

ORDINANCE #2013-1

An Ordinance of the Township of West Mahanoy, County of Schuylkill in the Commonwealth of Pennsylvania, Entitled "Chronic Nuisance Properties," Providing a Process for Enforcement and Abatement of Certain Nuisance Activities that Repeatedly Occur or Exist at Chronic Nuisance Properties Within the Confines of the Township.

WHEREAS, the current West Mahanoy Township Ordinances relating to do not provide an adequate means for abating chronic nuisance properties; and

WHEREAS, the Board of Supervisors of West Mahanoy Township desires to provide a process for abatement and enforcement of nuisance activities that repeatedly occur or exist at properties within the confines of the Township.

NOW, THEREFORE, the Board of Supervisors of West Mahanoy Township does hereby ordain as follows:

SECTION 1. SHORT TITLE.

This Ordinance may be cited as the "West Mahanoy Township Chronic Nuisance Property Ordinance."

SECTION 2. PURPOSE.

- (a) Chronic nuisance properties present grave health, safety and welfare concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. This chapter is enacted to remedy nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at properties by providing a process for abatement. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

- (b) Also, chronic nuisance properties are a financial burden to the township by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property. This chapter is a means to ameliorate those conditions and hold accountable those persons responsible for such property.

Chronic Nuisance Properties

SECTION 3. DEFINITIONS.

For purposes of this chapter, the following words or phrases shall have the meaning prescribed below:

- (a) "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition, which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the applicable township official determines is necessary in the interest of the general health, safety and welfare of the community;
- (b) "Control" means the ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property;
- (c) "Chronic nuisance property" means property on which a combination of three or more nuisance activities occur or exist during any sixty day (60) period;
- (d) "Drug-related activity" means any unlawful activity at a property which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined by State law.
- (e) "Nuisance activity" means and includes:
 - (1) Any nuisance as defined by state law or local ordinance occurring on, around or near a property, including but not limited to, violations of the following laws and regulations:
 - (a) Unauthorized and Junk Vehicles;
 - (b) Fire Code;
 - (c) Health and Sanitation;
 - (2) Any criminal conduct as defined by federal law, state law or local ordinance occurring on, around or near a property, including, but not limited to, the following activities or behaviors:
 - (a) Stalking;
 - (b) Harassment;
 - (c) Failure to Disperse;
 - (d) Disorderly Conduct;
 - (e) Assault;
 - (f) Any Domestic Violence Crimes;
 - (g) Reckless Endangerment;

- (h) Prostitution;
 - (i) Patronizing a Prostitute;
 - (j) Public Disturbance Noises;
 - (k) Lewd Conduct;
 - (l) Any Firearms/Dangerous Weapons violations;
 - (m) Drug related loitering
 - (n) Any Dangerous Animal violations;
 - (o) Any Drug related activity;
- (3) For purposes of this chapter, "Nuisance Activity" shall not include conduct where the person responsible is the victim of a crime and had no control over the criminal act.
- (f) "Person responsible for the property" or "Person responsible" means, unless otherwise defined,
- (1) any person who has titled ownership of the property or structure which is subject to this Ordinance;
 - (2) an occupant in control of the property or structure which is subject to this Ordinance;
 - (3) a developer, builder, or business operator or owner who is developing, building or operating a business on any property or in any structure which is subject to this Ordinance, and/or
 - (4) any person who has control over any property subject to this Ordinance and allows a violation of this Ordinance to continue.
- (g) "Person" means natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them;
- (h) "Premises and property" may be used by this chapter interchangeably and means and public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as a residential or commercial property;
- (i) "Rental unit" means any structure or that part of a structure, including but not limited to single family home, room or apartment, which is rented to another and used as a home residence, or sleeping place by one or more persons.

The definitions of the terms shall include the singular and plural form of each term, and the verbs used to define each term shall include past and/or present tense.

SECTION 4. VIOLATION.

- (a) Any property within the West Mahanoy Township, which is a chronic nuisance property, is in violation of this Ordinance and subject to its remedies and penalties set forth herein.
- (b) Any person responsible for property who permits such property to be a chronic nuisance property shall be in violation of this Ordinance and subject to the remedies and penalties set forth herein.

SECTION 5. PROCEDURE.

- (a) When the West Mahanoy Township Chief of Police, or his/her designee(s), receives documentation confirming the occurrence or existence of three (3) or more nuisance activities within a sixty-day (60) period on any property, the Chief of Police or his/her designee(s), may review such documentation to determine whether it describes the nuisance activities enumerated in Section 3(e). Upon such a finding, the Chief of Police, or his/her designee(s), shall warn the person responsible for such property, in writing, that the property is in danger of being declared a chronic nuisance property.
- (b) The warning shall contain:
 - (1) the street address or legal description sufficient for identification of the property;
 - (2) a concise description of the nuisance activities that exist, or that have occurred on the property;
 - (3) a demand that the person responsible for such property respond to the Chief of Police or his/her designee(s) within ten (10) days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance activities;
 - (4) offer the person responsible an opportunity to abate the nuisance activities giving rise to the violations; and
 - (5) a statement describing that if legal action is sought, the property could be subject to closure and civil penalties

and/or costs assessed up to one hundred dollars (\$100) per day if declared a chronic nuisance property.

- (6) a statement advising that a violation of this Ordinance will be deemed a summary offence, and in addition to criminal fines and court cost, the person responsible for the property may face imprisonment upon conviction.

