

ORDINANCE NO. 2009-8

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF NESQUEHONING BOROUGH ESTABLISHING A REGISTRATION PROGRAM FOR RESIDENTIAL RENTAL PROPERTIES; REQUIRING ALL OWNERS OF RESIDENTIAL RENTAL PROPERTIES TO DESIGNATE AN AGENT FOR SERVICE OF PROCESS; AND PRESCRIBING DUTIES OF OWNERS, AGENTS AND OCCUPANTS; DIRECTING THE DESIGNATION OF AGENTS; ESTABLISHING FEES FOR THE COSTS ASSOCIATED WITH THE REDISTRATATION OF RENTAL PROPERTY; AND PRESCRIBING PENALTIES FOR VIOLATIONS

BE IT ORDAINED by the Borough Council of the Borough of Nesquehoning as follows:

SECTION 1: DEFINITIONS AND INTERPRETATION.

The following words, when used in this ordinance, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular shall include the plural, and words in the masculine shall include the feminine and the neuter.

- a. AGENT - Individual of legal majority who has been designated by the Owner as the Agent of the Owner or manager of the property under the provisions of this Ordinance.
- b. BOROUGH – The Borough of Nesquehoning.
- c. BOROUGH CODE – The Building Code officially adopted by the Borough Council, or such other codes officially designated by the Borough Council for the regulation of construction, alteration, addition, repair, removal, demolition, location, occupancy and maintenance of buildings and structures.
- d. ZONING ORDINANCE – The Zoning Ordinance as officially adopted by the Borough of Nesquehoning.
- e. OFFICE – The Borough Office of the Borough of Nesquehoning.
- f. DWELLING UNIT – A single habitable unit, providing living facilities for one or more persons, including permanent space for living, sleeping, eating, cooking and bathing and sanitation, whether furnished or unfurnished. There may be more than one Dwelling Unit on a premises.
- g. INSPECTOR – any person authorized by Law or Ordinance to inspect buildings or systems, e.g. zoning, housing, plumbing, electrical systems, heat systems, mechanical systems and health necessary to operate or use buildings within the Borough of Nesquehoning. An Inspector would include those identified in Section 8 – Enforcement.

- h. FIRE DEPARTMENT – The Fire Department of the Borough of Nesquehoning or any member thereof, and includes the Fire Chiefs or a designee.
- i. LET FOR OCCUPANCY – To permit, provide or offer for consideration, possession or occupancy of a building, dwelling unit, rooming unit, premise or structure by a person who is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement or contract for the sale of land.
- j. OCCUPANT – A person age 18 or older who resides at a premises.
- k. OPERATOR – Any person who has charge, care or control of a premises which is offered or let for occupancy.
- l. OWNER – Any Person, Agent, or Operator having legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a Court of competent jurisdiction.
- m. OWNER-OCCUPANT – An owner who resides in a Dwelling unit on a regular permanent basis, or who otherwise occupies a non-residential portion of the Premises on a regular permanent basis.
- n. PERSON – Any person, partnership, firm, association, corporation or municipal authority or any other group acting as a single unit.
- o. POLICE DEPARTMENT – The Police Department of the Borough of Nesquehoning or any member thereof sworn to enforce laws and ordinances in the Borough, and includes the Chief of Police or his designee.
- p. PREMISES – Any parcel of real property in the Borough, including the land and all buildings and structures in which one or more Rental units are located.
- q. RENTAL UNIT – Means a Dwelling Unit or Rooming Unit which is let for Occupancy and is occupied by one or more tenants.
- r. ROOMING UNIT – Any room or groups of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.
- s. TENANT – Any person authorized by the Owner or Agent who occupies a Rental Unit within a Premises regardless of whether such Person has executed a lease for said Premises.

t. DISRUPTIVE CONDUCT – A form of conduct, action, incident or behavior perpetrated, caused or permitted by an occupant or guest of a Regulated Rental Unit that is:

1) in violation of Ordinances of the Borough of Nesquehoning and that is so loud, untimely as to time of day, offensive, and/or nuisance causing that it unreasonably interferes with the peaceful enjoyment by other persons of their premises or cause damage to property that is owned by others,

2) involves music or noise that is disruptive to persons occupying a different dwelling unit,

3) involves music or noise that is audible from a street, sidewalk or dwelling from a minimum distance of 50 feet away form the premises where the sound is originating,

4) is the subject of a criminal citation for Disorderly Conduct, or

5) is the subject of criminal charges under the Pennsylvania Crimes Code or the Pennsylvania Liquor Code.

