

## **Chapter 13**

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**Part 1****Alarm Systems****§13-101. Definition.**

Whenever used in this Part the following terms shall have the following meanings:

*Alarm*—a communication to the police, fire, EMS department or 911 Center indicating that a crime, fire or other emergency situation warranting immediate action by the police, fire or EMS departments has occurred or is occurring.

*Alarm device*—a device designed to automatically transmit an alarm directly to a public safety agency or to a person who is instructed to notify the public safety agency of the alarm.

*Borough*—the Borough of Nesquehoning.

*Conduct*—an act or omission and its accompanying state of mind or, where, relevant, a series of acts or omissions.

*False alarm*—an alarm to which the police, fire or EMS department responds when a crime, fire or other emergency has not occurred.

*Knowingly*—a person or entity acts knowingly when he/she/it is aware or practically certain that his/her conduct will result in producing the result which is prohibited herein.

*Intentional*—a person or entity acts intentionally if it is his/her/its conscious object to engage in conduct of the nature prohibited herein or to cause such a result.

*Nuisance alarm*—the activation of any alarm system or automatic telephone dialer alarm due to other than the said purpose for which the alarm system is designed. Any activation of any alarm system or automatic telephone dialer alarm that is caused by violent natural catastrophic conditions, including electrical storms or power outages, or conditions beyond the control of the permit holder will not constitute a “nuisance alarm.”

*Person*—an individual, corporation, partnership, incorporated association or other similar entity.

*Public safety agency*—the Pennsylvania State Police, or any municipal police, fire or emergency medical service department or volunteer fire companies and emergency services.

*Purposely or with purpose*—intentionally.

(Ord. 2009-3, 6/24/2009, §1)

**§13-102. False Alarms Prohibited.**

It shall be unlawful for the property owner, lessee or any person occupying, in control of or otherwise on any premises with 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 within the Borough.

(Ord. 2009-3, 6/24/2009, §2)

**§13-103. 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, in an amount as established, from time to time, by resolution of Borough Council, plus the costs of the dispatch of any emergency vehicles or personnel shall be in such amounts as established from time to time by resolution of Borough Council. [*Ord. 2013-1*]

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, in an amount as established, from time to time, by resolution of Borough Council, plus the costs of the dispatch of any emergency vehicles or personnel shall be in such amounts as established from time to time by resolution of Borough Council. [*Ord. 2013-1*]

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, in an amount as established, from time to time, by resolution of Borough Council, plus the costs of the dispatch of any emergency vehicles or personnel shall be in such amounts as established from time to time by resolution of Borough Council. [*Ord. 2013-1*]

5. A fifth or subsequent false alarm in any 1 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, in an amount as established, from time to time, by resolution of Borough Council, plus prosecution in accordance with the articles herein plus the costs of the dispatch of any emergency vehicles or personnel shall be in such amounts as established from time to time by resolution of Borough Council. [*Ord. 2013-1*]

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. 2009-3, 6/24/2009, §3; as amended by Ord. 2013-1, 6/26/2013*)

**§13-104. 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. 2009-3, 6/24/2009, §4)*

**§13-105. Penalties and Remedies for Violations.**

1. In the event a violation of this Part occurs, in addition to such other remedies as may be available under existing law, the Borough may institute an action in equity to prevent, restrain, correct or enjoin such violation.

2. Any person, whether as principal or agent, who violates this Part or assigns or abets its violation, shall upon conviction thereof, before any magisterial district judge, be sentenced to pay a fine not to exceed \$1,000, together with the costs of prosecution. Each violation shall constitute a separate offense, for which a summary conviction may be sought.

3. The Borough Police Department shall be responsible for enforcement of this Part.

*(Ord. 2009-3, 6/24/2009, §5)*



**Part 2****Transient Retail Merchants****§13-201. Definitions.**

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

*Charitable organization*—an organization which has been granted an exemption by the United States Internal Revenue Service under §501(c) or §509(a) of the Internal Revenue Code.

*Solicitor*—any person:

(1) Who goes from private residence to residence, conveying or transporting goods, wares, or merchandise, or offering or exposing the same for sale or making sales or delivering articles, goods, wares, or merchandise to purchasers.

