

**BOROUGH OF PENNINGTON  
MERCER COUNTY, NEW JERSEY  
BOARD OF HEALTH**

**ORDINANCE # BOH 2008 –1**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 136 OF THE  
REVISED GENERAL ORDINANCES OF THE BOROUGH OF PENNINGTON**

**WHEREAS**, the Pennington Borough Board of Health desires to protect and promote the health of the residents of the Borough; and

**WHEREAS**, doing so requires amending and supplementing §136 of the Borough of Pennington Revised General Ordinances;

**WHEREAS**, the Board of Health is empowered to enact and amend Health Ordinance pursuant to N.J.S.A.26:3-64 et seq.; and

**WHEREAS**, N.J.S.A. 26:3-45 to N.J.S.A. 26:3-63 permits a Board of Health to pass, alter and amend ordinances, rules and regulations to declare and define nuisances and the abatement thereof;

**NOW, THEREFORE, BE IT ORDAINED**, by the Board of Health of the Borough of Pennington, in the County of Mercer, State of New Jersey, that the Revised General Ordinances of the Borough of Pennington be amended and supplemented as follows:

**SECTION I**

**CHAPTER 136 PUBLIC HEALTH NUISANCE CODE OF THE BOROUGH OF PENNINGTON**

The purpose of this chapter is to protect and promote the public health through the control, abatement and prevention of nuisances of a Public Health Concern. Alleged infractions of the provisions and standards set forth will be investigated by an enforcing official in each case presented. Wherever there is a question as to the significance of an alleged infraction or the factual existence of an alleged infraction, the prudent judgment of the Health Officer or other enforcing official will prevail in the determination of a violation.

**136-1 Definitions**

- a. "Abandon" means to desert, ignore, and fail to maintain a property in a safe, habitable condition.
- b. "Accumulation" means the gathering together and increasing in amount over a period of time.
- c. "Ashes" mean the residue from the burning of wood, coal or other combustible materials.
- d. "Attractive Nuisance" is a potentially harmful object on or condition of the land that, by its features, tends to lure children or others.
- e. "Board of Health" means the Borough Board of Health of the Borough of Pennington
- f. "Building" shall be defined as specified in the New Jersey Uniform Construction code, N.J.A.C. 5:23-1 et. seq.
- g. "Building Code" means the New Jersey Uniform Construction Code of N.J.A.C. 5:23-1 et. seq.
- h. "Commercial Activity" is any activity which is not a residential use or activity and includes, but is not limited to, gasoline stations, retail sales, professional activities including but not limited to medical, dental, legal, architectural, accounting, etc., personal services including real estate, insurance, barbershops, hairdressers, nail salons, etc., nurseries, landscaping businesses, farm stands, repair shops of all kinds, and amusements including but not limited to movies, skating rinks, bowling alleys etc., whether part of a shopping area or not and any other non-residential use or activity.
- i. "Commercial Premises" are as defined in the Borough Zoning Ordinances and/or is any tract of land on which or on part of which commercial activity of any kind takes place.
- j. "Contractor" means a person engaged in any business or service, including construction, repairing, refurbishing, remodeling or the demolition of buildings or grounds within the Borough.