In order for such Disruptive Conduct to constitute an offense under this Ordinance, a written report must be issued by a sworn Police Officer or a Borough Code Enforcement Officer and notice must be sent to an Occupant and the Owner or Manager.

u. DISRUPTIVE CONDUCT REPORT – A written Report of “Disruptive Conduct” that is completed by a Police Officer or Code Enforcement Officer who investigated the matter.

SECTION 2. APPOINTMENT OF AN AGENT AND/OR MANAGER

Each Owner who is not an Owner-occupant, or who does not reside in the Borough of Nesquehoning or within a ten (10) mile air radius of the Borough limits, shall appoint an Agent and/or manager who shall reside in the Borough or within a ten (10) mile air radius of the Borough.

SECTION 3. DUTIES OF THE OWNER AND/OR AGENT

a. The Owner has the duty to maintain the Premises in good repair, clean and sanitary condition and to maintain the Premises in compliance with the current Codes, Building Codes and Zoning Ordinance of the Borough of Nesquehoning. The Owner may delegate implementation of these responsibilities to an Agent.

- b. The duties of the Owner and/or Agent shall be to receive notices and correspondence, including service of process, from the Borough of Nesquehoning, to arrange for the inspection of Rental Units, do or arrange for the performance of maintenance, cleaning, repair, pest control, snow and ice removal, and ensure continued compliance of the Premises with the current Codes, Building Codes and Zoning Ordinances in effect in the Borough of Nesquehoning, as well as arrange for garbage removal.
- c. The name, address and telephone number of the Owner and Agent, if applicable, shall be reported to the Borough Office in writing upon registering the Rental Units.
- d. No Dwelling Unit shall be occupied, knowingly by the Owner or Agent, by a number of persons that is in excess of the requirements outlined in 2003 International Property Maintenance Code, Chapter 4, Light, Ventilation and Occupancy Limits, Section PM-404.5, Overcrowding, or any update thereof.
- e. All Rental Agreements for Regulated Units shall be in writing or otherwise legally enforceable.
- f. The Owner or Occupant shall not include text in a Rental Agreement that is contrary to the provisions of this Ordinance.
- g. Addendum to Rental Agreement. An Addendum to each Rental Agreement for Regulated Rental Units shall be provided by the Owner to the Occupant before a Rental Agreement is presented for signing by an Occupant. Any alternative versions of this Addendum must be pre-approved by the Code Enforcement Officer. The Owner shall secure a written acknowledgment from Occupant(s) that the Occupant(s) have received the Addendum. Upon oral or written request by the Borough of Nesquehoning, the Owner, within ten (10) days of the request, shall furnish to the Borough copies of the acknowledgment that the Occupant(s) received the Addendum.
- h. Evictions – In the event that an Occupant(s) of a Regulated Rental Unit is involved in a third Disruptive Conduct violation within any one (1) year period during which a Residential Rental License was required or the Occupant(s) is/are in violation of any federal, state, or local law, the Code Enforcement Officer shall issue a written statement to the Owner or his Manager to order him/her to evict the Occupant(s) of the Regulated Rental Unit. If this Disruptive Conduct was caused by only one Occupant then the Code Enforcement Officer shall limit the Eviction Order to that person. Occupant(s) shall be responsible to prevent their guests from engaging in Disruptive Conduct on the premises. Once an eviction is ordered, those Occupant(s) shall not be permitted to occupy any area on the same lot for a minimum period of two (2) years. In addition, once an eviction is ordered, those Occupant(s) shall not be permitted to occupy any Dwelling Unit or boarding/rooming house unit that is owned by the same person or entity within the Borough of Nesquehoning for a minimum period of two (2) years. The Owner shall begin eviction proceedings until completion, without interruption, unless the Occupant(s) vacate the premises.