(2) Who goes from private residence to residence, soliciting or attempting to take orders from individuals for sale of goods, wares, or merchandise, including magazines, books, periodicals, or personal property of any nature whatsoever, for future delivery, or for service to be performed at that time or in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such order or whether or not he is collecting advance payments on such order.

(3) Who goes from private residence to residence soliciting donations or money for themselves or for any organization for any purpose, whether or not anything of value is given in return.

*Transient merchant*—any person, who for 3 months or less, hires, rents, or obtains a definite place of business, including a storeroom, a market stand, or a private residence, for the sale of goods, wares, merchandise, or to offer or expose the same for sale or for future delivery and sale, including any person employed or assisting at such place of business.

(Ord. 2013-1, 6/26/2013)

**§13-202. Exemptions.**

The terms of this Part shall not be held to apply to (A) the acts of merchants or their employees or agents in delivering goods or services in the regular course of business; (B) any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk and milk products, (C) farmers selling only their own produce; and (D) any person engaged in religious proselytizing, pamphleteering, distribution of religious tracts, political campaigning, or similar activities which involve no solicitation or sales or commercial transactions of any nature.

(Ord. 2013-1, 6/26/2013)

**§13-203. License Required.**

It shall be unlawful for any solicitor or transient merchant, as defined in §13-201 of this Part to engage in the activities described in said Section within the Township

without first obtaining a license therefore in compliance with the provisions of this Part. (Ord. 2013-1, 6/26/2013)

**§13-204. Application.**

1. Applicants for a license under this Part must file with the Police Department of the Borough an application in writing on a form to be furnished by the Borough, and which contains the following information:

A. Name and physical description of applicant.

B. The address and telephone number of the applicant, the organization for whom he is soliciting and, in the case of transient merchants, the local address from which proposed sales will be made.

C. A brief description of the nature of the business and the goods to be sold or the organization on behalf of which funds are solicited.

D. If employed, the name and address of the employer.

E. The source of supply of the goods or property proposed to be sold, or orders taken for the sale thereof; and, the proposed method of delivery.

F. Two recent photographs of the applicant, which shall be approximately 2 inches by 2 inches, showing the head and shoulders of the applicant in a clear and distinguishable manner.

G. A statement describing any criminal convictions that the applicant may have for burglary, theft, violent crimes against persons or property, fraud, or misrepresentation.

H. Applications involving solicitation for a charitable institution shall be accompanied by a copy of the grant of exemption issued by the Internal Revenue Service.

I. A description of any vehicle to be used in the course of applicant's solicitation or business, including the vehicle's license number and name of the vehicle's owner.

J. A statement of the length of time for which a license is requested.

2. This application completed as to all matters inquired of shall be turned over to the Police Department of the Borough, together with an application fee to cover the expenses of investigation, payable to the Borough of Nesquehoning; said fee to be established and amended from time to time by resolution of the Borough Council.

(Ord. 2013-1, 6/26/2013)

**§13-205. Investigation, Issuance, and Denial of License.**

1. Upon receipt of each application and the application fee, it shall be immediately reviewed by the Police Department for completeness and accuracy and for completion of a criminal background check.

2. If, as a result of such review, the application is found to be complete and accurate and the applicant's record is free of convictions of burglary, theft, violent crimes against persons or property, fraud, or misrepresentation, the Chief of Police or his designate shall endorse on the application his approval and return the application to the Borough Secretary or designate, who shall, upon payment of the prescribed initial



license fee deliver to the applicant his or her license within 24 hours after payment of the fee, provided that no license shall be issued to any convicted felon or person convicted of a crime involving moral turpitude.

3. Such license shall contain the signature of the issuing officer and the phone number of the Nesquehoning Borough Police Department, and shall show the name, address, and photograph of said licensee, the class of license issued, a description of the kind of goods, solicitation, or business involved, the organization involved and its name, address and telephone number, the amount of fee paid, the date of issuance and the expiration date, as well as the license number and other identifying description of any vehicle used in such licensed business. Each solicitor or transient merchant must secure an individual license. No license shall be used at any time by any person other than the one to whom it is issued. The Borough Secretary shall keep a permanent record of all licenses issued and those rejected.

