

**EAST MARLBOROUGH TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA
NUISANCE ORDINANCE
ORDINANCE NO. 2013-04**

AN ORDINANCE OF THE TOWNSHIP OF EAST MARLBOROUGH, CHESTER COUNTY, PENNSYLVANIA, PROHIBITING NUISANCES SUCH AS STORING OR ACCUMULATING ABANDONED OR JUNKED MOTOR VEHICLES, JUNK MATERIAL; OBSTRUCTING PUBLIC RIGHTS-OF-WAY; FAILING TO MAINTAIN ABANDONED OR UNOCCUPIED BUILDINGS, ON PRIVATE OR PUBLIC PROPERTY WITHIN THE TOWNSHIP; PROVIDING FOR THE REMOVAL OR REMEDIATION THEREOF ON PUBLIC OR PRIVATE GROUNDS AFTER NOTICE TO THE OWNERS TO DO SO; AND IN DEFAULT THEREOF, TO COLLECT THE COSTS OF SUCH REMOVAL OR REMEDIATION BY THE TOWNSHIP, AND PRESCRIBING PENALTIES FOR VIOLATION.

WHEREAS, the Board of Supervisors of East Marlborough Township, Chester County, Pennsylvania deems it to be in the best interest and general welfare of the citizens and the residents of this Township to prohibit the unreasonable, unwarrantable or unlawful use of private or public property which causes injury, damage, hurt, inconvenience, annoyance or discomfort to others in the legitimate enjoyment of their rights of person or property; and

WHEREAS, Act 60 of 1995, (53 P.S. §§66529) authorizes Townships of the Second Class to prohibit nuisances, to remove same and to impose Penalties therefore.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, and it is enacted and ordained by the Board of Supervisors of East Marlborough Township, Chester County, Pennsylvania, under and by virtue of the authority of the Second Class Township Code, as follows:

Section 1. Short Title.

This Ordinance shall be known as, and may be cited as, "The East Marlborough Township Nuisance Ordinance."

Section 2. Purposes and Intent.

In enacting this Ordinance, it is the purpose and intent of the Board of Supervisors to protect the citizens and residents of East Marlborough Township against the unreasonable, unwarrantable or unlawful use of private or public property which causes injury, damage, hurt, inconvenience, annoyance or discomfort to others in the legitimate enjoyment of their rights of person or property.

Section 3. Definitions.

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the word "shall" is always mandatory and not merely directory.

1. "Abandoned or Junked Motor Vehicles" are any vehicle in non-serviceable condition or without having both a current inspection sticker and current registration plate, except for an antique or collector motor vehicle (as defined by the Motor Vehicle Code, 75 Pa.C.S.A. §101 et.seq.) which is actively being restored.

2. "Abandoned or Junked Trailers" are any trailer in a non-serviceable or non-operational condition or without a current registration plate. The term "trailer" shall include, but shall not be limited to mobile homes, campers, utility trailers, construction trailers, horse trailers, boat trailers and snowmobile trailers.

3. "Ashes" are residue from fire used for cooking and for heating buildings.

4. "Board of Supervisors" is the Board of Supervisors of East Marlborough Township, Chester County.

5. "Garbage" is any waste materials resulting from the handling, preparation, cooking and consumption of food or from the handling, storage and sale of produce; provided that garbage shall not include (a) such materials maintained in a mulch or compost heap which is properly maintained for gardening or agricultural activities to be conducted on property on which the materials are stored or on nearby property owned or operated by the owner or operator of the property on which the materials are stored, or (b) cornstalks, stubble or other vegetative material generated in the course of planting, growing or harvesting fruits, vegetables or other agricultural crops.

6. "Junk Material" is any unused or abandoned machinery, equipment or appliances, and all forms of scrap metal, glass, tires, industrial waste and other salvageable materials.

7. "Nuisance" is any use of public or private property which is expressly described in Section 4 of this Ordinance or any unreasonable, unwarrantable, or unlawful activity, condition, structure or improvement which constitutes a threat or potential threat to the health or safety of property owners, residents, passersby or members of the public in the Township. Excluded is any agricultural activity or operation conducted using normal farming operations within the Township's Agricultural Security Area, unless expressly provided in a particular section of this Ordinance. In determining whether the use of a property is unreasonable or unwarrantable, the Township is not required to make quantitative measurements by instrumentation or other testing but, instead, may utilize the reasonable and substantiated determinations of affected individuals, property owners or

occupiers, as well as information provided by the Supervisors or other persons authorized by the Township.