1) Failure of the Owner to carry out an order to evict Occupant(s) shall result in the suspension of the Residential Rental License and shall be a violation of this Ordinance until such time as the Owner commences the eviction process. A second or subsequent failure to carry out an order to evict shall result in a revocation of the Residential Rental License, Suspension or revocation of the Residential Rental License may be appealed by the Owner to the Property Maintenance Board of Appeals or in the absence thereof to the Borough Council for a review of the decision to suspend or revoke the license within (10) days of the issuance of the order to evict.

2) This Ordinance shall not limit the ability of an Owner to evict tenants in compliance with State law for reasons other than violations of this Ordinance.

3) A requirement to evict Occupant(s) shall not apply if a successful appeal is made to the Borough Council =, or if the Magisterial District Justice rules in favor of the Occupant(s) during the eviction proceedings, or where a court appeal or other legal action has been filed that would lawfully prevent eviction.

4) The Code Enforcement Officer shall maintain a list of Occupant(s) who were ordered to be evicted and the affected addresses. Such a list shall be maintained for a minimum period of three (3) years and shall be available for public review in accordance with applicable laws.

SECTION 4. DUTIES OF THE OCCUPANT

a. The Occupant(s) shall comply with all obligations imposed upon Occupant(s) by this Ordinance, all applicable Codes and Ordinances of the Borough and all applicable provisions of State Law.

b. Occupant(s) shall collect and dispose of all rubbish, garbage and other waste in a clean and sanitary manner, and occupant(s) shall comply with Borough solid waste, sanitation and recycling regulations. Occupant(s) shall keep that part of the premises, which occupant(s) occupies or controls in a clean and sanitary manner.

c. Occupant(s) shall not engage in, nor tolerate nor permit guests on the premises to engage in, any conduct declared illegal under any federal statute, and/or under the Pennsylvania Crimes Code or Liquor Code or the illegal sale or distribution of controlled substances under the Controlled Substance, Drug, Device and Cosmetic Act, or their successor laws.

d. Occupant(s) shall not engage in, nor tolerate nor permit guests on the premises to engage in Disruptive Conduct or other violations of this Ordinance.

1) When Police investigate an allegation of Disruptive Conduct, the Police Officer shall complete a Disruptive Conduct Report upon a finding that the reported incident did, in his or her judgment, constitute "Disruptive Conduct" as defined herein. The

information provided in this Report shall include, if possible, the identity or identities of the alleged perpetrator(s) of the Disruptive Conduct and the factual basis for the Disruptive Conduct.

2) When a Police Officer issues a Disruptive Conduct Report concerning a Regulated Rental Unit, a copy shall be provided by the Police to the Code Enforcement Officer, who shall maintain records of such reports. The Code Enforcement Officer shall mail a copy of the Disruptive Conduct Report to an Occupant and the Owner or Manager after his/her receipt of the Report.

3) A criminal or civil citation is not required in order for a Disruptive Conduct Report to be issued.

4) If a citation is issued and successfully prosecuted or a guilty plea entered in a District Court, such citation automatically is considered a Disruptive Conduct Report. However, if an appeal of a citation is filed from a decision of a District Court, the matter shall not be deemed to constitute Disruptive Conduct unless a finding of guilty is affirmed by a final decision on appeal.

e. The Occupant(s) shall not intentionally cause, nor permit, nor tolerate others to cause damage to the premises. Conduct which results in damages in excess of Five Hundred (\$500.00) Dollars shall be considered as presumptive evidence of Disruptive Conduct under this Ordinance.

f. Occupant(s) shall permit a Code Enforcement Officer to conduct inspections of the premises during Borough business hours, after receiving notice from the Owner, Manager or the Borough.