- k. "Developed Property" is any premises on which a structure has been erected or other improvements have been made.
- l. "Dwelling" shall be defined as specified in the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1 et. seq.; Regulations for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10-1 et. seq.; Regulations Governing Rooming and Boarding Houses, N.J.A.C. 5:27-1 et. seq.; New Jersey State Housing Code, N.J.A.C. 5:28-1 et. seq., as may be the case.
- m. "Enforcing Officials" shall mean and include the Health Officer, Registered Environmental Health Specialist, Animal Control Officer, Zoning Officer, Construction Official, Fire Official or other official authorized by the Borough Board of Health to enforce this ordinance.
- n. "Exterior Property" is any space located between property boundary lines of the tax lot in question or the boundaries of any contiguous tax lots and any structure on the property.
- o. "Extermination" is the control and elimination of insects, mice, rats and other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, and trapping or by any other approved pest elimination methods.
- p. "Good Repair" means the structure is maintained in such a manner that there is no evidence of deterioration, or damaged or loose elements, and where appropriate, is capable of preventing the elements (rain, snow, wind) and rodents from entering the interior areas.
- q. "Hazardous Materials" mean wastes presenting a danger to health and safety by reason of their pathological, explosive, radiological or toxic characteristics.
- r. "Infestation" means the presence, within or contiguous to, a structure or premises of insects, mice, rats, vermin or other pests quantities large enough to constitute health threat.
- s. "Insects" means those insects that have public health significance for disease transmission, property damage, such as cockroaches, ticks, mosquitoes, lice, bedbugs and termites etc.
- t. "Noise" shall be defined by the Noise Control Act or N.J.S.A. 13:1G, Noise Control Regulation N.J.A.C. 7:29 and the Model Noise Control Ordinance, or Pennington Borough Noise ordinance and or any prohibitive activities in this Ordinance.
- u. "Non-residential" user means any type of commercial, industrial or similar activity, whether or not operating for a profit, occupying premises within the Borough and creating solid waste in any form.
- v. "Noxious Weeds" mean any plant designated by a Federal, State or County government as injurious to public health, agriculture, recreation, wildlife or property. A noxious weed may be native or non native, invasive or non invasive and may also be commonly defined as a plant that grows out of place and is competitive, persistent, and pernicious. Examples include but are not limited to ragweed, poison ivy or oak, thistle, and multiflora rose.
- w. "Occupant" shall be defined as specified in the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1 et. seq.; Regulations for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10-1 et. seq.; Regulations Governing Rooming and Boarding Houses, N.J.A.C. 5:27-1 et. seq.; New Jersey State Housing Code, N.J.A.C. 5:28-1 et. seq., as may be the case.
- x. "Owner" shall be defined as specified in the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1 et. seq.; Regulations for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10-1 et. seq.; Regulations Governing Rooming and Boarding Houses, N.J.A.C. 5:27-1 et. seq.; New Jersey State Housing Code, N.J.A.C. 5:28-1 et. seq.; New Jersey Uniform Fire Code N.J.A.C. 5:70 et seq., as may be the case.
- y. "Person" means and includes an individual, firm, corporation, association, society, partnership, and their agents or employees.
- z. "Premises" mean a house or building, together with its land and outbuilding.
- aa. "Public Health Concern" means any matters, conditions or things that cause worry, solicitude, or anxiety for the health, safety and welfare of the public do to their dangerous or unsanitary nature.

- bb. "Public Restroom" shall mean a room equipped with toilet facilities unarguably intended for public use in all public facilities and in establishments where commercial activity takes place.
- cc. "Resident" means any person occupying or maintaining a place of residence within the Borough.
- dd. "Residential" use means a dwelling unit, such as a home, condominium, trailer or a multifamily dwelling of two or more units.
- ee. "Rodents" mean those rodents that have public health significance for disease transmission, property damage such as mice, rats, bats and other borrowing rodents etc.
- ff. "Solid Waste" means any trash, garbage, junk, rubbish, refuse, litter, debris and other materials that when dumped, deposited, accumulated or abandoned create conditions of public health concern. This term shall include any animal or vegetable waste solids resulting from the handling, preparation, cooking or consumption of foods; discarded material such as; glass, wood, yard debris, grass/brush clippings, stone, concrete, plastic, ashes, cloth, rags, paper, metal, tires, street cleanings, dead animals, manure, appliances, furniture, equipment, automobiles, solid market wastes, construction materials, industrial wastes, chemical wastes, recyclable materials and containers, and all discarded appliances.
- gg. "Borough" means the Borough of Pennington, County of Mercer, and State of New Jersey.
- hh. "Usable Materials" properly stored are non perishable materials stored for new construction or other items intended to be used within 30 days and are stored off the ground and maintained in such a manner that they do not provide habitat for insects or rodents.
- ii. "Water drainage and accumulation" means the runoff, discharge or drainage of water from any premises or building which results in the accumulation of stagnant water. This subsection shall not apply to water retention areas and or reservoirs approved by the municipal engineer.
- jj. "Weeds" means the growth, existence or presence of any noxious weeds of any height, or the growth, existence or presence of any other weeds or plant growth in excess of ten inches. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs; provided, however, this term shall not include cultivated flowers, landscaped areas and gardens.

