

BOROUGH OF CLARKS SUMMIT

LACKAWANNA COUNTY, PENNSYLVANIA

ORDINANCE NO. 2009-04

AN ORDINANCE OF THE BOROUGH OF CLARKS SUMMIT, LACKAWANNA COUNTY, PENNSYLVANIA, TO DECLARE CERTAIN ACTIONS AS PUBLIC NUISANCES; TO PROHIBIT THE EXISTENCE OF DANGEROUS BUILDINGS AND STRUCTURES; TO REGULATE BURNING; AND TO ABATE OTHER PUBLIC NUISANCES IN ORDER TO PREVENT THE BLIGHT AND DETERIORATION OF PROPERTY, TO PROTECT PROPERTY VALUES WITHIN THE MUNICIPALITY AND TO ABATE PUBLIC HEALTH HAZARDS, AND OTHERWISE PROTECT THE GENERAL HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF BOROUGH OF CLARKS SUMMIT, AND TO PROVIDE ENFORCEMENT REMEDIES FOR VIOLATIONS AND AUTHORIZE ACTIONS TO ABATE NUISANCES.

Nuisances

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§101. Purpose.

The purpose of this Ordinance is to declare certain actions as public nuisances; to prohibit the existence of dangerous buildings and structures; to regulate burning; and to abate other public nuisances in order to prevent the blight and deterioration of property, to protect property values within the municipality and to abate public health hazards, and otherwise protect the general health, safety and welfare of the citizens of Borough of Clarks Summit.

§102. Responsibility – Nuisances Declared.

It shall be the responsibility of the property owner and/or occupant of the premises upon which any public nuisance, as described in this Ordinance, is situated and/or occurring, jointly with the owner of any junk, rubbish, structure, building or other item which constitutes such public nuisance, to provide for the removal or abatement of any such public nuisance and the remediation of any environmental problems associated with the activity or property condition which constitutes the public nuisance. Any owner of property upon which a public nuisance is located or taking place, and/or any person who or which owns junk, rubbish, structures or buildings which constitute a public nuisance, and/or any person who or which owns or is engaged in conduct, which constitutes a public nuisance, shall be deemed to be in violation of this Ordinance, and shall be subject to the penalties and remedies prescribed herein.

The following are hereby declared to be public nuisances and shall be removed, disposed of, or corrected as herein provided:

- A. Junk - Any junk not stored in a junkyard in compliance with the Borough Junkyard Ordinance and Borough Zoning Ordinance.
- B. Vehicles - The storage or deposit on a lot outside a fully enclosed building of one (1) or more abandoned or junked vehicles.
- C. Unsanitary or Dangerous Material
 - 1. The accumulation of junk, garbage and/or rubbish which is unsanitary, or otherwise dangerous or detrimental to the health, safety, or general welfare of the occupants of the premises or the public.
 - 2. The existence or presence of any accumulation of junk, garbage, refuse, rubbish, or animal or vegetable

matter which may attract vermin and/or insects, or in which insect larvae and vermin such as rodents are capable of breeding.