- (c) The Chief of Police or his/her designee(s) shall serve or cause to be served such warning upon the person responsible for the property via first-class mail or personal hand delivery.

- (d) If the person responsible for the property fails to respond to the warning within the time prescribed, the Chief of Police or his/her designee(s) shall issue a notice declaring the property to be a chronic nuisance property and post such notice at the property and issue the person responsible a civil infraction, punishable by a maximum penalty of One Thousand Dollars (\$1,000.00). If the person responsible fails to respond to the issued infraction and/or continues to violate the provisions of this chapter, the matter shall be referred to the Township Solicitor for further action.

- (e) If the person responsible responds as required by the notice and agrees to abate the nuisance activity, the Chief of Police or his/her designee(s), and the person responsible, may work out an agreed upon course of action which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the Township Solicitor for enforcement action. Provided, that in the event the Chief of Police or his/her designee(s) or the Township Solicitor determines that the person responsible has taken reasonable steps to abate the nuisance activity, the Township Solicitor shall not commence an enforcement action under this Ordinance, notwithstanding the continuance of the nuisance activity.

- (f) It is a defense to an action for chronic nuisance property that the person responsible, at all material times, could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control leading to the determination that the property is chronic nuisance property.

SECTION 6. COMMENCEMENT OF ACTION – EJECTMENT

- (a) The matter is referred to the Township Solicitor, the Township Solicitor shall immediately review and make a determination to initiate legal action authorized under this chapter or state statute, or may seek alternative forms of abatement of the nuisance activity. The Township Solicitor may initiate legal action on the chronic nuisance property and seek civil penalties and costs in District Court for the abatement of the nuisance.
- (b) A violation of this Ordinance by a person responsible for the property shall be deemed a summary offence. The penalty for violating this Ordinance shall be a maximum of One Thousand Dollars (\$1,000) per offence, plus imprisonment to the extent allowed by law for the punishment of summary offenses. Each day or portion thereof in which, a property is determined to be in violation of this Ordinance shall constitute a separate offence. Any person determined to be in violation of this Ordinance shall also be liable for court cost and reasonable attorney fees incurred by the Township in pursuing enforcement proceedings.
- (c) In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the Township shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. The Township may submit official police reports and other affidavits outlining the information that led to arrest(s), and other chronic nuisance activity occurring or existing at the property. The failure to prosecute an individual, or the fact no one has been convicted of a crime is not a defense to a chronic nuisance action.
- (d) Once a court determines the property to be a chronic nuisance under this Section, the court may impose a civil penalty against any or all of the persons responsible for the property, and may order any other relief deemed appropriate. A civil penalty may be assessed for up to one hundred dollars (\$100) per day for each day the nuisance activity continues to occur following the date of the original warning by the Chief of Police or his/her designee(s), as described in Section 5. In assessing the civil penalty, the court may consider the following factors, citing to those found applicable:
 - (1) the actions taken by the person responsible to mitigate or correct the nuisance activity;
 - (2) the repeated or continuous nature of the nuisance activity;

- (3) the statements of the neighbors or those affected by the nuisance activity; and
 - (4) any other factor deemed relevant by the court.
- (e) The court which determined the property to be a chronic nuisance property shall also assess costs against the person responsible in the amount it costs the Township to abate, or attempt to abate, the nuisance property.
- (f) If the court determines the property to be a chronic nuisance property, the court shall order the property closed and secured against all unauthorized access, use and occupancy for a period up to one year, and may impose a civil penalty and costs.
- (g) Once a determination has been made by the Court that the chronic nuisance property shall be subject to closure and/or condemnation. The Court may authorize the Township to physically secure the premises and initiate such closure. Costs for such closure shall be submitted to the court for review. Any civil penalty and/or costs awarded to the Township may be filed with the township treasurer who shall cause the same to be filed as a lien on the property with the County Prothonotary. The Township shall file a formal lis pendens notice when an action for abatement is filed in the Court of Common Pleas of Schuylkill County.
- (h) The Schuylkill County Court shall retain jurisdiction during any period of closure or abatement of the property.
- (i) District Court 21-3-05 or 21-2-01 depending on where the violation occurs shall have jurisdiction of civil infractions issued pursuant to this chapter.

SECTION 7. SUMMARY CLOSURE.

Nothing in this Ordinance prohibits the Township from taking any emergency action for the summary closure of such property when it is necessary to avoid an immediate threat to public welfare and/or safety. The Township may take summary action to close the property without complying with the notification provisions of PA Rules of Civil Procedure, but shall provide such notice as is reasonable under the circumstances.

SECTION 8. SEVERABILITY.

If any portion of this ordinance, or its application to any person or circumstances, is held invalid, the validity of the ordinance as a whole, or any other portion thereof, or the application of the provisions to other persons or circumstances is not affected.

If any one or more sections, subsection, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.

Finally, that any Ordinance or Resolution or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

SECTION 9. EFFECTIVE DATE.

The provisions of this Ordinance shall become effective immediately upon enactment by the Board of Supervisors of West Mahanoy Township.

ORDAINED AND ENACTED THIS 16 DAY OF APRIL, 2013

ATTEST:

M. J. B. M. B. C.
Secretary

Chris Malocu
Chris Malocu

Mary Ann Wisniefsky
Mary Ann Wisniefsky

Paul Martin
Paul Martin