance of the Borough, provided that no vehicle shall be removed or impounded except in strict adherence to the following Sections of this Part.

(Ord. 2003-2, 2/26/2002, §6)

§10-107. Abandoned Property.

It shall be unlawful to store, place, or accumulate on private property, any junked, wrecked, discarded, or abandoned machinery, equipment, household appliances, or other debris and waste materials of any kind or description, unless in a building, and it shall be unlawful for the owner of such items or the owner or occupant of any property to allow, permit, or suffer the same to be left upon any privately owned property, unless the same be authorized in conjunction with a business properly operated pursuant to other laws of Nesquehoning Borough.

(Ord. 2003-2, 2/26/2002, §7)

§10-108. Towing and Storage Charges.

The charges for towing and storage shall be at such rates as shall be fixed by the Nesquehoning Borough Council by resolution from time to time.

(Ord. 2003-2, 2/26/2002, §8)

§10-109. Procedure to Impound Vehicles.

1. Whenever it is found that any person or any owner or occupier of property in Nesquehoning Borough parks, places, stores, or deposits or permits to be parked, placed, stored, or deposited, any abandoned, wrecked, stripped, or illegally parked vehicle on any private or public property including, but not limited to, public streets, highways, lanes, or alleys, the Police Department of Nesquehoning Borough shall serve notice upon said person, owner, or occupier requiring them to remove said abandoned, wrecked, junked, or stripped vehicle within 7 days of receipt of said notice, or any other lesser time as emergency conditions may warrant. The notice shall describe the make, model, and registration plate number of the vehicle, if known, along with the exact place where the vehicle is located. It shall be sufficient notice to notify the person, owner, or occupier by certified mail at his last known address, if ascertainable, or to place an appropriate notice upon the vehicle in a conspicuous place to remove said vehicle within 7 days, or any other lesser time as the emergency conditions may warrant.

2. If the violations complained of shall not have been remedied within the time period specified in said notice, the Nesquehoning Borough Police Department may remove said vehicle or provide oral written authorization to the Borough-designated towing agent to remove said vehicle by towing said vehicle and holding said vehicle in storage until the cost of towing and storage, as well as all fines and costs associated with the abandoned, wrecked, junked, stripped, or illegally parked vehicle is paid in full. All liens and costs shall, after a proper demand and refusal or a failure to pay after 30 days, constitute a lien on said realty, which shall be filed by the Solicitor upon receipt of all information.

3. It shall be unlawful to park or leave any vehicle on private property or any public street, highway, lane, or alley, if the presence of the vehicle constitutes an immediate threat to the health, safety, welfare, and morals of the citizens of Nesquehoning Borough, or if the vehicle poses an immediate danger to the safety and welfare of the traveling public and the residents of Nesquehoning Borough, or if, in the opinion of the authorized officials, it constitutes a nuisance which gives rise to the existence of emergency conditions and the Nesquehoning Borough Police Department may remove any such abandoned, wrecked, stripped, or illegally parked vehicle, without notice to the owner or person in control of said vehicle, place said vehicle in storage, and hold said vehicle until the cost of storage and expenses for moving said vehicle are paid in full, and until any liens and costs associated with the abandoned, wrecked, stripped, or illegally parked vehicle have been paid.

4. Within 36 hours of receipt or notice by a salvor that a vehicle has been taken into possession under the authority granted by this Part, notice of the fact that such vehicle has been impounded shall be sent by personal service or by certified mail, return receipt requested, by the Nesquehoning Borough Police Department to the last known registered owner of the vehicle and all lienholders of record. Such notice shall designate the make, model, title number, vehicle identification number, and registration plate number, if known, the place from which said vehicle was removed, the reason for its removal and impoundment and the location where the vehicle is being held. Said notice shall also inform the owner and any lienholder of their right to reclaim the vehicle and contents thereof within 30 days after the date of notice at the place where the vehicle is being held by the salvor upon payment of all fines, towing, and storage costs, and the notice must state that the failure of the owner or lienholder to reclaim the vehicle is deemed consent by the owner to the destruction, sale, or other disposition of the abandoned, wrecked, stripped, or illegally parked vehicle, and of all lienholders to dissolution of their liens.

5. When the Nesquehoning Borough Police Department receives a report from the Borough designated towing agent who has towed a vehicle at the request of the Borough, which indicates that the vehicle is valueless except for junk, that fact must be verified by a police officer. If the identity of the last known registered owner or lienholder cannot be ascertained with reasonable certainty, no notice shall be required and the police officer shall issue a certificate junk. Issuance by the police officer of the certificate junk for a vehicle junked shall operate as a divestiture of all right, title, and interest in the vehicle of the owner and all lienholders.

