

## Chapter 135

### NUISANCES

§ 135-1. Nuisance defined.

§ 135-2. Creation or maintenance of nuisance prohibited.

§ 135-3. Removal or abatement; failure to comply; assessment of costs.

§ 135-4. Violations and penalties.

§ 135-5. Exceptions.

[HISTORY: Adopted by the Borough Council of the Borough of McSherrystown 1-27-1993 by Ord. No. 1993-2 as Part 8, Ch. 2, of the 1993 Code. Amendments noted where applicable.]

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§ 135-1. Nuisance defined.

The word "nuisance" as used in this chapter shall mean any use of property within the Borough, or any condition upon property within the Borough that, other than infrequently, causes or results in annoyance or discomfort to persons beyond the boundaries of that property; interference with the health and/or safety of persons beyond the boundaries of that property or of persons who might reasonably be expected to enter upon or be in that property; and/or disturbance to or interference with the peaceful use of the property of others within the Borough, in any case taking into consideration the location of the use or condition and the nature and condition of the surrounding neighborhood. Specifically, the word "nuisance" shall include but shall not be limited to the following:

- A. Loud playing of radios, television sets, jukeboxes, amplifiers and other sound devices so as to be heard beyond the premises from which the sound emanates.
- B. Operating gasoline-powered lawn mowers or gasoline-powered chain saws on Monday through Saturday before 7:00 a.m. or any Sunday before 9:00 a.m. [Amended 6-25-2003 by Ord. No. 2003-4]
- C. Operation of model airplanes equipped with gasoline engines on any public street or on any public ground, including any playground.
- D. Keeping or harboring any dog or other animal or fowl which, by frequent howling or barking or other noise or odor, shall annoy or disturb the neighborhood or a number of persons.
- E. Maintaining or permitting the maintenance of any of the following dangerous conditions, structures or premises:
  - (1) Open wells or cisterns;
  - (2) Open excavations;
  - (3) Unfinished buildings, foundations or other structures;
  - (4) Dangerous placement of materials or equipment;

- (5) Lakes, ponds or swimming pools not properly safeguarded;
  - (6) Stagnant water in pools in which mosquitoes, flies or insects multiply.
- F. Carrying on any building or road construction, excavation or trenching, or the operation of heavy equipment or trucks in connection therewith, at any time between the hours of 11:00 p.m. and 7:00 a.m. of the following day without a special permit issued by the Secretary. That special permit shall be issued only if it is shown that the construction work must proceed as a matter of emergency or that it can be carried on in such a manner or in such a place that the public or residents will not be annoyed or disturbed by that construction work.
- G. Carrying on construction work in such a manner that dirt is carried by wind onto adjacent properties or that mud is tracked or drained into streets adjacent to the project.
- H. Washing, tracking or otherwise depositing dirt, mud, soil, stone or debris upon or onto the pavement of any street, without removing the material before 5:00 p.m. of the day on which the material was deposited.
- I. Using any property or operating any business or other activity so as to permit or cause smoke, soot, cinders, fly ash, dust, mud, dirt, acid, noxious or offensive fumes, gases or odors to be carried off the premises, or to cause any water to become polluted by sewage, industrial wastes, acid or other substance, or to cause a glare from lights, or noise of such character as to cause annoyance to residents or interference with the normal use of adjacent properties.
- J. Creation or maintenance of "attractive nuisances," which is the leaving of a dangerous instrumentality which by its character is dangerous and attractive to children and in a place frequented by children.
- K. It shall be unlawful and considered a nuisance for any person to maintain upon any unenclosed porch or exterior attachment to a building furniture (except other than furniture designed for exterior use) which is commonly intended for use inside a dwelling, including but not limited to upholstered sofas, chairs, davenport, beds, divans and the like. [Added 11-14-2012 by Ord. No. 2012-4]

### § 135-2. Creation or maintenance of nuisance prohibited.

It shall be unlawful for any person to create, continue, cause, maintain or permit to exist any nuisance at any place within the Borough.

### § 135-3. Removal or abatement; failure to comply; assessment of costs.

Any person who creates, continues, causes, maintains or permits to exist any nuisance at any place within the Borough shall, within 10 days after notice from Council to do so, remove or abate that nuisance. If that person fails, neglects or refuses to abate the nuisance within the time limit, Council shall have authority, in person or by its agents and/or employees, to remove or abate the nuisance, and, in so doing, shall have authority to enter upon the property of the person in default. Thereupon, Council shall collect the cost and expense of the

abatement or removal from the person who created, continued, caused or maintained the nuisance and/or permitted it to exist, that person having failed, neglected or refused to remove or abate the nuisance, with an additional amount of 10%, in the manner provided for the collection of municipal claims, or by an action in assumpsit, provided that the cost and expense may be in addition to any penalty imposed under § 135-4.

**§ 135-4. Violations and penalties. [Amended 6-25-2003 by Ord. No. 2003-4]**

Any person who shall violate any section of this chapter shall, upon conviction, be sentenced to pay a fine of not less than \$50 nor more than \$1,000 and, in default thereof, to imprisonment for a term not to exceed 30 days.

**§ 135-5. Exceptions.**

This chapter shall not be construed to be the sole means for abatement of nuisances within the Borough, and nothing shall preclude any person from proceeding individually or with other injured persons to effect the abatement of a private nuisance. Furthermore, in the exercise of the powers conferred in this chapter, the Borough may institute proceedings in equity.