8. "Nuisance Vegetation" shall mean plants determined to be invasive or injurious to public health, crops, livestock, agricultural land or other property including, but not limited to, plants listed on Pennsylvania's Noxious Weed Control List at 7 PA Code Section 110.1, as it may be from time to time amended. The Township Board of Supervisors may, from time to time by Resolution, specify additional species as Nuisance Vegetation. Nuisance vegetation shall not include naturally occurring vegetation on property outside a residential subdivision or commercial or industrial district, including wetlands or woodlands, hedgerows, steep banks, and similar natural areas.

9. "Offending Person" is an Owner or other Person believed by the Township to have violated this Ordinance or permitted a violation of this Ordinance.

10. "Owner" is a person or entity having the following status with respect to any premises located within the Township: (i) a title owner thereof; (ii) a lessee in possession of such premises; (iii) a person occupying or having charge of such premises, irrespective of legal status.

11. "Person" is any natural person, firm, partnership, association, corporation, company, club, co-partnership, society, or any entity or organization of any kind, other than the Township or other governmental agency having jurisdiction within the Township, the agents or employees of the Township or other governmental agency acting in their capacity as such.

12. "Rubbish" is any combustible trash, including paper, cartons, boxes, barrels, wood, excelsior, wood or other combustible furniture, and bedding; and any noncombustible trash, including metals, tin cans, metal or other noncombustible furniture, pieces of concrete, glass, crockery, and other mineral waste; provided that, rubbish shall not include (a) such materials generated or occurring on the property from property maintenance, landscaping or active construction operations so long as such materials are removed promptly following the completion of such operations, (b) such materials generated or occurring on the property from or used in agricultural, farming or equestrian activities, including cornstalks, stubble or other vegetative material generated in the course of planting, growing or harvesting fruits, vegetables or other agricultural crops or (c) naturally occurring conditions on undisturbed property, including, wetlands or woodlands, hedgerows, steep banks, and similar natural areas.

13. "Township" is the Township of East Marlborough, which is located within the confines of Chester County, Pennsylvania.

Section 4. Nuisances Declared Unlawful.

It shall be unlawful for any person to create or maintain any condition, activity or use upon their property which could directly or indirectly cause a nuisance or a health or safety hazard to a property owner, resident, passerby or member of the public in the Township. While not intended to be a comprehensive list, the establishment, maintenance,

operation or continuance of any of the following, at any time within the Township, is hereby declared to be a nuisance under the terms of this Ordinance.

A. Garbage, Rubbish, Junk Material, Etc. Storing or accumulating the following:

1. Garbage: It shall be unlawful to place or permit to remain anywhere in the Township any garbage, except for garbage stored in a tightly covered container for a period of not more than 14 calendar days.

2. Rubbish or ashes: It shall be unlawful to cause or permit to accumulate any rubbish or ashes, except as may be contained within a covered container that prevents such material from being blown away by the wind.

3. Junk material that can be seen from either (i) any public highway, road, street, avenue, lane or alley which is maintained by the Township or other municipality or the Commonwealth of Pennsylvania or (ii) any nearby public or private property.

4. Any other non-agricultural materials which are conducive to the harboring of vermin or otherwise cause a potential health or safety hazard.

5. Manure or mushroom substrate that is maintained at a location closer than one hundred (100) feet from a property line or a stream, pond or wetland area, including within the Township's Agricultural Security Area.

B. Abandoned or Junked Motor Vehicles or Trailers; Antique or Collector Motor Vehicles. Maintaining, storing or accumulating (a) one (1) or more abandoned or junked motor vehicles, except that maintaining up to three (3) antique or collector motor vehicles which are actively being restored shall not constitute a nuisance or (b) one (1) or more abandoned or junked trailers, unless any such vehicle or trailer is stored within a building or cannot be seen from either (i) any public highway, road, street, avenue, lane or alley which is maintained by the Township or other municipality or the Commonwealth of Pennsylvania, or (ii) any nearby public or private property.

C. Drainage or Flow of Water. 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, washstands, clothes washers, dish washers, lavatories, water closets, privies, septic systems 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 or upon any public highway, road, street, avenue, lane or alley, into any stream or waterway, or from any property into or upon any adjoining property, except for materials generated from any agricultural activity or operation conducted using normal farming operations within the Township's Agricultural Security Area.

D. Burning and Setting Fires. Either (i) burning of junk material, oil or tar products or garbage or (ii) intentionally starting fires endangering the lives or property of the property owners, residents, passersby or members of the public in the Township.

E. Nuisance Vegetation. Planting, maintaining or permitting the growth of (a) any bamboo within any public highway, road, street, right-of-way, avenue, lane or alley which is maintained by the Township or other municipality or the Commonwealth of Pennsylvania or (b) any Nuisance Vegetation.