6. No vehicle shall be removed under the authority of this Part if, at the time of the intended removal thereof, the owner or person for the time being in charge of such vehicle is present and expresses a willingness and intention to remove said vehicle

immediately.

7. Where the party abandoning the vehicle cannot be ascertained, then the Police Department shall presume that the last owner, whether an individual person, association, partnership, or corporation, registered with the Department of Revenue of the Commonwealth of Pennsylvania or similar department any other state or territory or with any department of the United States or other nation, is the party guilty of the violation and is subject to the penalties prescribed in this Part unless proof to the contrary is presented; however, this provision shall not apply to those persons, partnerships, associations, or corporations who hold title to a vehicle solely as security under finance purchase agreements or as security for loans, and, in such cases, the Department of Police shall presume that the party having control and custody of the vehicle under the finance or loan agreement is the party guilty of the violation and is subject to the penalties prescribed in this Part, unless proof to the contrary is presented.

8. Within 5 days after notice, the party or parties attached may request a hearing with the Borough Council of Nesquehoning by filing a written request with the Borough Secretary. The Borough Council, after said hearing, shall affirm, withdraw, or modify the notice. [*Ord. 2013-1*]

9. If a hearing is not requested then the parties affected shall proceed to remove or have removed the motor vehicle or motor vehicles or other items from the property in question in accordance with the notice and order.

10. On proper request, a hearing on the matter shall be given forthwith and, where more than one party is involved, it shall be the duty of the party requesting said hearing to notify the Borough Secretary of Nesquehoning of the names and addresses of all other parties affected or interested.

(*Ord. 2003-2, 2/26/2002, §9; as amended by Ord. 2013-1, 6/26/2013*)

§10-110. Effect of Payment of Charges With or Without Protest.

1. The payment of any fines, towing, and storage charges or impoundment charges authorized by this Part shall, unless said payments shall have been made under protest, be final and conclusive, and shall constitute a waiver of any right to recover the monies paid.

2. In the event that any fine, towing, storage, and impoundment charges so imposed shall be paid under protest and the offender, within 5 days of paying all towing, storage, and impoundment charges, fines, and costs, formally, in writing, requests a hearing with the district court having jurisdiction, the offender shall be entitled to a hearing before said magisterial district judge or court of record having jurisdiction, in which case such defendant shall be proceeded against and shall receive such notice as is provided by the Vehicle Code, 75 Pa.C.S.A. §101 *et seq.*, in other cases of summary offenses, and shall have the same rights as to appeal and waiver of hearing. Upon proper request, a hearing on the matter shall be given forthwith and, where more than one party is involved, it shall be the duty of the party requesting said hearing to notify all other parties affected or interested at the time or place of the impending hearing. [*Ord. 2013-1*]

3. The payment of towing and storage charges shall not operate to relieve the owner or operator of any vehicle from liability or any fine or penalty for the violation

of any law or ordinance because of which said vehicle was removed or impounded.

(*Ord. 2003-2, 2/26/2002, §10; as amended by Ord. 2013-1, 6/26/2013*)

§10-111. Violation and Penalties.

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(*Ord. 2003-2, 2/26/2002, §11; as amended by Ord. 2013-1, 6/26/2013*)

§10-112. Records of Vehicles Removed and Impounded.

The Nesquehoning Borough Police Department shall keep a record of all vehicles impounded and shall at all times be able to furnish the owners or agents of the owners thereof with information as to the place of storage of such vehicles.

(*Ord. 2003-2, 2/26/2002, §12*)

Part 2**Grass and Weeds****§10-201. Restrictions of Growth of Grass and Weeds.**

No person, firm, or corporation, owning or occupying any property within the Borough of Nesquehoning, shall permit any grass or weeds or any vegetation whatsoever, not edible or planted for same useful or ornamental purpose, to grow or remain upon such premises or upon the sidewalk, curb, or gutter adjoining so as to exceed a height of 6 inches or to throw off any unpleasant or noxious odor or to conceal any filthy deposit or to create or produce pollen. Any grass, weeds, or other vegetation growing upon any premises in the Borough in violation of any of the provisions of this Section is hereby declared to be a nuisance and detrimental to the health, safety, cleanliness, and comfort of the inhabitants, of the Borough.

