

ORDINANCE NO. 2008-5

AN ORDINANCE AMENDING THE BOROUGH CODE OF THE BOROUGH OF NESQUEHONING AND REQUIRING A CONTRACTOR TO OBTAIN A PERMIT OR LICENSE TO PERFORM WORK WITHIN THE BOROUGH OF NESQUEHONING AND REGULATING CERTAIN ACTIVITIES RELATED TO THE REPAIR, REPLACEMENT OR MAINTENANCE OF UTILITY LINES.

BE IT ORDAINED AND ENACTED BY THE BOROUGH COUNCIL OF THE BOROUGH OF NESQUEHONING AS FOLLOWS:

SECTION 1: DEFINITIONS:

As used in this ordinance, the following terms shall have the meaning indicated unless a different meaning already appears from the context.

- A. *Contractor* – any person, partnership, association, firm or corporation who provides labor and/or materials necessary to construct, repair, replace or improve any structure or utility line of any real estate located within the borough limits. This shall include but not limited to a general contractor, electrical contractor, plumbing contractor, masonry contractor, carpenter, landscaping contractor, excavating contractor or demolition contractor. A property owner who works exclusively within his or her boundary limits is not to be contained as a contractor within the meaning of this ordinance.

- B. *Person* – any natural person, partnership, association, corporation or other legal entity.

SECTION 2. LICENSE REQUIRED:

No person shall operate as a contractor within the Borough of Nesquehoning without first having obtained from the Building Code Enforcement Officer, or other designated person, a permit, for which a fee shall be charged for the use of the Borough of Nesquehoning. Said fee is to be in such amounts as are established from time to time by resolution of the Nesquehoning Borough Council.

- a) The permit shall be valid for a period of one (1) year from the date of issuance.

SECTION 3. REQUIREMENTS FOR ISSUANCE OR RENEWAL OF PERMIT

- A. All application for issuance of a permit for a license to act as a contractor shall be made on a form as supplied by the Building Code Enforcement Officer or other designated official.

- B. All applications must be accompanied by a certificate of workers' compensation insurance specifying the name of the workers' compensation insurance company, the number of employees of the contractor and the federal and state employer identification number.

1) If a contractor or person signs an affidavit stating that he has no employees and is not required to carry workers' compensation insurance, the Borough of Nesquehoning may issue the permit stating the contractor's federal or state employer identification number, and a notation that the contractor has no other employees and does not carry workers' compensation insurance, and that the contractor is not permitted to employ any individuals or companies to perform work pursuant to his license.

C. A contractor shall also be required to maintain property damage, bodily injury and products liability insurance. Blasting and demolition insurance shall be required for blasting and demolition contractors.

D. The amount of the required insurance shall be as set by the Building Code Enforcement Officer or other designated official.

E. If the above insurance is not supplied as required then there will be no building permits issued to the contractor who fails to comply herewith.

SECTION 4. EXCEPTIONS AND EXEMPTIONS

A. The provisions of this chapter shall not apply to the official transactions of my authorized representative of the government of the United States, any political subdivision of the Commonwealth or an agency or instrumentality of the foregoing governments.

B. No contractor's license shall be required by any person when acting in a particular capacity or particular type of transaction as follows:

- 1) A person who performs labor or services for a contractor for wages or salary.
- 2) A person who is required by other state or local law to attain standards of competency or experience and who must obtain licensing under such state or local law, as a prerequisite to engaging in a craft or profession, and who is acting exclusively within the scope of such craft or profession for which he is currently licensed pursuant to such other law.
- 3) Painter – No license shall be required by any individual engaged in painting of any house or building in the borough.

SECTION 5. ISSUANCE OR DENIAL OF LICENSE

A. When an application has been filed with the Building Official in proper form, the Building Official must, within a period of thirty (30) days from the date following the date the application is received, issue or refuse to issue the appropriate contractor's license to the applicant. If the issuance of a license is denied, the Building Official shall mail to the unsuccessful applicant a written statement setting forth the reason or reasons for the denial, within the aforesaid thirty (30) day period and a refund of the application fee. The rejected applicant shall be entitled to

request a hearing from the Borough Council within thirty (30) days to appeal the Building Official's decision.

SECTION 6. REVOCATION OF LICENSE; DISCLAIMER OR LIABILITY

A. The Building Official shall revoke any license issued under the provisions of this chapter under the following circumstances. The applicant who has his license revoked shall be entitled to request a hearing from the Borough Council within thirty (30) days to appeal the Building Official's revocation.

- 1) If the license falsely answered any question or questions contained on an application for licensing or renewal of licensing previously submitted to the Building Official.
- 2) Failure of the licensee to maintain, during the license year, the policies of insurance required under the provisions of this chapter.
- 3) If the licensee violates any of the terms or provisions of the Ordinances of the Borough of Nesquehoning or any terms or provisions of this chapter.
- 4) If the licensee violates any condition or requirement of a building permit, sewer construction permit or highway permit issued by the borough.
- 5) If the license willfully deviates from or disregards any plans or specifications for any contracting job in any substantial respect without first obtaining the consent of the owner in writing to any such change and without first notifying the Building Official of any such changes.
- 6) If the licensee does any business through any person who is subject to the licensing requirement of this chapter and who is not licensed as required by this chapter.
- 7) If the licensee conducts a contractor's business in the borough under any name other than that under which he is licensed.
- 8) If the license fails to comply with an order, demand or requirement lawfully made by the Building Official under the authority of this chapter or any other borough ordinance.

B. The Borough of Nesquehoning, by the virtue of granting a license to this contractor, does not warrant or make representation regarding the quality of any of the workmanship performed by said contractor. The Borough does not assume any liability for the quality of this contractor's workmanship or lack thereof. The purpose of this licensing requirement is to guarantee that the contractor has adequate insurance and has not been convicted of any prior fraudulent activities. Furthermore, the Borough will not be held liable for any failure on its part to investigate any of the facts that may be falsely stated in any application presented by any contractor receiving a license by the Borough.

SECTION 7. PROHIBITED ACTS

In addition to all other acts prohibited by the terms of this chapter, those acts warranting revocation of a license under Section 6 be prohibited acts and subject the violators to the fine under Section 8.

SECTION 8. VIOLATIONS AND PENALTIES

In addition to refusal or revocation of a license as provided under this chapter, any person, defined in this chapter, or any officer, agency, servant or employee thereof, who shall fail, neglect or refuse to comply with any of the terms or provisions of this chapter shall, upon conviction thereof before a Magisterial District Judge, be sentenced to pay a fine or penalty of not exceeding six hundred dollars (\$600.00) and cost of prosecution for each offense, to be collected as like fines or penalties, and costs are now by law collectible. The fine or penalty imposed by this section shall be in addition to any other penalty imposed by this chapter.

After notice of said violation is given by the Borough of Nesquehoning, each day upon which this ordinance or any part thereof continues to be violated, shall be deemed a new violation and each day the same is continued shall be deemed a separate offense and punishable as such.

SECTION 9. REPEALER

All parties of ordinances and amendments inconsistent herewith are repealed.

SECTION 10. EFFECTIVE DATE

That the Borough Secretary shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this ordinance shall take effect thirty (30) days after enactment.

ENACTED into Ordinance and adopted by the Council of the Borough of Nesquehoning, Carbon County, Pennsylvania this 25th day of June, 2008.

BOROUGH OF NESQUEHONING

By: Don DeMarco
President of Council

ATTEST: RoniSue Ahner
Secretary

Approved this 25th day of June, 2008.

K. Tony Walck
Mayor