- D. Dangerous Structures - Maintaining or causing to be maintained any dangerous dwelling, structure or building, including, but not limited to, abandoned or unoccupied dwellings or buildings in a state of dilapidation or disrepair in accord with the provisions of the Borough Code Enforcement Ordinance or in violation of the Uniform Construction Code or other applicable property maintenance codes.
- E. Wells; Cisterns - Permitting or allowing any well, cistern, or similar structure to be, or remain uncovered.
- F. Vegetation; Trees
1. Permitting the growth of any vegetation which presents a public safety hazard by limiting the vision or right-of-way of travelers on any public road or sidewalk, or which has been permitted to grow to conceal any violation of this Ordinance. This shall not affect any requirement for screening provided in accord with any other Borough ordinances. The removal of any tree or vegetation shall be undertaken only in compliance with Borough Shade Tree Commission requirements.
 2. Permitting the growth of any trees, vegetation or other appendages of or to realty kept or maintained or which are permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, or injurious to the public.
- G. Noise - Any noise source which due to intensity, frequency, duration, location, lack of shielding or other reason which causes injury, damage, hurt, inconvenience, or discomfort to others in the legitimate use and quiet enjoyment of their rights of person or property.
- H. Light - Any light source which due to intensity, frequency, duration, location, lack of shielding or other reason causes any direct or sky-reflected glare visible at the property line of the property on which the light source is located; or which causes any safety hazard to any driver on any public or private road.
- I. Streets, Ditches, Rights-of-way or Other Public Places
1. All obstructions caused or permitted on any street, sidewalk, ditch, right-of-way to the danger or annoyance of the public.
 2. All snow, ice accumulation, stones, rubbish, mud, dirt, filth, slops, vegetable matter or other article thrown or placed by any person on or in any street, sidewalk, ditch, right-of-way or other public place which in any way may cause any injury to the public.
 3. Plowing or otherwise disturbing the soil within the public street right-of-way.
 4. Placing a vehicle or other obstruction on or along any street of the Borough so as to interfere with vehicular or pedestrian traffic, unless it should become necessary to drive or place the vehicle in such position to load or unload materials, merchandise or furniture, and then such vehicle shall only be permitted to remain for such lengths of time as is necessary to load or unload the same.
 5. All sidewalks, ditches, gutters or curbstones permitted to remain in an unsafe condition or out of repair.
- J. Drainage; Ponds; Pools
1. Draining or flowing, or allowing to drain or flow, by pipe or other channel, whether natural or artificial, any foul or offensive water or drainage from sinks, bathtubs, wash stands, lavatories, water closets, privies, or cesspools of any kind or nature whatsoever, or any foul or offensive water or foul or offensive drainage of

any kind, from property along any public highway, road, street, avenue, lane or alley: or from any property into or upon any adjoining property.

2. Throwing, spreading or depositing in any watercourse, drainage way, channel or gutter, and permitting it to remain there, any stone, soil, vegetation or any other material.
 3. All ponds or pools of stagnant water in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.
- K. Open Excavations - Allowing or permitting any excavation, material excavated or obstruction on or adjoining any highway, street, or road, to remain opened or exposed without the same being secured by a barricade, temporary fence, or other protective materials.
- L. Burning - Engaging in, allowing or permitting any burning in violation of the Borough Open Burning Ordinance.
- M. Animals - Owning, maintaining, harboring, caring for, having custody of, controlling, possessing, keeping, raising, nursing, treating or otherwise having or exposing and animal in violation of any Borough animal control ordinance.
- N. Explosive Substances - All houses or buildings used for special storage of powder, dynamite or other explosive substances, except those maintained pursuant to a permit issued by competent authority.
- O. Sewage; Putrid Material - Any lot, house, building or inclosure in which or upon which there exists any untreated sewage effluent, stagnant water, animal or vegetable matter or other substances capable of becoming putrid, offensive, annoying or unhealthy.
- P. Water Quality - The pollution, or the existence of a condition or conditions which cause or threaten the pollution of any waters in the Borough in such manner as to cause or threaten injury to any of the inhabitants of this municipality either in their health, comfort or enjoyment of their property.
- Q. Others - Any other such attractive public nuisance, action, non-action, situation or physical object which by its nature is deemed by the Enforcement Officer to constitute a public nuisance under the terms of this Ordinance.

§103. Definitions.

Abandoned or Junked Vehicle: Any vehicle not stored in a fully enclosed building which is not in good operating and road-worthy condition except as may otherwise be permitted at a legally existing business in compliance with other Borough ordinances. *Good operating and road-worthy condition* means a vehicle having both a current and valid registration and current and valid inspection sticker as required by the motor vehicle laws of the Commonwealth of Pennsylvania. Registrations and inspections which have been expired for less than sixty (60) days shall be considered current for the purposes of this definition.