4. Applicants denied a license shall be so notified in writing setting forth specifically the grounds for denial and advising the applicant of the right of appeal the denial under the Local Agency Law, 2 Pa.C.S.A. §751 *et seq.* Such notice shall be transmitted by first class mail, postage prepaid, to the applicant's last known address. (Ord. 2013-1, 6/26/2013)

#### **§13-206. Charitable Organization Fee Exemption.**

Charitable organizations shall comply with the provisions of this Part, but the application or license fee may be reduced or waived as set forth by resolution of the Borough Council.

(Ord. 2013-1, 6/26/2013)

#### **§13-207. License Fees.**

Every applicant granted a license as a solicitor or transient merchant under this Part shall pay a license fee as established by resolution of the Borough Council.

(Ord. 2013-1, 6/26/2013)

#### **§13-208. Rules and Requirements, Restrictions on Time and Place.**

1. From October 1 through April 15, no licensee shall solicit at private residences before 9 a.m. or after 6 p.m., prevailing time. From April 15 through September 30, no licensee shall solicit at private residences before 9 a.m. or after 9 p.m., prevailing time.

2. No licensee shall solicit at any private residences or business premises exhibiting a sign reading "No Solicitors" or words of the same or similar meaning.

3. Residents may erect "No Solicitors" or similar signs not to exceed 120 square inches in size, which for the purpose of this Part shall be conspicuously displayed near their entrance walk or doorway.

4. Solicitors may solicit at business properties in the Borough during all business hours; and may solicit in Borough streets and other public places from 9 a.m. prevailing time to sunset; provided, that such solicitors obtain a license as required by this Part and they shall be subject to all the other provisions of this Part.

5. No licensee shall occupy a fixed location upon any Borough street, sidewalk, or alley for the purpose of conducting sales of any kind.

6. No licensee shall carry on the activities of a solicitor or transient merchant as described in subsection .1 above.

7. The Chief of Police shall maintain a list of addresses of residents who have stated in writing or by telephone call to the Police Department that they do not wish to be solicited at any time. A copy of this "No Soliciting List" shall be supplied along with and as part of any transient retail license issued hereunder.

8. The license shall be conspicuously displayed on the person of each licensee during all solicitation activities.

9. The licensee shall permit the residents of any home where solicitation is conducted to examine the license upon request.

10. No licensee may use any false statement or misrepresentation in the course of solicitation.

11. All licensees shall immediately leave a premises when requested by the owner or occupant to do so.

*(Ord. 2013-1, 6/26/2013)*

#### **§13-209. Revocation of Permit; Notice of Hearing.**

1. Licenses issued under the provisions of this Part may be revoked by the Chief of Police or his designee for any of the following causes, each of which causes shall constitute a violation of this Part:

A. Fraud, misrepresentation, or false statement contained in the application for license.

B. Fraud, misrepresentation, or false statement made in the course of carrying on his business as solicitor or transient merchant.

C. Any violation of this Part.

D. Conviction of any crime or misdemeanor involving moral turpitude.

E. Conducting solicitation or business in an unlawful manner or in such a manner as to constitute a breach of the peace.

F. Refusing to leave premises when asked to do so by the occupant.

G. Conducting solicitation or business not described in the license.

H. Conducting transient retail business activities at residential premises posted with a "No Solicitors" or similar sign or at residential premises identified on the Borough's "No Soliciting List" accompanying the issuance of a license hereunder.

2. Notice of the revocation of a license shall be given in writing, setting forth specifically the grounds for revocation and advising the licensee of the opportunity for a hearing. Such notice shall be transmitted by certified mail, postage prepaid, to the permittee at his last known address.

*(Ord. 2013-1, 6/26/2013)*

#### **§13-210. Appeals.**

Any person aggrieved by the action of the Chief of Police or his designee in the denial of application approval as provided in §13-204 of this Part, or in the action of the

revocation provided in §13-209 of this Part, shall have the right to appeal to the Borough Council. Such appeal shall be taken by filing with the Council, within 14 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for appeal. Aggrieved persons timely filing appeals shall be granted a hearing by the Council in accordance with the Local Agency Law, 2 Pa.C.S.A. §751 *et seq.*

(*Ord. 2013-1, 6/26/2013*)

**§13-211. Expiration of Permit.**

All permits expire on December 31 of the year when issued unless otherwise stated in the permit.

(*Ord. 2013-1, 6/26/2013*)

**§13-212. 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. 2013-1, 6/26/2013*)