(Ord. 66-5, 7/14/1966, §1)

§10-202. Duties of Owner or Occupant of Premises.

The owner or any premises, as to vacant premises or premises occupied by the owner, and the occupant thereof, in case of premises occupied by other than the owner thereof, shall remove, trim, or cut all grass, weeds, or other vegetation growing or remaining upon such premises or upon the sidewalk, curb, or gutter adjoining in violation of the provisions of the §10-201 of this Part.

(Ord. 66-5, 7/14/1966, §2)

§10-203. Enforcement.

The Borough Council, or any officer or employee of the Borough designated thereby for enforcement of this Part, is hereby authorized to give notice, by personal service, or by the United States mail, to the owner, his/her agent, or occupant, as the case may be, of any premises whereon grass, weeds, or other vegetation is growing or remaining in violation of the provisions of §10-201 of this Part, directing and requiring such occupant or owner to remove, trim, or cut such, grass, weeds, or vegetation so as to conform to the requirements of this Part, within 5 days after issuance of such notice. Whenever, in the judgment of the officer designated to enforce this Part, it shall appear to be impracticable to give notice as above provided, either because the owner or occupant cannot be readily located or because a search for the owner or occupant would entail unreasonable delay, the Borough Council or any officer or employee of the Borough designated thereby for enforcement of this Part, may give notice by posting conspicuously on the property where such nuisance exists, a notice or order directing and requiring that such notice be abated within 5 days. In case any person, firm, or corporation shall neglect, fail, or refuse to comply with such notice within the time period stated therein, the Borough Council may order the removal, trimming, or cutting of such grass, weeds, or vegetation, and the costs thereof, together with a penalty of 10 percent of the costs thereof as administrative expenses shall be collected by the Borough from such person, firm, or corporation, in the manner prescribed by law.

(Ord. 66-5, 7/14/1966, §3; as amended by Ord. 2007-2, 7/25/2007)

§10-204. Violations and Penalties.

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(Ord. 66-5, 7/14/1966, §4; as amended by Ord. 84-3, 7/19/1984, §1; by Ord. 95-1, 2/8/1995, §53-4; and by Ord. 2013-1, 6/26/2013)

Part 3**Reimbursement for Emergency Costs and Services****§10-301. Definitions.**

As used in this Part, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

Extraordinary expenses—those expenses, and those related costs and fees, that are incurred by the Borough, local, State, or Federal department or agency, emergency services organization and from the private sector for actual costs or charges for labor, materials, and any other costs or charges for labor, materials, and any other costs associated with the use of specialized extinguishing or abatement agent, chemical neutralizer, or similar equipment or material that is employed to monitor, extinguish, confine, neutralize, contain, clean, or remove any hazardous material that is or may be involved in a fire, or release into the air, ground, or water or the potential threat of any release into the air, ground, or water or the potential threat of any release or fire, and any and all activities associated with the implementation of a protection action (i.e., evacuation) to protect the public health, safety, and welfare.

Extraordinary service—a service performed by any Borough departments or employees, or any public or private sector organization, agency, or company directly associated with mitigating the hazard or potential hazard or involved in providing service to implement a protection action.

Extraordinary services—may include, but is not limited to, the abatement and disposition of hazardous materials, spills, releases, or the threat of spills or releases of hazardous materials, utility line breaks or leakages and other imminent or perceived or potential threats to the health, safety, and welfare of the public that may be detailed or contemplated in the definition of “extraordinary expenses” above. The cost of labor shall include the actual wage rates, including fringe benefits, paid by the Borough of Nesquehoning to its employees, the Borough Local Emergency Management Coordinator and Deputy Coordinator and actual wage rates, including benefits paid, to volunteer firefighters and ambulance personnel by their private employer.

(Ord. 91-7, 9/19/1991)

§10-302. Administration.

The Council of the Borough shall impose and collect from the person, partnership, corporation, or other entity the following costs, expenses, and fees incurred.

A. Fees and costs (including overhead costs) shall encompass all personnel, equipment, fuel, materials, and maintenance expenses in such a form as to insure for full reimbursement for charges from both the public and private sectors actually rendered.

B. Within 30 days of the date of the extraordinary or dangerous occurrence giving rise to the extraordinary service, the affected public agencies, departments, or private companies shall submit its extraordinary service related costs, fees,

charges, and expenses to the Borough for review. At such time as all costs, fees, charges, and expenses related to the extraordinary services have been collected and reviewed, but in any case not later than 60 days from the date of determining the combined cost of rendering extraordinary services, the Borough Council shall submit a bill for all costs, fees, charges, and expenses to the owner, agent, or manager of the vehicle or fixed facility which caused the need for extraordinary services, with a demand that a full remittance be made within 30 days of receipt.

