

Chapter 6

Conduct

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Part 1**Discharge of Firearms or Similar Devices****§6-101. Discharge of Firearms Prohibited.**

Except in necessary defense of person and/or property and except as provided hereunder, it shall be unlawful for any person to use, fire, or discharge any gun or other firearm within the Borough of Nesquehoning.

(Ord. 2008-7, 6/25/2008, §1)

§6-102. Use of Air Rifles, Bows 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 §6-103 hereunder, and except on a target range which is properly constructed to trap or stop the projectile as ascertained by the Chief of Police.

(Ord. 2008-7, 6/25/2008, §2)

§6-103. 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 laws of this Commonwealth engaged in target shooting upon the grounds or property belonging to or under control of such organization.

C. Any law enforcement officers when used in the discharge of their official duties.

D. Persons firing or discharging a firearm, bow and arrow, or other similar weapon at a rifle or gun range.

E. Persons firing or discharging a bow and arrow or crossbow at a private range or target, either indoors or outdoors, and contained entirely within the boundaries of the real estate or real property.

(Ord. 2008-7, 6/25/2008, §3)

§6-104. Penalties for Violation.

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. 2008-7, 6/25/2008, §4; as amended by Ord. 2013-1, 6/26/2013)

§6-105. Enforcement.

The Nesquehoning Borough Police Department shall be charged with the enforcement of this Part.

(Ord. 2008-7, 6/25/2008, §5)

Part 2**Drug Paraphernalia****§6-201. General.**

1. "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, inhaling, or otherwise introducing into the human body a controlled substance or any physically or mentally altering substance in violation of this Part. It includes, but is not limited to:

A. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

B. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

C. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.

D. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.

E. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.

F. Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.

G. Separation gins and shifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana.

H. Blenders, bowls, containers, spoons, and mixing devices used, intended for use or designed for use in compounding controlled substances.

I. Capsules, balloons, envelopes, and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.

J. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.

K. Hypodermic syringes, needles, and other objects used, intended for use or designed for use in parenterally injected controlled substances into the human body.

L. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body such as:

(1) Metal, wooden, acrylic glass, stone, plastic, or ceramic pipes with or without screens permanent screens, hashish heads, or punctured metal bowls.

- (2) Water pipes.
- (3) Carburetion tubes or devices.
- (4) Smoking and carburetion masks.
- (5) Roach clips; meaning objects used to hold burning material such as marijuana cigarette that has become too small or too short to be held in hand.
- (6) Miniature cocaine spoons and cocaine vials.
- (7) Carburetor pipes.
- (8) Bongs.
- (9) Ice pipes and chillers.

M. Items that can be used to introduce substances into the human body that may be used for legitimate purpose in business, industry, or medicine, but can be used to cause intoxication, riation, stupefaction, or cause other physical or mental impairment.

2. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors statements by an owner or by anyone in control of the object under any State and Federal laws relating to any controlled substance, the proximity of the object; in time and space, to a direct violation of this Part, the proximity of the object, direct or circumstantial evidence of the intent of an owner or of anyone in control of the object, to deliver to a person who he knows or should reasonably know, intend to use the object to facilitate a violation of this Part; the innocence of the owner or anyone in control of the object, as to a direct violation of this act, should not prevent a finding that the object is intended for use as drug paraphernalia, instructions oral or written provided with the object concerning its use, descriptive materials accompanying the object which explain or depict its use; national and local advertising concerning its use, the manner in which the object is displayed for sale, whether the owner, or anyone in control of the object is a legitimate supplier of like or related items in the community such as licensed distributor or dealer of tobacco products, direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise, the existence and scope of legitimate uses for the object in the community and expert testimony concerning its use.

3. Anybody attempting to sell, convey, or possess drug paraphernalia as deformed in 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*]

(*Ord. 99-3, 10/27/1999; as amended by Ord. 2013-1, 6/26/2013*)

Part 3**Sex Offender Residency Restrictions****§6-301. Definitions.**

Child care facility—a licensed day care center, child care facility or any other child care service facility exempt from licensing pursuant to the laws of the Commonwealth of Pennsylvania.

