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Part 1**Preliminary Provisions****§1-101. Short Title.**

The short title of this Code of Ordinances prepared and published for the Borough of Nesquehoning shall be the “Borough of Nesquehoning Code of Ordinances.”

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

§1-102. Citation of Code of Ordinances.

The Borough of Nesquehoning Code of Ordinances may be cited by Section number. The approved short form is “Code.” Thus, “Code, §27-101” refers to §101 of Chapter 27 of this Code of Ordinances.

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

§1-103. Arrangement of Code.

1. This Code is divided into Chapters which are subdivided as follows:
 - A. Subchapters, identified by capital letters, beginning with a Chapter title and number.
 - B. Parts, identified by Arabic numerals, beginning with a Part title and number.
 - C. Subparts, identified by Arabic numerals, beginning with a title.
2. The Sections of the Code are subdivided as follows:
 - A. Subsections, identified by Arabic numerals.
 - B. Paragraphs, identified by capital letters.
 - C. Subparagraphs, identified by Arabic numerals enclosed within parentheses.
 - D. Clauses, identified by lower case letters enclosed within parentheses.
 - E. Subclauses, identified by Arabic numerals followed by a parenthesis.
 - F. Items, identified by identified by lower case letters followed by a parenthesis.
 - G. Subitems, identified by small Roman numerals.

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

§1-104. Headings.

Chapter, Subchapter, Part, Subpart, Section, Subsection, Paragraph, Subparagraph, Clause, and Subclause headings contained in the Code may not be deemed to govern, limit, modify, or affect the scope, meaning or intent of the Code. The headings of Sections, Subsections, or other divisions of this Code are intended as mere captions to indicate the contents of the Section, Subsection, or other division and shall not be deemed to be taken as titles of such Section, Subsection, or other division, nor as any part of said Section, Subsection, or other division unless expressly so provided.

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

§1-105. Tenses, Gender, and Number.

Except as may be otherwise stated in any provision of this Code, the present tense includes the past and future tenses, and the future the present; the masculine gender includes the feminine and neuter, the feminine includes the masculine and neuter, and the neuter includes the masculine and feminine; and the singular includes the plural, and the plural the singular.

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

§1-106. Construction.

1. Except as may be otherwise specifically provided by any provision of this Code, the Statutory Construction Act of 1972, 1 Pa.C.S.A. §1501 *et seq.*, shall be applied in construing this Code.

2. *Effect of Repeal or Expiration of Code Section.*

A. The repeal of a Code Section or ordinance, or its expiration by virtue of any provision contained therein, shall not affect any right accrued or any offense committed, any penalty or punishment incurred, or any proceeding commenced before the repeal took effect or the ordinance expired.

B. When any ordinance repealing a former Code Section, ordinance, clause, or provision shall itself be repealed, such repeal shall not be construed to revive such former Code Section, ordinance, clause, or provision, unless it shall be expressly so provided.

3. *Saving Clause.* The provisions of this Code, so far as they are the same as those ordinances and regulations in force immediately prior to the adoption of this Code, are intended as a continuation of such ordinances, resolutions and regulations and not as a new enactment. The provisions of this Code shall not affect any suit or prosecution pending or to be instituted to enforce any of the prior ordinances or regulations. Except as specifically stated in this Code or in the ordinance adopting this consolidation, codification and revision of the ordinances and regulations, it is the intention of the Borough Council that no ordinance or regulation of the Borough be amended, revised or repealed by implication.

4. *Resolutions.* The provisions of this Code of Ordinances may contain resolutions, that is, actions of the Borough Council (in written form and designated "resolution") which did not require prior public notice in accordance with the provisions of the Borough Code, 53 P.S. §45101 *et seq.*, at the time of their passage by the Borough Council. Such "resolutions" are included herein for ease of reference and the Borough Council does not intend by their inclusion herein to require prior public notice before amending, revising or repealing such resolution or resolutions as may have been included herein in the future. It is the intention of the Borough Council that such actions of the Borough Council that may be included in this Code and specifically cited and designated as a resolution shall not become an ordinance (requiring prior public notice before amendment, revision or repeal) by the simple fact of inclusion in this Code.

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

§1-107. Normal Numbering.

