

**BOROUGH OF WIND GAP
COUNTY OF NORTHAMPTON
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO. 455

AN ORDINANCE OF THE BOROUGH OF WIND GAP, NORTHAMPTON COUNTY, PENNSYLVANIA, REPEALING ORDINANCE NO. 6 AND RE-ADOPTING AND RE-ESTABLISHING AN ORDINANCE PROHIBITING AND/OR REGULATING SUCH NUISANCES AND PROVIDING FOR PENALTIES AND ENFORCEMENT

WHEREAS, the Borough of Wind Gap is a duly organized and existing municipality and political subdivision within the County of Northampton, Commonwealth of Pennsylvania with offices located at 29 Mechanic Street, Wind Gap, Northampton County, PA 18091; and,

WHEREAS, pursuant to the Borough Code, the Borough of Wind Gap has the power to prohibit, remove and/or regulate nuisances along with the authority to make regulations for safety, comfort and general welfare of the Borough and its residents (53 P.S. Section 46202 and the subsections thereunder including, but without limitation, subsections (4), (5), (6), (10), (13), (14), (15), (17), (18), (23), (28), (39), (45), (50) and (74); and,

WHEREAS, the Borough has decided that various conduct and activities constitutes nuisances which need to be prohibited, regulated and/or restricted as such activities constitute an unreasonable or significant interference with the public health, the public safety, the public peace, the public comfort and/or the public convenience.

WHEREAS, the present Borough Ordinance prohibiting and/or regulating nuisances (Ordinance No. 6) is outdated – having been adopted in 1893 – and it is the intent to repeal said ordinance and replace same with the instant ordinance.

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NOW, THEREFORE, BE IT ORDAINED AND ENACTED, AND IT IS HEREBY ORDAINED AND ENACTED, by the Council of the Borough of Wind Gap, County of Northampton and Commonwealth of Pennsylvania, as follows:

SECTION 1. All of the above recitals are herein incorporated by reference.

SECTION 2. General provisions.

The conditions in the following sections (and subsections) are hereby declared by the Council of the Borough of Wind Gap to be against the public health, safety, welfare and good order. It shall be illegal for any person to act (or fail to act) so as to authorize, permit or allow any of the conditions in this ordinance to exist. The term "person" in this ordinance shall include the plural as well as the singular and shall also mean any company, proprietorship, partnership, corporation or other entity wherever appropriate.

SECTION 3. Destruction of public property.

No person shall damage, injure, break or destroy any streetlight or streetlight fixture, fire hydrant, park property or any real or personal property owned or leased by the Borough of Wind Gap.

SECTION 4. Unguarded excavations.

No owner of any tract of land or parcel of ground located within the Borough shall permit any excavation or hole with a minimum diameter of two (2) feet and a depth of two (2) feet to remain opened without placing a suitable cover over such hole or excavation, without placing suitable barriers around such hole or excavation and without placing suitable warnings to the public around such hole or excavation.

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SECTION 5. Cutting of weeds, grass and excessive vegetation.

The Borough of Wind Gap herein incorporates by reference its Weed Ordinance No. 402 as fully as though the same was herein reiterated at length and appeared at large hereto. However, the penalty provisions of that Ordinance Number 402 are amended to conform to the penalty provisions noted herein.

SECTION 6. Graffiti.

No person shall write, etch, imprint, inscribe, mark or paint any word, symbol, sign, trademark, initial or inscription whatsoever on or upon or otherwise deface any building, structure, tree, or natural or man-made feature upon any property, public or private, located within the Borough of Wind Gap without first having obtained the permission of the owner of such property.

SECTION 7. False alarms.

In the event that an alarm within a vehicle or building shall be triggered falsely more than three (3) times within any thirty (30) calendar day period, the owner of the vehicle or building shall be subject to the penalties as set forth herein.

SECTION 8. Littering.

No person shall toss, throw, drop, deposit or leave any trash, refuse, garbage, debris or other waste material of any kind upon any property, public or private, within the Borough of Wind Gap or upon any street, right-of-way, alley, curb, sidewalk, gutter, culvert or drain.

SECTION 9. Water and Other Debris.

No person shall discharge or deposit water (or other liquid), leaves, grass, sticks, wood, stones, rocks, dirt or debris of any type into or onto any street, right-of-way, alley, curb, sidewalk, gutter, culvert or drain.

SECTION 10. Dogs and cats.

No person shall own or control within the Borough any dog(s) or cat(s) as to either cause unsanitary or unhealthy conditions or noxious or foul odors or allow conditions to exist that would cause the animals to be improperly fed or watered or fail to receive proper health care.

SECTION 11. Other animals.

No person shall own or control within the Borough any chickens, fowls, pigs, hogs, pigeons, cows, horses, or any other type of livestock or any other wild or domesticated animals.

SECTION 12. Noise, odors, fumes, dust and vibrations.