Agricultural Operation: An enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry. It includes necessary structures within the limits of the parcel and the storage of equipment necessary for production.

Antique Vehicle - Any vehicle twenty-five (25) years or older which has been restored to good operating and road-worthy condition. (See definition of good operating and road-worthy condition.)

Attractive Public Nuisance - A condition of property which may reasonably be construed to be a source of danger to the persons who may reside or otherwise be resort on the premises, or who may, by reason of something which may be expected to attract them, come to the premises.

Borough - Borough of Clarks Summit, Lackawanna County, Pennsylvania.

Building - Any structure having a roof supported by fully enclosed exterior walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, services, goods or materials of any kind or nature, including, but not limited to, dwellings, dwelling units, mobile homes, garages, barns, stables, sheds, plants, factories, warehouses and similar structures.

Burning - Any process which involves the use of an open flame or intense heat including but not limited to, uncontained fires, contained fires, any manufacturing and commercial process involving burning, and incinerators.

Collector Vehicle - Any vehicle of limited manufactured production from the present through twenty-four (24) years old, in good operating and road-worthy condition. (See definition of good operating and road-worthy condition.)

Continuous (as related to dog nuisances) - Uninterrupted, unbroken and persistent or so persistently repeated at short intervals as to constitute virtually an unbroken series.

Excessive (as related to dog nuisances) - Substantially greater than what is commonly considered usual or common barking by a dog.

Dangerous Premises - Any building, structure or property which has any or all of the following defects:

- A. Any structure which shows damage or deterioration to the supporting member or members, or damage or deterioration to the non-supporting enclosing or outside walls or coverings so as to be dangerous to life, safety, or the general health and welfare of the occupants or the public;
- B. Any structure which has improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which has insufficient strength to be reasonably safe for the purpose used;
- C. Any structure which has been damaged by fire, wind or other causes so as to be dangerous to life, safety, or the general health and welfare of the occupants or the public;
- D. Any structure which is so damaged, dilapidated, decayed, unsafe, unsanitary, vermin infested or which so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease, so as to cause injury to the health, safety or general welfare of those living therein;
- E. Any structure which has parts which are so inadequately attached that they may fall and injure, occupants, property or members of the public;
- F. Any structure which lacks illumination, ventilation or sanitation facilities or because of another condition is unsafe, unsanitary, or dangerous to the health, safety, or general welfare of the occupants or the public;
- G. Any building, structure or property which because of its location or due to an accumulation of garbage or rubbish is unsanitary, or otherwise dangerous, to the health or safety of the occupants or the public;
- H. Any building, structure or property which can be construed as a public nuisance.

Dwelling - Any building which is wholly or partly used or intended to be used for living by human occupants.

Emergency Case - A violation which poses an imminent threat to the public health, safety or welfare and which

requires immediate action to eliminate such imminent threat.

Enforcement Officer - The individual(s), agency or firm appointed by the Borough of Clarks Summit Borough Council to enforce the provisions of this Ordinance, including any and all duly appointed Assistant Enforcement Officers.

Garbage - Animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Good Operating and Road-Worthy Condition - A vehicle having both a current and valid registration and current and valid inspection sticker as required by the motor vehicle laws of the Commonwealth of Pennsylvania. Registrations and inspections which have been expired for less than sixty (60) days shall be considered current for the purposes of this definition.

Junk - Any scrap, waste, refuse, reclaimable material or debris, vehicles, appliances, equipment or machinery, or parts thereof, whether or not stored or used in conjunction with dismantling, processing, salvage, storage, baling, disposal or other use or disposition as governed by the Borough Junkyard Ordinance and Borough Zoning Ordinance.

Junkyard - An area of land, with or without buildings, used for the storage of junk as governed by the Borough Junkyard Ordinance and Borough Zoning Ordinance.