SECTION 5. NOTICES

a. Whenever an Inspector or Code Enforcement Officer determines that any Rental Unit or Premises fails to meet the requirements set forth in the applicable Codes, the Inspector or Code Enforcement Officer shall issue a correction notice setting forth the violations and ordering the Occupant, Owner or Agent, as appropriate, to correct such violations. The notice shall:

- 1) be in writing;
- 2) describe the location and nature of the violation;
- 3) establish a reasonable time for the correction of the violation.

b. All notices shall be served upon the Occupant, Owner or Agent, as applicable, personally or by certified mail, return receipt requested. A copy of any notices served solely on an Occupant shall also be provided to the Owner or Agent. In the event service is first attempted by mail and the notice is returned by the postal authorities marked "unclaimed" or "refuse", then the Code Enforcement Officer or Police Department shall

attempt delivery by personal service on the Occupant, Owner or Agent as applicable. The Code Enforcement Officer or any other designee so appointed by Council shall also post the notice at a conspicuous place on the Premises. If personal service directed to the Owner or Agent cannot be accomplished after a reasonable attempt to do so, then the notice may be sent to the Owner or Agent, as applicable, at the address stated on the most current registration application for the Premises in question, by regular first class mail, postage prepaid. If such notice is not returned by the postal authorities within five (5) days of its deposit in the U.S. Mail, then it shall be deemed to have been delivered to and received by the addressee on the fifth day following its deposit in the United States Mail.

c. For purposes of this Ordinance, any notice hereunder that is given to the Agent shall be deemed as notice given to the Owner.

d. There shall be a rebuttable presumption that any notice that is given to the Occupant, Owner or Agent under this Ordinance shall have been received by such Occupant, Owner or Agent if the notice was served in the manner provided by this Ordinance.

e. Subject to paragraph 4.d above, a claimed lack of knowledge by the Owner or Agent, if applicable, of any violation hereunder cited shall be no defense to closure of rental units pursuant to Section 9, as long as all notices prerequisite to such proceedings have been given and deemed received in accordance with the provisions of this ordinance.

f. All notices shall contain a reasonable time to correct, or to take steps to correct violations of the above. The Occupant, Owner or Agent to whom the notice was addressed may request additional time to correct violations. Requests for additional time must be in writing and either deposited in the U.S. Mail (post-marked) or hand-delivered to the Borough Office within five (5) days of receipt of the notice by the Occupant, Owner or Agent. The Borough retains the right to deny or modify time extension requests. If the Occupant, Owner or Agent is attempting in good faith to correct violations but is unable to do so within the time specified in the notice, the Occupant, Owner or Agent shall have the right to request such additional time as may be needed to complete the correction work, which request shall not be unreasonably withheld.

g. Failure to correct violations within the time period stated in the notice of violation shall result in such actions or penalties as are set forth in Section 10 of this ordinance. If the notice of violation relates to actions or omissions of the Occupant, and the Occupant fails to make the necessary correction, the Owner or Agent may be required to remedy the condition. No adverse action shall be taken against the Owner or Agent, for failure to remedy a condition as long as the Owner or Agent is acting with due diligence and taking bona fide steps to correct the violation, including but not limited to pursuing remedies under a lease agreement with an Occupant or Tenant. The Borough shall not be precluded from pursuing an enforcement action against any Occupant or Tenant who is deemed to be in violation.

SECTION 6. INSURANCE

In order to protect the health, safety and welfare of the residents of the Borough, it is hereby declared that the Borough shall require hazard and general liability insurance for all property owners letting property for occupancy in the Borough.

- a. Minimum coverage; use of insurance proceeds. All Owners shall be required to obtain a minimum of fifty thousand (\$50,000.00) dollars in general liability insurance, and hazard and casualty insurance in an amount sufficient to either restore or remove the building in the event of a fire or other casualty. Further, in the event of any fire or loss covered by such insurance, it shall be the obligation of the Owner to use such insurance proceeds to cause the restoration or demolition or other repair of the property in adherence to the Borough Code and all applicable ordinances.
- b. Property owner to provide Borough with insurance information. Owners shall be required to place their insurance company name, policy number and policy expiration date on their Rental Property Registration form, or in the alternative, to provide the Borough office with a copy of certificate of insurance. A registration Certificate (see Section 6 below) shall not be issued to any Owner or Agent unless the aforementioned information has been provided to the Borough office. The Borough office shall be informed of any change in policies for a particular rental property or cancellation of a policy for said property within thirty (30) days of said change or cancellation.