C. All monies received under the provisions of this Part shall be placed into the general fund and reimbursement be made to all public and private sector departments, agencies who had submitted related costs, fees, charges, and expenses for providing an extraordinary service as outlined herein.

(Ord. 91-7, 9/19/1991)

§10-303. Emergency Conditions.

In the event of a spill, leak, or fire involving petroleum, chemicals, and/or hazardous materials, if the shipper, carrier, or owner of said products does not have a contract with a professional hazardous materials clean up crew (DEP-EPA approved), and/or if such conditions warrant, the Borough of Nesquehoning Local Emergency Management Coordinator and/or the designated deputy, or the Borough of Nesquehoning Fire Chief or assistants, shall have the authority to contact a private firm for cleanup, control, extinguishment, and not limited to the disposal of said hazardous products or substance.

(Ord. 91-7, 9/19/1991; as amended by Ord. 2013-1, 6/26/2013)

§10-304. Litigation.

The Borough may enforce the provisions of this Part by civil action in a court of competent jurisdiction for the collection of any amounts due hereunder plus attorney's fees or for any other relief that may be appropriate.

(Ord. 91-7, 9/19/1991)

§10-305. Emergency Services.

Nothing in this Part shall authorize any Borough department or personnel or staff members to refuse or delay an emergency service to any person, firm, organization, or corporation that has not reimbursed the Borough for extraordinary services. Furthermore, nothing in this Section shall be construed to demand reimbursement to the Borough for those Borough services that are normally provided to the Borough residents and others as a matter of the Borough's general operating procedure and for which the levying of taxes or the demand for reimbursement is normally made.

(Ord. 91-7, 9/19/1991)

Part 4**Outdoor Furnaces****§10-401. Purpose and Scope.**

1. Residence, commercial, and industrial establishments situated within the Borough are entitled to clean air and environmental circumstances free of unreasonable dust, obnoxious odors, noxious fumes and smells, as well as an environment free of stored debris and storage of combustible fuels in adjacent or exposed exterior areas within densely populated areas.

2. Research indicates that outdoor fuel burning appliances cause emission problems that cross property lines because the smoke stays close to the ground. It can easily reach humans working or playing outdoors or penetrate neighboring buildings. It also causes problems with smoke visibility. The low-lying smoke can worsen cardiovascular problems such as angina, irritate eyes and lungs, trigger headaches, worsen respiratory diseases such as asthma, emphysema and bronchitis.

(Ord. 2008-8, 10/22/2008, §1)

§10-402. Definitions.

Outdoor furnaces—any equipment, device, apparatus, or structure or any part thereof which is installed, affixed, or situated outdoors for the purpose of combustion of any type of fuel to produce heat or energy used as a component of a heating system providing heat for an interior space or water source.

Chimney—any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired outdoor furnace, especially that part of such structure extending above a roof.

(Ord. 2008-8, 10/22/2008, §2)

§10-403. Regulations.

1. Outdoor furnaces shall not be placed less than 100 feet from the nearest point of intersection of any other adjacent property owner's structure and shall have a chimney stack of at least 20 feet and/or at least 2 feet above the roof line of the highest structure within 2 feet, when installed. Said chimney stack shall also have a spark arrestor installed on top.

2. Outdoor furnaces shall not be placed less than 100 feet from the nearest point of intersection of the property line of another property owner.

3. An area of 20 feet around the outdoor furnace structure shall be free of vegetation, except grass not exceeding 4 inches in height.

4. The minimum required lot size for an outdoor furnace is 40,000 square feet.

5. No other fuel other than natural wood without additive, wood pellets without additive and agricultural seeds in their natural state may be burned. Processed wood products and other non-wood products, recyclable materials, plastics, rubber, paper products, garbage, and painted or treated wood are prohibited.

6. Furnaces are prohibited to burn between May 1 and September 30.

7. Outdoor furnaces which are designed to heat structures 10 percent greater than the size of the structure(s) are not permitted.

8. Outdoor furnaces and associated installation shall be subject to inspection by the Zoning Enforcement Officer and Building Codes Enforcement Officer at any reasonable time to assure compliance with the terms hereof.