1. *Chapters.* Chapters are numbered sequentially in Arabic throughout this Code.
2. *Parts.* Parts are numbered sequentially in Arabic throughout this Code.
3. Whenever other divisions are necessary, Chapters shall be divided into Subchapters, Parts into Subparts and designated with the Chapter or Part number followed by a capital letter. For instance, Chapter 1 may be divided into Subchapters 1A and 1B.
4. *Sections.* Sections are numbered sequentially throughout a Chapter and a Part such that the first number or number is the Chapter number, followed by a hyphen, followed by the Part number, followed by the Section number within the Part. For example, "§1-101" designates Chapter 1, Part 1, Section 1. Similarly, "§27-305" designates Chapter 27, Part 3, Section 5.
5. *Internal Divisions of Sections.* Whenever internal divisions are necessary, Sections shall be divided into Subsections, Subsections into Paragraphs, Paragraphs into Subparagraphs, Subparagraphs into Clauses, and Clauses into Subclauses, and Subclauses into Items, designated as follows:
 1. Subsection.
 - A. Paragraph.
 - (1) Subparagraph.
 - (a) Clause.
 - 1) Subclause.
 - a) Item.
 - I. Subitem

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

§1-108. Special Numbering Problems.

1. *Addition of New Units Between Existing Units.* If it becomes necessary to introduce a new Chapter, Part, or Section between existing Chapters, Parts or Sections, the new Chapter, Part, or Section shall be designated by the addition of a capital letter suffix to the preceding Chapter, Part, or Section number. Thus, a Chapter introduced between Chapters 5 and 6 would be Chapter 5A and Sections in that Chapter would be numbered, for instance, "§5A-101." If it becomes necessary to introduce a Part between existing Parts 5 and 6 the new Part would be Part 5A and Sections in that Part would be numbered, for instance, "§5-5A01." A new Section introduced between existing Sections 5 and 6 would be "§5-105A." When a number of new Parts or Sections have been introduced the Chapter or Part shall be renumbered.
2. If it becomes necessary to introduce a Subsection between Subsections, for instance, Subsections .5 and .6, the new Subsection would be numbered Subsection .5-A.
3. If it becomes necessary to introduce a unit smaller than a Subsection between existing units, the entire Subsection shall be revised and renumbered.
4. *Vacated Numbers.* Whenever a number is vacated by a revocation or repeal, the remaining elements in the overall unit shall retain their old numbers until the overall unit is completely revised. Prior to revision, the vacated number may be marked:

“[Reserved].”

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

§1-109. Amending Code.

1. All ordinances passed subsequent to the adoption of this Code which amend, repeal or in any way affect this Code shall be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed Chapters, Parts, Sections, Paragraphs, Clauses, or other part or provision hereof, by subsequent ordinance, such repealed portions may be excluded from this Code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances omitted are readopted as a new Code by the Borough Council.

2. Amendment to any provision of this Code shall be made by specific reference to the Chapter, Part, Section and/or Subsection number of this Code in the following language:

A. *Amendment or Revision.* “Chapter ___, Part ___, Section ___, Subsection ___, is hereby amended (revised) to read as follows . . .” The amended or revised provisions may then be set out in full as desired.

B. *Addition.* “Chapter ___, Part ___, Section ___, Subsection ___, is hereby amended by the addition of the following . . .” The new provision shall then be set out in full as desired.

C. *Repeal.* “Chapter ___, Part ___, Section ___, Subsection ___, is hereby repealed in its entirety.”

3. It is the intention of the Borough Council that the numbering scheme of this Code be adhered to in enacting future ordinances. In the event that any ordinance or other enactment be adopted which does not conform to the numbering system of this Code, it is the intention of the Borough Council that such enactment be renumbered in the process of supplementing, revising or updating this Code to conform to the numbering scheme of this Code. The Borough Council hereby acknowledges and confirms that the numbering scheme herein is for ease of reference and that the renumbering of any enactment when added to this Code shall not in any manner affect the validity of said enactment.

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

§1-110. Altering Code.

It shall be unlawful for any person to change or amend by addition or deletion any part or portion of this Code, or to insert or delete pages or portions thereof, or to alter or tamper with such Code in any manner whatsoever, except by ordinance or resolution or other official act of the Borough Council.

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

§1-111. Penalties.

1. *Penalty Where No Penalty Provided.* Whenever in this Code or in any ordinance of the Borough any act is prohibited or is declared to be unlawful, or whenever in this

Code or other ordinance the doing of any act is declared to be unlawful, and no specific penalty is provided therefor:

A. *Violations of Health, Safety, and Welfare Provisions.* For violations of ordinances adopting building, housing, property maintenance, health, fire or public safety codes; and for ordinances regulating water services, water pollution, air pollution and noise, the following penalty shall be provided:

(1) 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.