Section 509 – Dust, Dirt, Smoke, Vapors, Gases and Odor control,
Section 515 – Noise Control and Section 516 – Vibration Control of the Borough Zoning Ordinance is hereby incorporated by reference as fully as though the same were reiterated at length and appeared at large hereto.

SECTION 13. Air and water pollution.

No person shall engage in any activity that is not compliance with the air pollution law and/or water pollution laws of the Commonwealth of Pennsylvania, the United States of America and any standards or regulations promulgated pursuant to such laws.

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SECTION 14. Flammables, explosives and chemicals.

No person shall engage in any activity in which flammables, explosives, chemicals or fireworks are manufactured, produced, used or stored (whether indoors or outdoors) or disposed in such a fashion as to cause or create a hazard or the risk of a fire or an explosion within the Borough of Wind Gap.

SECTION 15. Radioactive or nuclear materials.

No person shall engage in the manufacture, production, use, storage (whether indoors or outdoors) or disposal of any radioactive or nuclear materials in any form and for any other purpose whatsoever, except those necessary for medical or dental health care radiology and/or radiography.

SECTION 16. Radioactive or nuclear power generation, transmission or distribution.

No person shall engage in the manufacture, production, use, storage (whether indoors or outdoors) or disposal of any radioactive or nuclear materials in any form for electrical, heating, gas or other power or utility generation, transmission or distribution.

SECTION 17. Other hazardous materials.

No person shall engage in any activity that involves the manufacture, production, use, storage (whether indoors or outdoors) or disposal of any other dangerous or hazardous materials, flammables, explosives, chemicals or other products.

SECTION 18. Dump or Landfill.

No person shall engage in any activity that constitutes a dump or landfill.

SECTION 19. Lighting.

Section 510 – Light, Glare and Heat Control of the Borough Zoning Ordinance is hereby incorporated by reference as fully as though the same was reiterated at length and appeared at large hereto.

SECTION 20. Violations and penalties.

A. Any person violating the provisions of this ordinance shall, upon conviction thereof, pay a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), plus costs, for the first offense; not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00), plus costs, for the second offense committed within a period of one (1) year; not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), plus costs, for the third offense committed within a period of one (1) year; and not less than Seven Hundred Fifty Dollars (\$750.00) nor more than One Thousand Dollars (\$1,000.00), plus costs, for fourth and subsequent offenses committed within a period of one (1) year. "Costs" shall mean all expenses incurred by the Borough in prosecuting the case including but not limited to administration fees, filing fees, stenographic transcript charges, witness fees, whether lay or expert and reasonable attorney's fees.

B. A violation of this Ordinance shall constitute a summary offense and prosecution for such offense shall be in accordance within the practice in summary cases (53 P.S. Section 48301) with, however, the applicable fine to be imposed as delineated in the subsection A, supra, of this section. (53 P.S. Section 48308).

C. This ordinance may be enforced by either the Borough Zoning Officer or the Borough Police Department.

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D. In addition to proceeding by way of a summary offense, the Borough shall also retain the right to institute by an appropriate action or proceeding, whether at law or in equity or both, any lawsuit or injunction to prohibit, prevent, restrain, correct, abate such nuisance(s) whether in or on land, a building, structure, waterways or otherwise. These civil remedies are cumulative to the summary offense remedy noted above.

E. Any act, or failure to act, shall be considered a separate offense for each day the violation continues and may be prosecuted as such.

SECTION 21. Severability

The terms, conditions and provisions of this Ordinance are severable. If any such term, condition or provision of this Ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining terms, conditions or provisions of this Ordinance; and it is hereby declared to be the intent of the Borough that this Ordinance would have been adopted and enacted had such unconstitutional, illegal or invalid term, condition or provision not been included herein.

SECTION 22. Repealer

A. Borough Ordinance Number Six (6) is repealed in its entirety; however and for purposes of reference, Section 502 Nuisances of the Borough Zoning Ordinance shall be deemed to refer to this updated ordinance. Further, the terms, conditions and provisions of any other Borough ordinances that are inconsistent herewith shall be deemed vacated and/or repealed; but, any other terms, conditions and

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provisions of that or any other Borough ordinances that are not inconsistent herewith shall remain in full force and effect.

B. This ordinance is not meant to supersede Chapter 65 – Nuisances of the PA Crime Code, Title 18 Pa. C.S.A. Section 6501 through and including Section 6505. The Borough police (or other appropriate officials or individuals) have the discretion to prosecute under those sections of the criminal code and request that the remedies and penalties recited therein be (if legally permitted) in addition to any prosecution under this Ordinance and the enforcement of the rights and the pursuit of the remedies under this Ordinance.

SECTION 23. This Ordinance shall become effective with five (5) days of its enactment.

ORDAINED AND ENACTED into an Ordinance this ____ day of _____, 2006.

ATTEST:

BOROUGH OF WIND GAP

Louise Firestone, Secretary

By: _____
Kerry Gassler, President

APPROVED this ____ day of _____, 2006.

ATTEST:

Louise Firestone, Secretary

By: _____
Mitchell D. Mogilski, Sr., Mayor

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