9. Outdoor furnace installation is subject to the permit provisions of the Zoning [Chapter 27] and Building Code [Chapter 5] Ordinances, including furnishing the following information:

A. A drawing providing and identifying all of the information necessary to assure compliance herewith, including property lines, location of neighboring properties and structures, height of nearby buildings, etc.

B. Manufacturer's specifications for the outdoor furnace.

C. Compliance with all applicable State and Federal Statutes, including the Environmental Protection Agency (EPA) and the Underwriter's Laboratory (UL) listing.

10. Nothing contained herein shall authorize any installation that is a public or private nuisance, regardless of compliance herewith.

11. This Part shall not be a defense to any civil claims.

12. All outdoor furnaces shall be operated and maintained in strict conformance with the manufacturer's instructions and the regulations promulgated hereunder. In the event of a conflict, the regulation promulgated hereunder shall apply unless the manufacturer's instructions are stricter, in which case the manufacturer's instructions shall apply.

13. Ashes or waste cannot be accumulated in a large area on the property. They may be dispersed on the property as long as no accumulation can be seen (for example: spread in a driveway). Any large accumulation of ashes or waste must be disposed of weekly with your trash.

14. All storage of materials being burnt in the outdoor furnace shall be neatly stacked and/or stored under cover and free from insects (termites, ants, etc.) or any type of disease carrying rodents.

(Ord. 2008-8, 10/22/2008, §3)

§10-404. Enforcement.

1. If noncompliance with the provisions of this Part constitutes a nuisance, or if any condition poses a threat to the health, safety, or welfare of the public, the Police Department shall issue a written notice to be served by registered or certified mail upon the owner of said premises or, if the owner's whereabouts or identity be unknown, by posting the notice conspicuously upon the offending premises.

2. Said notice shall specify the condition complained of and shall require the owner to commence to remove or otherwise rectify the condition as set forth therein within 10 days of mailing or posting of said notice and, thereafter, to fully comply with the requirements of the said notice within a reasonable time.

(Ord. 2008-8, 10/22/2008, §4)

§10-405. Penalty.

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(Ord. 2008-8, 10/22/2008, §5; as amended by Ord. 2013-1, 6/26/2013)

§10-406. Grandfather Clause.

This Part shall not be construed to be retroactive and shall not require the removal of any outdoor furnace in existence within the Borough at the effective date of this Part. All outdoor furnaces in existence at the effective date of this Part shall have or must erect a flue or chimney in accordance with the height requirements contained herein. If an outdoor furnace is more than 50 percent torn down, damaged, deteriorated or otherwise reduced to 50 percent of its original design, any rebuilding or restoration of said outdoor furnace shall be a violation of this Part.

(Ord. 2008-8, 10/22/2008, §6)

Part 5**Tobacco Free Zones****§10-501. Areas Designated.**

The areas of parks and playgrounds where children are present such as the John Cerchiaro Park in New Columbus, the Johnson Park on Railroad Street, the Nesquehoning Little League Field, the Panther Valley Elementary School, the Hauto Fire Company Park, and the Sports Complex Field all located within the Borough of Nesquehoning be designated tobacco-free.

(Res. 2011-1, 3/23/2011)

§10-502. Posting of Signs.

The Borough Council directs that appropriate signage be posted prominently to advise people that the posted areas are tobacco-free and that “Violators will be immediately ejected from the park or recreational facility.”

(Res. 2011-1, 3/23/2011)

§10-503. Notification.

The community will be notified of the passing of this Part.

(Res. 2011-1, 3/23/2011)

Part 6**Smoke, Heat and Carbon Monoxide Detectors****§10-601. Short Title and Declaration of Purpose.**

1. *Short Title.* This Part shall be known and may be cited as the “Borough of Nesquehoning Smoke, Heat and Carbon Monoxide Detector Ordinance.”

2. *Declaration of Purpose.* This Part is adopted for the purpose of promoting the public health, safety, welfare and reasonable and safe use of property within the Borough of Nesquehoning, Carbon County, Pennsylvania.

(Ord. 2011-4, 6/28/2011, §1)

§10-602. Definitions.

General Terms. The following terms and phrases, when used in this Part, shall have the meaning ascribed to them as set forth below, except in those instances where the context already indicates a different meaning. All terms of the singular shall include those of the plural and vice versa. The masculine shall include the feminine and vice versa. The term “may” is permissible; “shall” is mandatory.