Lot - A designated parcel, tract or area of land, regardless of size, established by a plat or other legal means, and intended for transfer of ownership, use, lease or improvements or for development, regardless of how or if it is conveyed.

Nuisance - Any unreasonable, unwarrantable or unlawful course of conduct or use of private or public property which causes or may cause injury, damage, hurt, inconvenience, annoyance, interference, or discomfort to others in the legitimate use and enjoyment of their rights of person or property.

Occupant - The person owning, leasing, renting, occupying or having charge, care, custody or control of any premises in Borough of Clarks Summit.

Outside Storage - Not contained in a building fully enclosed with completed walls and roof.

Owner (as related to dog nuisances) - When applied to the proprietorship of a dog, includes every person having a right of property in such dog, or has it in his care, and every person who permits such dog to remain on or about any premises occupied by said person.

Person: An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization or other legal entity.

Property Owner - The person who, alone or jointly or severally with others is the owner of record of the premises as filed with the Lackawanna County Recorder of Deeds. In the case where an owner is represented by an agent, including but not limited to a manager, executor, executrix, administrator, administratrix, or guardian of the estate of the owner, such person thus representing the actual owner shall be bound to comply with the provisions of this Ordinance and with rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

Premises or Property - A piece, parcel, lot or tract of land.

Rubbish - Combustible and non combustible waste materials including but not limited to, garbage, junk, residue from the burning of wood, coal, coke, and other combustible material, paper, rags, cartons, boxes, wood, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust, and similar materials.

Structure - A combination of materials to form a construction for use, occupancy, or ornamentation whether installed

on, above, or below the surface of land or water.

Unregistered Vehicle - Any motor vehicle or trailer that does not display a license plate with a current registration sticker and does not have a valid State safety inspection sticker. This term shall not apply to vehicles (such as licensed antique vehicles) for which State regulations do not require an inspection sticker. The term also shall not include motor vehicles displaying a license and inspection stickers that have each expired less than ninety (90) days previously.

Vegetation - Any grass, weed, vegetable, crop, shrub, or other plant.

Vehicle - Any device in, upon or by which any person or property is or may be transported or drawn upon a public highway or upon any land, including, but not limited to, automobiles, trucks, vans, buses, utility trailers, tractors, truck tractors, recreational vehicles, motor homes, travel trailers, motorcycles, machinery, trailers, farm machinery and implements, and other wheeled equipment; boats; and aircraft.

Vermin Infested - The presence, within or upon a premises, of any insects, rodents or other pests which constitute a public nuisance.

Waste or Garbage - Any garbage, refuse, industrial, lunchroom or office waste or other material including solid, liquid, semi-solid or contained gaseous material, resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities. The term shall also include any garbage, refuse, other discarded material or other waste. Including solid, liquid, semi-solid or containing gaseous materials resulting from industrial and mining operations, local facilities or any other by-product or effluent from an industrial, mining or agricultural water supply treatment facility, waste water treatment facility or air pollution control facility or any other material defined by the Pennsylvania Department of Environmental Protection as solid, liquid, municipal, medical, industrial, toxic or hazardous waste.

§104. Enforcement Officer; Notice.

The Borough Council shall appoint an individual, agency or firm to serve as the Enforcement Officer, who shall be responsible for enforcing the terms of this Ordinance. The Borough Council may also appoint one or more Assistant Enforcement officers who shall have all authority of the Enforcement Officer