#### **136-2 Nuisances Defined and Prohibited**

- A. Any matter, thing, condition or act which after investigation by the Health Officer or other enforcing official is deemed to be injurious, detrimental or a menace to the public health or environment or is deemed to be an annoyance or interfere with the comfort or wellbeing of the inhabitants of the Borough is hereby declared to be a nuisance and shall include but not be limited to the following.
  - i. Pollution or the existence of a condition or discharge or release which causes or threatens pollution of any surface water or subsurface water of the Borough.
  - ii. The escape or entrance into open air/outdoor environment from any stack, vent, chimney, process or from any fire of such quantities and duration of smoke, fly ash, dust, fumes, vapors, mists, or gases that tend to be injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property throughout the Borough.
  - iii. The growth, existence or presence of ragweed, of ten (10") inches in height or greater, or in such a quantity so as to cause damage or injury to adjacent properties or, or be a public health concern, on any plot of land, lot, highway, street, sidewalk, right-of-way or any other public or private place within 200 feet of an occupied dwelling.
  - iv. The growth, existence or presence of poison ivy, of ten (10") inches in height or greater, or in such a quantity so as to cause damage or injury to adjacent properties or, or be a public health concern, within twenty (20) feet of an adjoining property line of an occupied residential or commercial property, sidewalk or right-of-way.
  - v. The growth, existence or presence of any weeds or noxious weeds, of ten (10") inches in height or greater, or in such a quantity so as to cause damage or injury to adjacent properties or, or be a public health concern, on any approved residential or commercial

property with the exception of approved State, County or local designated conservation areas or other restricted use areas. Subdivision lots approved but not issued final certificate of occupancy are included.

- vi. All residential and commercial lawn areas are to be maintained and mowed and may not to exceed ten (10") inches in height. Areas allowed to return to natural conditions must be approved by the Health Department per section 136-7-3 of this ordinance.
- vii. The existence or presence of dead and dying trees or limbs on any land within 50 feet of an adjoining dwelling or within 20 feet of an adjoining residential property line.
- viii. Any dead or dying tree that harbors insects or rodents.
- ix. The presence on any plot of land, highway, street, right-of-way or any other public or private place of any solid waste, but excluding usable materials properly stored. The practice of composting shall not fall within the meaning of this subsection, provided that such compost pile, mound or area is maintained on one's own private property and is properly maintained so as not to present offensive odors, the breeding or harborage of flies or other insects, rodents, vermin or any other public health nuisance.
- x. Depositing, dumping, accumulating, maintaining or otherwise allowing any matter or thing which serves as food for insects or rodents and to which they may have access or which serves or constitutes a breeding place or harborage for insects, rodents or pigeons of a public health significance in or on any land premises, building or other place.
- xi. The existence or presence of any accumulation of solid waste which may attract insects, rodents or other vermin and to which insects, rodents or other vermin may have access, or in which they may breed or dwell.
- xii. The existence or presence of any water or other liquid in which mosquito eggs, larvae or pupae exist or of any condition which allows water to lie, pond, stand or otherwise accumulate so as to provide a breeding environment for mosquitoes. The meaning of this subsection shall not apply to ponds where fish are adequately maintained so as to preclude the breeding of mosquitoes. This section shall not apply to fountains or swimming pools which maintain adequate circulation to preclude the breeding of mosquitoes.
- xiii. The keeping of any animal or animals in such a manner as to cause or present a source of foulness, odors or breeding of insects, rodents or other vermin.
- xiv. The existence or maintenance of any condition which may reasonably constitute a safety hazard, an attractive nuisance or otherwise present a threat to the safety and well-being of the inhabitants of the Borough or of the public at large, including but not limited to the following:
  - a. Any vacant building which is not adequately sealed, boarded up or otherwise secured so as to preclude the entry of inquisitive minors or others. (See also, the New Jersey Fire code.)
  - b. Any excavation, depression, hole, shaft, abandoned or unused well which is of such depth or dimension so as to present a hazard in terms of one falling into or being entrapped therein and which has not been adequately fenced or sealed so as to prevent injury or harm.
  - c. Any discarded refrigerator, cabinet, automobile or other piece of equipment, machinery, device or material which may offer or present an enclosure and a hazardous attraction to children or others which has not been properly sealed or discarded.
  - d. Any dead or dying trees or limbs in such proximity to a dwelling, building, street, sidewalk, pathway, right-of-way, thoroughfare, driveway, park, playground or other frequented area where the falling of the tree or part thereof would endanger life, threaten injury or damage property.
- xv. The willful abandonment of any domestic animal within the boundaries of the Borough.
- xvi. Accumulation and storage of solid waste on any private or commercial property unless properly contained or stacked for disposal for fourteen (14) days or more.
- xvii. Placement of solid wastes at curb for more than 5 days prior to the scheduled pick up

date. All items must be removed after the 5<sup>th</sup> day if not collected due to weather or the fault of the hauler. Non-payment of contractor for these services is not an acceptable reason for allowing items to remain.