F. Uncovered Well, Cistern, Cesspool and/or Septic Tanks. Permitting or allowing any well, cistern cesspool or septic tank to be, or remain, uncovered or, in the case of an uncovered well, cistern, cesspool or septic tank that is abandoned or otherwise not in use, failing to properly back-fill the former well, cistern, cesspool or septic tank.

G. Obstructing Public Roads. Partially or completely obstructing any public highway, road, street, right-of-way, avenue, lane or alley which is maintained by the Township or other municipality or the Commonwealth of Pennsylvania, or on the sidewalk or gutter in front of any premises, by or as the result of (a) dumping, piling or permitting to be deposited thereon, material of any kind, including garbage, rubbish, ashes, junk material, mud, dirt, coal, wood, brick, stone, gravel, clay, and sand, and permitting it to remain thereon, (b) pushing, shoveling or otherwise depositing snow thereon, and allowing same to remain thereon, (c) installing fences, or (d) diverting water.

H. Excavation along Public Roads. Allowing or permitting any excavation, material excavated or obstruction on or adjoining any public highway, road, street, right-of-way, avenue, lane or alley which is maintained by the Township or other municipality or the Commonwealth of Pennsylvania, to remain opened or exposed without properly notifying the relevant authorities and securing the same by a visually conspicuous barricade, temporary fence, or other protective materials.

I. Depositing on Public Roads. Throwing, spreading or depositing on any public highway, road, street, right-of-way, avenue, lane or alley which is maintained by the Township or other municipality or the Commonwealth of Pennsylvania or any watercourse or gutter within the Township limits, and permitting it to remain there, (i) any garbage, rubbish, ashes, junk material, animal carcass, any other similar offensive matter or (ii) any tacks, nails, sharp pieces of iron, glass bottles, briars, thorns or other dangerous and similar substances which may injure an individual or animal or puncture a rubber tire.

J. Littering and Dumping. Throwing or depositing on any public or private property any garbage, rubbish, or junk material.

K. Lights. No incandescent, strobe, sodium, mercury vapor, LED or similar lights shall spot, flood, or otherwise shine so as to impede the safe movement of traffic upon the streets, highways or traffic ways within the Township. No residence, business, industry or other person shall illuminate any sign adjacent to any street, highway or traffic way within the Township, with flashing, rotating, sequential, strobe, or otherwise moving lights, so as to interfere with the movement of traffic upon said streets, highways or traffic ways within the Township. No residence, business, industry or other person shall utilize any form or configuration of lights so as to resemble a traffic signal, railroad signal, or any other form of simulated signal, visible to the motoring public upon any street, highway or traffic way within the Township; provided, however, that none of the following acts shall be deemed prohibited by this Ordinance:

(a) Use of a spotlight by any policeman, other law enforcement officer, game protection, fireman, or other emergency officer or government official, in the performance of his or her official duties;

(b) Use of a spotlight by any person engaged in and for the purpose of assisting in, any rescue operation, any search for or apprehension of any criminal or fugitive from justice, any search for any lost or abducted person or domestic animal, or the lighting of any way or direction of travel for purposes of lawful travel, whether on or off such public road;

(c) Use of lighting by any person engaged in and for the purpose of assisting in, illuminating the scene of any crime, disaster, public disturbance, or an event permitted under the Township's Outdoor Activities Ordinance; and

(d) Any incidental and peripheral or accidental illumination by any spotlight otherwise in lawful use.

L. Emissions. The setting, maintenance, operation, conduct or permitting of the establishment and maintenance of fire or combustion in connection with a manufacturing, commercial or other similar non-residential or non-agricultural process which is or may be accompanied by constant, periodic or occasional emission on to any surrounding or adjacent property of smoke, odor, sparks, ash particles, burned sawdust or other debris or the creation and spreading of ash, debris, poison and like materials on surrounding or adjacent property.

M. Failure to Maintain Abandoned Properties. Failing to maintain any abandoned, unoccupied or foreclosed premises in a manner substantially consistent with the condition of properties in the neighborhood or vicinity, including, with respect to the maintenance of exteriors of buildings and other structures, the maintenance of lawns and other vegetation, and the removal of snow and other naturally occurring material on the property.

Section 5. Written Notice to Violators Required.