- A. Inspections; Permission - The Enforcement Officer may inspect any premises to determine whether any violations of this Ordinance exist. Prior to entering upon any property to conduct an inspection, the Enforcement Officer shall obtain the permission of the owner or occupant for the same. If the Enforcement Officer is unable to obtain such permission, the Enforcement Officer shall have the authority to conduct the necessary inspection of the premises in accord with this Ordinance and the applicable laws of the Commonwealth.
- B. Consultation - In carrying out any of the duties authorized by this Ordinance, the Enforcement Officer, may consult with the Borough Engineer or any other professional designated by the Borough Council.
- C. Notice - Whenever an inspection discloses that a violation exists, the Enforcement Officer shall issue a notice to the owner and/or occupant of the premises. The notice, the form of which shall be adopted by Resolution of the Borough Council:
 - 1. Shall be in writing;
 - 2. Shall include a statement of the reasons it is being issued;
 - 3. Shall state a reasonable time to rectify the conditions constituting the violation, and may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this Ordinance.
 - 4. Shall inform the owner that should he fail to comply with the order, a complaint will be filed with the

Magisterial District Judge to effect the correction of the violation, and in accord with this Ordinance, collect any and all costs, expenses, and penalties incurred against the land on which the violation is located.

- D. Service of Notice - Except in emergency cases, the notice shall be sent by registered mail or by certificate of mailing, or personally delivered to, the owner, and/or the occupant of the premises. Where the owner is absent from the Borough, all notices shall be deemed to be properly served upon the owner if:
 - 1. A copy of the notice is served upon the owner personally; or,
 - 2. A copy of the notice is sent by registered mail or by certificate of mailing to the last known address of the owner, regardless of receipt, and is posted in a conspicuous place on or about the premises affected by the notice; or,
 - 3. The owner is served with such notice by any other method authorized under the laws of the Commonwealth.
- E. Hearing Appearance - The Enforcement Officer shall appear at all hearings conducted by the Magisterial District Judge and testify as to the violation.
- F. Emergency Cases (See definition in §103.) - Whenever the Enforcement Officer finds that an emergency exists which requires immediate action to protect the public health, welfare or safety, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is necessary to correct the violation and eliminate the emergency. Notwithstanding the other provisions of this Ordinance, such order shall be effective immediately. The costs of such emergency correction shall be collected in the same manner as provided herein for other cases.

§105. Violations; Enforcement Remedies; Action to Abate Nuisance.

- A. Compliance - Failure to comply with any provision of this Ordinance, and/or failure to comply with an order to abate a nuisance, shall be violations of this Ordinance.
- B. Fine - Any person who has violated or permitted the violation of any provisions of this Ordinance shall upon judgment thereof by any Magisterial District Judge be sentenced to pay a fine of up to one thousand dollars (\$1,000.00) per day of violation, together with the costs of suit, and/or shall be committed to the Lackawanna County Prison for a period not exceeding thirty (30) days. Each day of violation shall constitute a separate offense, for which a summary conviction may be sought. All judgments, costs, interest and reasonable attorney fees collected for the violation of this Ordinance, shall be paid over to the Borough.
- C. Other Remedies - The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.
- D. Abatement By Borough and Recovery of Costs- In addition, if the owner or person in control of any dangerous premises, or act or condition constituting a public nuisance or violation of this Ordinance, fails to respond to a notice of violation directing the removal or abatement of the public nuisance or correction of the violation within the time limit prescribed by the notice, or fails to comply with the decision of the Magisterial District Judge, the Enforcement officer and/or the Borough Council shall be empowered to cause such work of abatement to be commenced and/or completed by the Borough, the Borough may enter a municipal lien upon the premises to recover the cost and expense thereof.

SEVERABILITY

Should any section, subsection, clause, provision or other portion of this Ordinance be declared invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance; the Borough Council having adopted this Ordinance as if such invalid portions had not been included therein.

REPEALER

All other Ordinances or sections of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

EFFECTIVE DATE

This Ordinance shall become effective five (5) days following its adoption.

ADOPTION

ORDINANCE ORDAINED AND ENACTED this 3rd day of June, 2009, by the Borough Council of the Borough of Clarks Summit, Lackawanna County, Pennsylvania.

BOROUGH OF CLARKS SUMMIT

By: _____
Council President

ATTEST:

Secretary

APPROVED this 3rd day of June, 2009

By: _____
Mayor