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 Nesquehoning, which said “open space” is regulated, maintained, and/or owned by the Borough of Nesquehoning.

Community center—a building and related facility used for educational, social, cultural, or recreational activities.

Permanent residence—a place where a person lives, abides, lodges, or resides for 14 or more consecutive days.

Public park or recreational facility—any recreational facility, playground, or park, owned or operated by the Borough of Nesquehoning or any other governmental agency including, but not limited to, the Panther Valley School District, the County of Carbon or the Commonwealth of Pennsylvania.

School—any public or private entity which provides education services to a minor under the age of 18 years.

Sex offender—any person, over the age of 18 years of age who has been convicted of a crime against a minor identified in §9795.1 of the Judicial Code, 42 Pa.C.S.A. §9795.1, and which includes, but is not limited to, kidnaping, luring a child into a motor vehicle, institutional sexual assault, indecent sexual 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 individuals convicted of any attempt to commit any of the offenses enumerated herein. [Ord. 2013-1]

Temporary residence—a place where a person lives, abides, lodges, or resides for a period of less than 14 days in the aggregate during any calendar year, which is not the person’s permanent address or place where the person routinely lives, abides, lodges, or resides and which is not the person’s permanent residence.

(Ord. 2007-1, 4/25/2007, §1; as amended by Ord. 2013-1, 6/26/2013)

§6-302. Residency Restriction/Prohibition.

1. It shall be unlawful for any sex offender as defined above to establish a permanent or temporary residence within 1,500 feet of any school, child care facility, common open space, community center, public park, or any other recreational facility.

2. 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, child care facility, common open space, community

center, public park, or other recreational facility.

(*Ord. 2007-1, 4/25/2007, §2*)

§6-303. Notice to Move.

1. Any sex offender who resides on a permanent or temporary basis within 1,500 feet of any school, child care facility, common open space, community center, public park, or recreational facility shall within 45 days of receipt of written notice of the sex offender's noncompliance with this Part, move from said location to a new location, but said location may not be within 1,500 feet of any school, child care facility, common open space, community center, park, or other recreational facility. Furthermore, it shall be a violation each day that a sex offender shall remain in any location that is within 1,500 feet of any school, child care facility, common open space, community center, public park, or recreational facility.

2. Any person receiving such a notice to relocate from within 1,500 feet from a school, child care facility, common open space, community center, public park, or recreational facility may appeal such notice to the Borough Council and request a hearing with Council within 5 days of receipt of said notice and requesting additional time in which to relocate or any other valid reason pertaining to the notice to relocate. Said request for a hearing shall be in writing and filed with the Borough Secretary within 5 days of the receipt of such notice. Council shall thereafter hold a hearing within 15 days of receipt of the request for a hearing at which time the affected person will be granted an opportunity to address the Council as a whole, or a committee thereof or a hearing officer so appointed by Council to hear such a matter and thereafter report findings to Council, whereupon Council will act upon the appeal request.

(*Ord. 2007-1, 4/25/2007, §3*)

§6-304. Exceptions.

This Part shall not apply to any person who established residence prior to the effective date of this Part, and it shall not apply if the school, child care facility, common open space, community center, public park, or recreational facility are located within 1,500 feet of the person's permanent residence after the effective date of this Part. The provisions of this Part shall not be applicable to persons incarcerated in any facility owned, maintained, and/or operated by the County of Carbon, the Commonwealth of Pennsylvania or the United States of America.

(*Ord. 2007-1, 4/25/2007, §4*)

§6-305. 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. 2007-1, 4/25/2007, §5; as amended by Ord. 2013-1, 6/26/2013*)

§6-306. Enforcement.

The Nesquehoning Borough Police Department shall be charged with the enforcement of this Part.

(Ord. 2007-1, 4/25/2007, §6)

§6-307. Publication.

The Borough Secretary is herein directed by the Borough Council of Nesquehoning to have prepared and placed at the Borough office for Nesquehoning during regular business hours a map of the Borough of Nesquehoning depicting the areas where sex offenders are restricted from residing on a permanent or temporary basis.

(Ord. 2007-1, 4/25/2007, §7)