Approved UL smoke detector—a sensing device which detects smoke or visible or invisible particles of combustion which:

(1) Shall bear a label or other identification issued by an approved testing agency having service for inspection of materials and workmanship at the factory during fabrication and assembly; and such device, combination of devices and equipment shall be approved and installed for the purposes for which they are intended.

(2) Shall in the case of AC powered detectors be equipped with a “power on” visible indicator; and where a battery power supply is employed, all power requirements shall be met for at least one year’s life including routine battery testing and audible trouble signal shall be given before the battery is incapable of operating the device for alarm purposes.

(3) Shall sound an alarm signal easily audible in each sleeping area with a rating of not less than 85 decibels at 10 feet.

(4) Shall be capable of being interconnected between other smoke detectors and also carbon monoxide detectors and heat detectors.

Apartment building—a building which rooms are rented on a transient or non-transient basis, with accommodations for more than five but less than 16 units.

Carbon monoxide detector—a device which emits an audible signal when activated by carbon monoxide. The carbon monoxide detector must meet or exceed the standards set forth by Underwriter’s Laboratories or Federal Mutual Testing Laboratories and shall contain a power indicator and an alarm level. Such a detector shall be capable of being interconnected between other carbon monoxide detectors and also heat detectors and smoke detectors.

Heat detector—a device which emits an audible signal when activated by heat. The heat detector must meet or exceed the standards set forth by Underwriter’s

Laboratories or Federal Mutual Testing Laboratories and shall contain a power indicator and alarm level. Such a detector shall be capable of being interconnected between other heat detectors and also carbon monoxide detectors and smoke detectors.

Leased and/or rented residential rental dwelling unit—any dwelling designed for permanent living quarters.

Multi-family building—a building in which rooms are rented on a transient or non-transient basis, with accommodations for more than one but less than six units.

Owner—a person, persons or entity which holds legal title to a tract of real estate in question, according to the records in the Carbon County Recorder of Deeds Office.

Sleeping area—an area or areas of a building in which the bedrooms or sleeping areas are located. Where bedrooms or rooms habitually used for sleeping are separated by other use areas (such as kitchens or living rooms, but not bathrooms or closets), they shall be considered as separate sleeping areas for the purposes of this Part.

(Ord. 2011-4, 6/28/2011, §2)

§10-603. Hotel Requirements.

In all hotels, approved smoke, heat and carbon monoxide detection systems interconnected and shall be installed in corridors, hallways and in the room outside sleeping areas, in accordance with the applicable sections of the National Fire Protection Association (NFPA) Standard No. 72-A-1975, 72B-1975, 72C-1975, 72D-1975 and 72E-1975 and also in accordance with the applicable section of the NFPA Standard No. 74-1975, “Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment,” and shall be UL; and, in addition the system shall transmit directly to the Carbon County Communications Center and shall be installed in accordance with the aforementioned standards.

(Ord. 2011-4, 6/28/2011, §3)

§10-604. Apartment Building Standards.

In all apartment buildings, approved smoke and carbon monoxide detection systems shall be interconnected and shall be installed in all corridors, hallways and in the apartment outside sleeping areas, in accordance with the applicable section of NFPA Standard No. 72E and NFPA No. 72; and shall be approved by the Nesquehoning Borough code enforcement. In all apartment buildings, approved heat detection systems shall be interconnected between themselves and all carbon monoxide detectors and smoke detectors and shall be installed in all corridors and hallways, in accordance with the applicable section of NFPA Standard No. 72E and NFPA No. 72; and shall be approved by the Nesquehoning Borough Fire Department.

(Ord. 2011-4, 6/28/2011, §4)

§10-605. Multi-family Building Standards.

In all multi-family buildings, approved smoke and carbon monoxide detection

systems shall be interconnected and shall be installed in each unit in an area giving access to each “sleeping area” and installed according to NFPA standards. All detecting units must be UL approved.

(*Ord. 2011-4, 6/28/2011, §5*)

§10-606. Smoke, Heat and Carbon Monoxide Detectors Required.

The owner of each and every apartment building, hotel, rented residential rental dwelling unit or multi-family building within the boundaries of Nesquehoning Borough shall install smoke, heat and carbon monoxide detectors in each such residential dwelling unit within 1 year of the enactment of this Part.

A. All smoke, heat and carbon monoxide detectors required under this Part shall be installed in accordance with manufacturer’s instructions and current state of art practices. Any alarm system installed to comply with this Part shall be installed in accordance with all applicable national, State and local codes and standards. It shall be the installer’s responsibility to document the adequacy of such installations. Each unit must be UL approved.