Whenever a condition constituting a nuisance is caused, permitted or maintained by an Offending Person, the Board of Supervisors or its designee shall make an effort to contact the Offending Person to discuss remediation of the nuisance. If the Offending Person fails to take steps to remediate the nuisance or if the Offending Person cannot be found or fails to respond to efforts to contact him, the Board of Supervisors or its designee shall cause a written notice to be served upon the property where the nuisance is located or where the Offending Person is known or was last-known to reside in one of the following ways:

1. by certified mail, return receipt requested, to the last known address of the Offending Person;
2. by making personal delivery of the notice to the Offending Person; or

3. by handing a copy of the notice at the residence of the Offending Person to an adult member of the family with which he resides, but if no adult member of the family is found, then to an adult person in charge of such residence; or

4. by fixing a copy of the notice to the door at the entrance of the premises in violation or at which the Offending Person is known or was last-known to reside; or

5. by publishing a copy of the notice in a local newspaper of general circulation within Chester County, Pennsylvania, once a week for two (2) successive weeks.

Such notice shall set forth in what respect such condition constitutes a nuisance, whether removal is necessary and required by the Township, or whether the situation can be corrected by repairs, alterations or by fencing or boarding, or in some way confining and limiting the nuisance.

Such notice shall require the Offending Person to commence action in accordance with the terms thereof within twenty (20) calendar days and thereafter, to comply fully with its terms with reasonable dispatch, with all material to be supplied and work to be done at the Offending Person's expense; provided, however, if the circumstances require immediate corrective measures, such notice shall require the Offending Person to immediately comply with the terms thereof.

Failure of the Offending Person to comply with such within the time limits specified therein shall serve to authorize the Township Manager or Code Enforcement Officer to enter upon the Offending Person's property and to remove, abate or cease the conditions creating a nuisance. The Township shall thereafter have the right to recover all costs expended by the Township for removal, abatement or cessation of such nuisance conditions, and may impose a municipal lien upon such property in the amount of such costs incurred by the Township.

Section 6. Penalty for Violation.

Notwithstanding anything set forth in Section 5 of this Ordinance, whenever in the determination of the Board of Supervisors or the Township Manager the circumstances warrant, this Ordinance may be enforced either pursuant to Section 1601(c.1)(1) or Section 1601(c.1)(2) of the Second Class Township Code, 53 P.S. Section 66601(c.1)(1) or Section 66601(c.1)(2) in the manner set forth in this Section 6.

1. Enforcement thereof may be by an action before a District Justice in the same manner provided for the enforcement of summary offenses or proceedings for collection of civil penalties under the Pennsylvania Rules of Civil Procedure. The Township Solicitor may assume charge of the prosecution without the consent of the District Attorney.

2. Any Offending Person shall (i) upon being found liable for a violation of this Ordinance in a civil enforcement proceeding commenced by the Township, pay a judgment of up to the amount of Six Hundred (\$600.00) Dollars per violation, or (ii) upon being found guilty in a summary offense proceeding, pay a fine of up to One Thousand

Dollars (\$1,000.00) per violation plus, in either case, the costs of prosecution and all court costs, including reasonable attorney fees, incurred by the Township as a result thereof. Each day that a violation continues shall constitute a separate violation, unless the District Justice determining that there has been a violation further determines that there was a good faith basis for such person violating this Ordinance to have believed that there was no such violation. In that latter event, there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice, and, thereafter, each day that a violation continues shall constitute a separate violation. In the event that any Offending Person against whom a judgment has been rendered by the District Justice neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable Pennsylvania Rules of Civil Procedure and shall have the right to recover all costs incurred by the Township in enforcing the judgment, and may impose a municipal lien upon the property on which the violation occurred in the amount of such judgment and of such costs incurred by the Township. All judgments, costs and reasonable attorney fees collected for the violation of this Ordinance shall be paid over to the Township.

3. In addition to the rights of the Township set forth in paragraph 2 of this Section 6, the Township, by means of a complaint in equity, may compel the owner of the premises to comply with the terms of any notice of violation or seek any such other relief as any such court of competent jurisdiction is empowered to afford, including, but not limited to, injunctive relief. The Township shall have the right to recover the costs of prosecution and all court costs, including reasonable attorney fees, incurred by the Township as a result of such complaint in equity, and may impose a municipal lien upon such property on which the violation occurred in the amount of such costs incurred by the Township.

Section 7. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof,

Section 8. Repeal of Prior Ordinances.

This Ordinance shall serve to repeal any pre-existing ordinances of the Township inconsistent with the terms hereof. Without limiting the foregoing, the Township's ordinance prohibiting nuisances enacted by the Board of Supervisors on the 12th day of May, 1975 is hereby repealed.

Section 9. Effective Date.

This Ordinance shall become effective five (5) days after the adoption hereof.

ENACTED AND ORDAINED by the East Marlborough Township Board of Supervisors
this 1st day of April, 2013.

**EAST MARLBOROUGH TOWNSHIP
BOARD OF SUPERVISORS**

Carl H. Wall
[Signature]
Edie Caudill
Joseph F. Wear
[Signature]

Attest:

Janet L. Lamb