SECTION 7. RENTAL REGISTRATION AND LICENSE REQUIREMENTS

a. No person shall hereafter occupy, allow to be occupied, advertise for occupancy, solicit occupants for, or let to another person for occupancy any Rental Unit within the Borough for which an application for license has not been made and filed with the Borough Office and for which there is not an effective license. Initial application and renewal shall be made upon forms furnished by the Borough Office for such purpose and shall specifically require the following minimum information:

- 1) Name, mailing address, street address and phone number of the Owner, and if the Owner is not a natural person, the name, address and phone number of a designated representative of the Owner.
- 2) Name, mailing address, street address and phone number of the Agent of the Owner, if applicable.
- 3) The street address of the Premises being registered.
- 4) The number and types of units within the Premises (Dwelling Units or Rooming Units).

- b. The Owner or Agent shall notify the Borough Office of any changes of the above information within thirty (30) days of such change.
- c. The initial application for registration and licensing shall be made by personally filing an application with the Borough Office by January 1, 2008. Thereafter, any new applicant shall file an application before the Premises is let for occupancy, or within thirty (30) days of becoming an Owner of a current registered Premises. One application per property is required, as each property will receive its own license.
- d. Upon receipt of the initial application or any renewal thereof and the payment of applicable fees as set forth in Section 8 below, the Borough office shall issue a Rental Registration License to the Owner within thirty (30) days of receipt of payment.
- e. Each new license issued hereunder, and each renewal license, shall expire on December 31 of each year. The Borough Office shall mail license renewal applications to the Owner or designated Agent on or before December 1 of each year. Renewal applications and fees may be returned by mail or in person to the Borough Office. A renewal license will not be issued unless the application and appropriate fee has been remitted.

SECTION 8. FEES

- a. Annual license Fee. There shall be a license fee for the initial license and an annual renewal fee thereafter. Fees shall be assessed against and payable by the Owner in the amount of \$5.00 per Rental Unit, payable at the time of the initial registration and annual renewal, as more specifically set forth in Section 7 above.
 - 1. Application for occupancy permits shall be made upon forms furnished by the Borough office for such purpose and shall specifically require the following minimum information:
 - a) Name of Occupant
 - b) Mailing address of Occupant
 - c) Street address of Rental Unit for which Occupant is applying if different from mailing address.
 - d) Name of Landlord.
 - e) Date of lease commencement.
 - f) Proof of age if claiming exemption from the permit fee.
 - g) Proper identification showing proof of legal citizenship and/or residency.
 - 2. Upon receipt of the application and the payment of applicable fees as set forth above, the Borough Office shall issue an Occupancy Permit to the occupant immediately.

SECTION 9. ENFORCEMENT

- a. The following persons are hereby authorized to enforce this ordinance.
 1. The Chief of Police
 2. Any Police Officer
 3. Code Enforcement Officer
 4. The Fire Chief
 5. Health Officer
 6. or other Borough designee

- b. The designation of any person to enforce this Ordinance or authorization of an inspector, when in writing, and signed by a person authorized by Section 8a is to designate or authorize an Inspector to enforce this Ordinance, shall be prima facie evidence of such authority before the Magisterial District Judge, Court of Common Pleas, or any other Court, administrative body of the Borough, or of this Commonwealth, and the designating Director or Supervisor need not be called as a witness thereto.

SECTION 10. FAILURE TO CORRECT VIOLATIONS

If any person shall fail, refuse or neglect to comply with a notice of violation as set forth in Section 4 above, the Borough shall have the right to file an enforcement action with the Magisterial District Judge against any person the Borough deems to be in violation. If, after hearing, the Magisterial District Judge determines that such Person or Persons are in violation, the Magisterial District Judge may assess fines in accordance with Section 10 below on a daily basis until such violations are corrected. Such order shall be stayed pending any appeal to the Court of Common Pleas.