B. Enunciator panels that specifically show the detector or room activated are required to be installed in conjunction with the installation of the smoke detectors at entrance ways.

C. Upon the sounding of an alarm the owner, or his designee shall have 1 hour to respond upon receipt of the alarm signal. The building owner or his designee must have available on premises or provisions made to silence the alarm upon response and confirmation by the Nesquehoning Fire Department.

(*Ord. 2011-4, 6/28/2011, §6*)

§10-607. Location.

Smoke, heat and carbon monoxide detectors shall not be placed in dead air spaces which are located at the corner of a room where the ceiling and wall meet and into which smoke or heat may have difficulty penetrating such as kitchens and bathrooms, but smoke detectors shall be located on the ceiling no nearer than 6 inches from the wall or on walls no nearer than 6 inches nor further than 12 inches from the ceiling (NFPA No. 74, Appendix B) while heat detectors and carbon monoxide detectors shall be installed pursuant to the requirements specified in §§10-603 and 10-604 of this Part.

(*Ord. 2011-4, 6/28/2011, §7*)

§10-608. Wiring.

For electrically powered devices, an AC primary power source shall be utilized on all new construction pursuant to the provisions of the National Electrical Code. In an existing “multi-family building” said detectors must be powered by a cord-connected, AC power source; provided, however, the plug-in outlet is fitted with a plug restrainer device and the receptacle is not subject to power loss by a wall switch. All systems required herein shall be interconnected and one unit is to sound an alarm such that all detectors sound an audible signal when a single detector is activated. If battery powered detector units are available and conform to the UL standards contained herein then they be approved for use after inspection by the Nesquehoning code enforcement.

(*Ord. 2011-4, 6/28/2011, §8*)

§10-609. Inspections.

The installation and/or maintenance shall be subject to inspection by the code enforcement official or his or her designee for Nesquehoning Borough annually. The code enforcement official or his or her designee shall inspect each property required to have smoke detectors, heat alarm or carbon monoxide alarms installed to see if the installation and/or maintenance is in compliance with this Part.

(*Ord. 2011-4, 6/28/2011, §9*)

§10-610. Responsibility for Maintenance.

1. It shall be the owner's responsibility and duty to:

A. Install UL approved smoke, heat and carbon monoxide detectors, when required under this Part.

B. Annually inspect said smoke, heat and carbon monoxide detectors to ensure that they are in working condition.

C. Maintain said smoke, heat and carbon monoxide detectors in proper working condition.

D. To inform all person residing in the dwelling unit of the presence and purpose of the smoke, heat and carbon monoxide detectors.

E. To arrange with the Nesquehoning Borough code enforcement officer for a yearly inspection of the detectors and/or alarms required herein.

F. To replace all detectors, including smoke detectors, carbon monoxide and heat detectors at least every 10 years or according to manufacturer's recommendations which ever occurs sooner.

G. To install a smoke, heat and carbon monoxide detector guard to prevent tampering with the unit.

2. It shall be the tenant's responsibility in any leased or rental unit to refrain from interfering with the maintenance or proper operation of any smoke, heat or carbon monoxide detector and to report equipment issues to the owner of the property.

3. It shall be the right of any tenant in any leased or rented unit to file a complaint with the Nesquehoning Borough office when he or she has reason to believe that his or her landlord has violated the terms of this Section.

A. Upon receipt of a complaint, the Nesquehoning Borough Secretary shall notify the Nesquehoning Borough code enforcement to investigate the complaint to determine if the complaint has merit.

B. Upon receipt of the complaint, the Nesquehoning code enforcement officer shall immediately investigate the complaint and the premises for compliance with this Part.

4. The Nesquehoning fire department shall have the right to inspect any installed smoke, heat or carbon monoxide detector in any premises affected herein upon complaint being made any party.

(*Ord. 2011-4, 6/28/2011, §10*)

§10-611. Enforcement.

Primary jurisdiction to enforce this Part shall be vested in the Fire Chief, Code Enforcement Officer or his designee, code enforcement official or emergency personnel; provided, however, that this Part shall not be interpreted so as to prevent any law enforcement officer from enforcing the terms of this Part.

(*Ord. 2011-4, 6/28/2011, §12*)

§10-612. Penalties for Tampering with Detectors.

Any person convicted of tampering with a smoke, heat or carbon monoxide detector so as to render said detector inoperable, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than \$100 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(*Ord. 2011-4, 6/28/2011, §13; as amended by Ord. 2013-1, 6/26/2013*)

§10-613. False Alarms Prohibited.