B. *Other Violations.* All other penalties, except for penalties in Chapter 15, “Motor Vehicles and Traffic” (based on the Vehicle Code, 75 Pa.C.S.A. §101 *et seq.*), penalties and ordinances adopted under the authority of the Municipalities Planning Code, 53 P.S. §10101 *et seq.*, earned income tax ordinances adopted under the Local Tax Enabling Act, 53 P.S. §6913, and ordinance adopted under authority of the Sewage Facilities Act, 35 P.S. §750.1 *et seq.*, should provide, generally:

(1) Any person, partnership, or corporation who or which has violated or permitted the violation of the provisions of this Part, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, shall pay a judgment of not more than \$600 plus all court costs and reasonable attorney fees. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by a magisterial district judge. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues or each Section of this Part which shall be found to have been violated shall constitute a separate violation.

2. The imposition of a penalty under the provisions of this Code shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the laws of the Commonwealth of Pennsylvania and the United States of America. In addition, the Borough may institute injunctive, mandamus or any other appropriate action or proceeding at law or in equity for the enforcement of this Code. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus, or other appropriate forms of remedy or relief.

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

Part 2**Departments, Boards, and Commissions****A. Recreation Commission****§1-201. Adoption.**

This Part is adopted in accordance with §2708 of the Borough Code, 53 P.S. §47708, as amended.

(*Ord. 77-8, 10/20/1977, Art. 1*)

§1-202. Creation of Recreation Board.

There is hereby created a Recreation Board which shall be known as “Nesquehoning Recreation Commission.”

(*Ord. 77-8, 10/20/1977, Art. 2*)

§1-203. Appointment of Board Members.

The Board shall be composed of nine members who shall be appointed by the Council of the Borough of Nesquehoning with the power to supervise and maintain public recreation places and facilities, as designated by the Council of the Borough of Nesquehoning. The Board shall work with the Council’s Recreation Committee. The Board members shall serve for terms of 5 years and the terms of the members shall be staggered in such a manner that at least two expire annually. Vacancies in the Board, occurring otherwise than by expiration of term, shall be filled for the unexpired term in the same manner as original appointments. Board members shall serve without pay.

(*Ord. 77-8, 10/20/1977, Art. 3; as amended by Ord. 91-11, 11/21/1991; and by Ord. 94-3, 7/13/1994*)

§1-204. Election of Officers by Board Members.

The members of the Recreation Board shall elect their own chairman and secretary and shall select all other necessary officers to serve for a period of 1 year. The Board may adopt by-laws, rules, and regulations, subject to approval of Council, covering its procedure not inconsistent with the provisions of State laws. The Recreation Board shall from time to time make rules governing the operation and conduct of the recreational facilities operated by the Board, subject to approval of Council. The Board shall hold regular meetings at such times and places as it may designate.

(*Ord. 77-8, 10/20/1977, Art. 4*)

§1-205. Duties of the Recreation Board.

The Recreation Board shall maintain, operate, and supervise the public parks, playfields, and all other outdoor and indoor recreation areas and facilities owned or controlled by the Borough of Nesquehoning.

(*Ord. 77-8, 10/20/1977, Art. 5*)

§1-206. Acceptance of Grants, Gifts, Bequests, or Donations.

In behalf of Nesquehoning Borough Council, the Recreation Board may accept any grants, gifts, bequests, or donation of services, equipment, real estate, or money from any individual or group, to be used as specified by the donor, or by the terms of acceptance, subject to the approval of Nesquehoning Borough Council. Any grants, gifts, bequests, or donation of money to the Recreation Commission shall be deposited in the Borough's recreation account. Any grants, gifts, bequests, or donations of equipment, other personal property or real estate to the Recreation Commission shall be the property of Nesquehoning Borough Council.

(*Ord. 77-8, 10/20/1977, Art. 6*)

§1-207. Entering into Contracts or Incurring Debts Prohibited.

The Recreation Board shall have no authority to enter into any contract or incur any obligation binding upon the Borough of Nesquehoning. The Recreation Board, in September of each year, shall submit in writing to Council its request for personnel, equipment and other material needed for the following year. The Recreation Board, however, shall have authority to enter into contracts for the rental of the Nesquehoning Recreation Center, shall collect the rentals therefrom, shall be authorized to pay any expenses incidental to the rental of the Nesquehoning Recreation Center and shall, by November 1 of each year, submit a report to Council covering the receipts and expenditures of said rentals and shall on that date pay over to Council any sum of accrued rentals in excess of \$250.

(*Ord. 77-8, 10/20/1977, Art. 7; as amended by Ord. 79-1, 5/17/1979, Art. 2*)

§1-208. Reporting Procedures.