SECTION 11. FAILURE TO COMPLY WITH THIS ORDINANCE; PENALTIES

- a. Except as provided in subsections 10b and 10c below, any Person who shall violate any provision of this Ordinance shall, upon conviction thereof after notice and a hearing before the Magisterial District Judge, be sentenced to pay a fine of not less than \$100.00 and not more than \$300.00 plus costs, or imprisonment for a term not to exceed ninety (90) days in default of payment. Every day that a violation of this Ordinance continues shall constitute a separate offense, provided, however, that failure to register or renew or pay appropriate fees in a timely manner shall not constitute a continuing offense but shall be a single offense not subject to daily fines.

- b. Any Owner or Agent who shall allow any Occupant to occupy a Rental Unit without first obtaining an occupancy permit is in violation of Section 7b and shall, upon conviction thereof after notice and a hearing before a Magisterial District Judge, be sentenced to pay a fine of \$600.00 for each occupant that does not have an occupancy permit and \$100.00 per Occupant per day for each day that an Owner or Agent continues to allow each such

Occupant to occupy the Rental Unit without an occupancy permit after Owner or Agent is given notice of such violation pursuant to Section 4 above. Owner or Agent shall not be held liable for the actions of Occupants who allow additional occupancy in any Rental Unit without the Owner or Agent's written permission, provided that Owner or Agent takes reasonable steps to remove or register such unauthorized Occupants within ten (10) days of learning of their unauthorized Occupancy in the Rental Unit. Any Occupant having an occupancy permit but who allows additional occupancy in a Rental Unit without first obtaining the written permission of the Owner or Agent and without requiring each such additional Occupant to obtain his or her own occupancy permit is in violation of Section 7b of this Ordinance and shall, upon conviction thereof after notice and a hearing before the Magisterial District Judge, be sentenced to pay a fine of \$600.00 for each additional occupant permitted by an Occupant that does not have an Occupancy Permit and \$100.00 per additional Occupant per day for each day that Occupant continues to allow each such additional Occupant to occupy the Rental Unit without an occupancy permit after Occupant is given written notice of such violation by Owner or Agent or pursuant to Section 4 above.

SECTION 12. APPLICABILITY AND EXEMPTIONS TO THE ORDINANCE

The provisions of the ordinance shall not apply to the following properties, which are exempt from registration and license requirements:

- a. Rental Units owned by Public Authorities as defined under the Pennsylvania Municipal Authorities Act, and Dwelling Units that are part of an elderly housing multi-unit building which is 75% occupied by individuals over the age of sixty-five.
- b. Multi-Dwelling Units that operate under the Internal Revenue Service Code Section 42 concerning entities that operate with an elderly component.
- c. Properties which consist of a double home, half of which is let for occupancy and half of which is Owner-occupied as the Owner's residence.

SECTION 13. CONFIDENTIALITY OF INFORMATION

All registration information collected by the Borough under this Ordinance shall be maintained as confidential and shall not be disseminated or released to any individual, group or organization for any purpose except as provided herein or as required by law. Information may be released only to authorized individuals when required during the course of an official Borough, state or federal investigation or inquiry.

SECTION 14. SAVING CLAUSE

This Ordinance shall not affect violations of any other ordinance, code or regulation existing prior to the effective date thereof and any such violations shall be governed and shall continue to be punishable to the full extent of the law under the provisions of those ordinances, codes or regulations in effect at the time the violation was committed.

SECTION 15. SEVERABILITY

If any section, clause or portion of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect any other section, clause, provisions or portion of this Ordinance so long as it remains legally enforceable without the invalid section. The Borough reserves the right to amend this Ordinance or any portion thereof from time to time as it shall deem advisable in the best interest of the promotion of the purposes and intent of this Ordinance, and the effective administration thereof.

SECTION 16. EFFECTIVE DATE

This Ordinance shall become effective immediately upon approval.

DULY ENACTED AND ORDAINED This 16th day of December, 2009 by the Council of the Borough of Nesquehoning, Carbon County, Pennsylvania.

BOROUGH OF NESQUEHONING

By: *Donato DeMarco*
President of Council

ATTEST: *RoniSue Ahner*
Secretary

Approved this 16th day of December, 2009.

K. Tony Walck
Mayor