It shall be unlawful for the property owner, lessee or any person occupying, in control of or otherwise on any premises within the Borough of Nesquehoning, to make or cause to be made, a false alarm, directly or indirectly to any fire department, public safety agency or emergency response agency responding to alarms with the Borough.

(*Ord. 2011-4, 6/28/2011, §14*)

§10-614. False Alarm Service Fees.

1. Upon the determination that a false alarm, as defined herein, has occurred, the Borough shall notify the person responsible for the alarm device from which the false alarm emanated as to the occurrence of the false alarm in writing within 14 days of the date of the false alarm. Within 14 days thereafter, the property owner, lessee or person in control of the property shall make a written report to the Chief of Police as to what steps have been taken to prevent or eliminate future false alarms.

2. In the event of a second false alarm from the same location in any 12-month period, the property owner, lessee or person in control of the property from which the false alarm originated shall be subject to a service fee of \$500 plus the costs of the dispatch of any emergency vehicles or personnel as per the schedule of fees attached hereto as Exhibit "A."¹ These fees may be changed hereafter by Council, from time to time, by resolution.

3. In the event of a third false alarm occurring in any 12-month period, the property owner, lessee or person in control of the property from which the false alarm originated shall be subject to a service fee of \$1,000 plus the costs of the dispatch of any emergency vehicles or personnel as per the schedule of fees attached hereto as Exhibit "A."¹ These fees may be changed hereafter by Council, from time to time, by resolution.

¹Editor's Note: Exhibit "A" is on file in the Borough office.

4. In the event of a fourth false alarm originating from any one location in any 12-month period, the property owner, lessee or person in control of said property shall be subject to a service fee of \$1,000 plus the costs of the dispatch of any emergency vehicles or personnel as per the schedule of fees attached hereto as Exhibit "A."² These fees may be changed hereafter by Council, from time to time, by resolution.

5. A fifth or subsequent false alarm in any one calendar year originating from any single location or address shall subject the property owner, lessee or person in control of said property to a service fee of \$1,000 plus prosecution in accordance with the articles herein plus the costs of the dispatch of any emergency vehicles or personnel as per the schedule of fees attached hereto as Exhibit "A."² These fees may be changed hereafter by Council, from time to time, by resolution.

6. Three or more "nuisance alarms" in any 12-month period which originate from any single location or address is hereby deemed to be declared a nuisance pursuant to the Pennsylvania Borough Code 53 P.S. §45101 *et seq.*, and the Borough may proceed to abate the nuisance by any and all means available.

(*Ord. 2011-4, 6/28/2011, §15*)

§10-615. Operational Standards.

1. If an alarm device is designed to cause a bell, siren, or sound-making device to be activated on or near the premises on which the alarm is installed at the time it gives an alarm, said alarm device shall be equipped with a timing mechanism that will discharge the audible alarm after a maximum period of 10 minutes, other than fire alarms. Exceptions shall be made for certified systems requiring longer sounding alarms for insurance purposes, providing that certification and policy requirements are documented with the Borough, and maintained, and further providing that these devices are equipped with timers to disengage the audible alarm after the minimum time required for certification. All existing audible alarms without such a timing mechanism, other than fire alarms, shall be disconnected by the owner or lessee or person in control of said premises within 90 days of the effective date of this Part.

2. The sensory mechanism used in conjunction with an alarm must be adjusted to suppress false indications of fire or intrusion, so that the alarm device will not be activated by impulse due to transient pressure in water lines, short flashes of light, wind noises such as rattling or vibrating of doors or windows, vehicular noises adjacent to the premises, or other forces unrelated to genuine alarm situations.

3. The alarm device must be maintained in good repair to assure reliability of operation.

4. No person shall conduct any testing upon any alarm device without first notifying the Carbon County 911 Center and the Nesquehoning Borough Police Department. Where the equipment is keyed through an intermediary, no such permission is necessary unless the alarm or signal is to be relayed to the 911 Center or the Nesquehoning Borough Police, Fire or EMS Departments.

(*Ord. 2011-4, 6/28/2011, §16*)

²Editor's Note: Exhibit "A" is on file in the Borough office.

§10-616. Penalties for Failure to Comply.

Should the owner of any leased or rented residential dwelling unit fail to comply with the terms of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than \$100 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(*Ord. 2011-4, 6/28/2011, §17; as amended by Ord. 2013-1, 6/26/2013*)