The Recreation Board shall make full and complete reports to the Borough Council at such times as may be designated or requested by the Borough Council. The fiscal year of the Recreation Board shall conform to that of the Borough of Nesquehoning.

(*Ord. 77-8, 10/20/1977, Art. 8*)

Part 3**Elected and Appointed Officials****A. Independent Auditor****§1-301. Appointment of Independent Auditor.**

The Council of the Borough of Nesquehoning hereby authorizes the appointment of an independent auditor, who shall be a certified public accountant registered in Pennsylvania, a firm of certified public accountants so registered or a competent public accountant or a competent firm of public accountants.

(*Ord. 82-2, 11/18/1982, Art. 2*)

§1-302. Term of Appointment.

The said auditor or accountant or firm thereof shall be appointed annually, by resolution, before the close of the Borough's fiscal year, to wit, before December 31 of each year.

(*Ord. 82-2, 11/18/1982, Art. 3*)

§1-303. Duties and Powers.

The said auditor or accountant or firm thereof shall make an independent examination of the accounting records of the Borough for such fiscal year and shall also perform the other duties and exercise the powers as conferred upon him by §1196 of the Borough Code, 53 P.S. §46196 *et seq.*

(*Ord. 82-2, 11/18/1982, Art. 4; as amended by Ord. 95-1, 2/8/1995, §20-13*)

§1-304. Abolishment of Office of Elected Borough Auditor.

Upon the appointment of an independent auditor, accountant, or firm thereof, the office of elected Borough Auditor shall be abolished, although the elected Borough auditors then in office shall continue to hold their office during the term for which elected and the elected Borough Auditor shall not audit, settle, or adjust the accounts audited by such independent auditor or accountant or firm thereof, but shall perform the other duties of their office until their said term expires.

(*Ord. 82-2, 11/18/1982, Art. 5*)

B. Secretary/Treasurer**§1-311. Secretary/Treasurer.**

1. This Part 3B is adopted pursuant to §1104 of the Borough Code, 53 P.S. §46104.

2. The offices of Secretary of the Borough of Nesquehoning and Treasurer of the Borough of Nesquehoning shall be held by the same person.

(*Ord. 88-1, 1/4/1988, Art. I and II*)

C. Tax Collector**§1-321. Real Estate Tax Certification and Duplicate Bills.**

Effective with the date of this Part 3C, the Borough Council of the Borough of Nesquehoning appoints the locally-elected Tax Collector, his/her predecessor or successor as the agent authorized to provide and issue real estate tax certification upon request by the real estate property owner or their authorized agent, and hereby authorize said Tax Collector to assess, collect and retain, as compensation for providing said tax certification service, a fee in an amount as established from time to time by resolution of Borough Council, per taxing year certified; further, a fee is hereby established, to be collected and retained by the above-designated persons, for the issuance of a duplicate tax bill or facsimile thereof, said fee shall be in an amount as established from time to time by resolution of Borough Council, for each duplicate document issued.

(Ord. 2009-6, 9/23/2009; as amended by Ord. 2013-1, 6/26/2013)

Part 4**Open Records Policy****§1-401. Purpose.**

The purpose of this policy is to assure compliance with Act 3 of 2008, the Pennsylvania “Right-to-Know” Law, 65 P.S. §67.101 *et seq.*, as amended, to provide access to public records of Nesquehoning Borough; to preserve the integrity of Nesquehoning Borough records; and to minimize the financial impact to the residents of the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

(*Res. 2008-12, 12/17/2008, §1*)

§1-402. Designated Open Records Officer and Record Request Procedure.

It is the policy of the Borough to require the presence of a designated employee when public records are examined and inspected and to charge reasonable fees for duplication of public records of the Borough. Nesquehoning Borough designates the Borough Secretary as the Open Records Officer, responsible for assuring compliance with the Pennsylvania “Right-to-Know” law, in accordance with the following guidelines:

A. The Borough Secretary may designate certain employee(s) to process public record requests.

B. The Borough Secretary is responsible for minimizing, where possible, the financial impact to the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

C. All requests for public records of the Borough under this policy shall be specific in identifying and describing each public record requested. In no case shall the Borough be required to create a public record which does not exist or to compile, maintain, format or organize a public record in a manner in which the Borough does not currently compile, maintain, format or organize the public record. All requests for public records shall be submitted in writing and include the date of the request, requester’s name, address and telephone number, certification of United States residency, signature of requester, and if duplication is requested, appropriate payment.

D. The designated employee shall make a good faith effort to determine whether each record requested is a public record.

E. The Borough shall facilitate a reasonable response to a request for Nesquehoning Borough’s public records. In no case is the Borough expected to provide extraordinary staff to respond to the request, but will respond in a manner consistent with the Borough’s administrative responsibilities and consistent with the requirements of the Pennsylvania “Right-to-Know” Law.

F. The designated employee shall respond to the requester within 5 business days from the date of receipt of the written request. If the Borough does not respond within 5 business days of receipt thereof, the request is deemed denied.

G. The response provided by the Borough shall consist of (1) approval for access to the public record; (2) review of the request by the designated employee; or (3) denial of access to the record requested.

H. If access to the public record requested is approved, the public record shall be available for access during the regular business hours of the Borough. The designated employee shall cooperate fully with the requester, while also taking reasonable measures to protect the Borough public records from the possibility of theft and/or modifications. The presence of a designated employee is required when public records are examined and inspected.

I. Fees for duplication of public records shall be as established by the Commonwealth's Office of Open Records. The Borough may at its discretion waive fees.

J. In the event the estimated cost of fulfilling a request submitted under this policy is expected to exceed \$100, the designated employee(s) shall obtain the expected cost in advance of fulfilling the request to avoid unwarranted expense of Borough resources.

K. If the request is being reviewed, the notice provided by the Borough shall be in writing and include the reason for the review and the expected response date, which shall be within 30 days of the notice of review. If the Borough does not respond within 30 days thereof, the request is deemed denied. Review of the request is limited to situations where:

(1) The record requested contains information which is subject to access, as well as information which is not subject to access that must be redacted prior to a grant of access. The redacted information is considered a denial as to that information.

(2) The record requires retrieval from a remote location.

(3) A timely response cannot be accomplished due to staffing limitations.

(4) A legal review is necessary to determine whether the record requested is a public record.

(5) The requester has failed to comply with the Borough's policy and procedure requirements.

(6) The requester refuses to pay the applicable fees.

(7) The extent or nature of the request precludes a response within the required time period.

Upon a determination that one of the factors listed above applies, the Borough shall send a written notice to the requester within 5 business days of receipt of the request for access. The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days following the 5 business days permitted by law, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice. If the requester agrees to the extension, the request shall be deemed denied on the following the date specified in the notice if the agency has not provided a response by that date.

L. If access to the record requested is denied, the notice provided by the Borough shall be in writing as indicated in the form attached hereto entitled "Denial of Request to Review and/or Duplicate Nesquehoning Borough Records."

M. If the request is denied or deemed denied, the requester may file an appeal with the Commonwealth's Office of Open Records within 15 business days of the mailing date of the Borough's notice of denial, or within 15 days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the agency for delaying or denying the request.

N. Within 30 days of the mailing date of the final determination of the appeals officer, the requester or Borough may file a petition for review or other document as required by Rule of Court, with the Court of Common Pleas for Carbon County. The decision of the court shall contain findings of fact and conclusions of law passed upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision. A petition for review under this section shall stay the release of documents until a decision is issued.

O. This policy shall be available for review at the Borough office.

(Res. 2008-12, 12/17/2008, §2)

BOROUGH OF NESQUEHONING
PUBLIC RECORD REVIEW/DUPPLICATION REQUEST

Please print legibly

Date of Request: _____

Requester's Name: _____

Requester's Address: _____

Requester's Telephone Number: _____

I request review/ duplication(check as appropriate) of the following records:

Important: You must identify or describe the records with sufficient specificity to enable the Borough to determine which records are being requested. Use additional sheets, if necessary.

I certify that I am a resident of the United States of America.

Signature of Requester

This request may be submitted in person, by mail, by facsimile or E-mail to:

Nesquehoning Borough Secretary
Open Records Officer
Borough Office
114 West Catawissa Street
Nesquehoning, PA. 18240

BOROUGH OF NESQUEHONING
DENIAL OF REQUEST TO REVIEW AND/OR DUPLICATE

Date of Denial: _____

Requester's Name: _____

Requester's Address: _____

Re: Denial of Request to review and/or Duplicate _____

Date of Request: _____

Dear _____

Please be advised that your request to review/duplicate the following records: _____

has been denied for the following reason(s): _____

The denial is based upon the following authority: _____

You have the right to appeal this decision. If you appeal, you must: (1) within fifteen(15)days of this notice of denial or deemed denial, file an appeal with the Commonwealth of Pennsylvania, Department of Community & Economic Development, Office of Open Records. the appeal shall state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the Borough for delaying or denying the request.

Nesquehoning Borough Open Records Officer