- xviii. Any sidewalk, walkways, driveway, parking spaces or similar area containing cracks, pothole, or other defect which creates a hazardous condition or which is obstructed by plant growth or other natural or artificial barrier.
  - xix. The runoff, sump pump discharge or drainage of water from any premises or building which results in the accumulation of ice, stagnant water or discharges on public roadways or onto an adjoining property in an uncontrolled (via pipe or swale) manner without permission of adjoining property owner. This subsection shall not apply to water retention areas when properly maintained and cleaned of silt and debris and or reservoirs approved by the Borough officials.
  - xx. Public restroom shall be kept in good repair; all surfaces of fixtures, walls and floors are cleaned on a regular schedule and must be provided with running hot and cold water of adequate pressure per plumbing code. A supply of toilet paper, soap and hand drying supplies or equipment shall be provided at all times. Hand washing signs shall be posted.
- B. It shall be unlawful for any person or persons to commit, maintain or allow any nuisance, as declared and described in this section.

### **136-3 Return of Land to its Natural Condition due to larger residential lot zoning.**

- A. Whenever cultivated farm land is no longer actively farmed and considered for development or conversion to preserved open space there is a tendency to allow these lands to convert back or to go un-mowed, to the extent that they are creating a public health nuisance with such condition including wildlife harborage and nuisance weeds problems for both adjoining residential lot owners and farmers. Therefore, these lands are to be stabilized with appropriate vegetation, pre-emergent weed control or mowed.
- B. In residential subdivisions, the owner, tenant or occupant of lands may make an application to the Health Department to allow land to revert back to its natural condition, but in such a manner that will not allow for the establishment of noxious weeds or rodent harborage. Reforesting with 1.5 to 2 inch diameter or larger assorted pines and hard wood trees is recommended. Wildflower areas are to be maintained and mowed annually.
- C. The application will require submission of a survey of the subject land.
- D. The plan must be consistent with recommendation of the Horticulturist from Rutgers Cooperative Research and Extension of Mercer County.

### **136-4 Housing Standards of Habitability**

- A. It shall be unlawful for the owner of any building to allow occupancy as a residence which is not in compliance the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1 et. seq.; Regulations for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10-1 et. seq.; Regulations Governing Rooming and Boarding Houses, N.J.A.C. 5:27-1 et. seq.; New Jersey State Housing Code, N.J.A.C. 5:28-1 et. seq., as may be the case.
- B. It shall be unlawful for the owner of any building to allow occupancy as a business, commercial or industrial establishment which is not in compliance with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1 et seq. and or where the New Jersey Department of Labor and Industry or the United States Occupational Safety and Health Act provides otherwise.

### **136-5 Inspection of premises for violations; denial of entry; warrant.**

- A. All places and premises in this Borough shall be subject to inspection by the Health Officer or other enforcing official if that official has reason to believe that any section of this chapter is being violated.
- B. It shall be unlawful for any person to hinder, obstruct, delay, resist or prevent the Board of Health or other Enforcing Official upon presentation of identification from having full access to any place or premises upon which a violation of this code is believed to exist. In the event that entry to any place or premises is denied by any owner or tenant, the enforcing official shall obtain the appropriate warrant for entry through the Municipal Court.

### 136-6 Abatement of Nuisances

- A. Whenever a nuisance as declared by section 136.2 of this Ordinance is found on any plot of land, lot, right-of-way or any other premises or place, a violation shall be given to the owner, in writing, to remove or abate the same within such time as shall be specified therein but not less than five (5) days from the date of service thereof. Notice to the owner, of the violation and the time to abate, shall be deemed complete as of the date of the violation notice if served personally on the property owner. Notice to the owner, of the violation and the time to abate, shall be deemed complete three (3) days after the date on the violation notice, if served by regular first class mail, or posted at or on the subject premises.

If the owner resides out of state or cannot be notified speedily, such notices shall be left at the place or premises with the tenant or occupant or posted on the premises, and such action shall be considered proper notification to the owner, tenant or occupant. Notice to the owner, tenant or occupant, of the violation and the time to abate, shall be deemed complete as of the date of the violation notice, if served personally on the tenant or occupant. Notice, of the violation and the time to abate, shall be deemed complete three (3) days after the date on the violation notice, if served by regular first class mail, or posted at or on the subject premises.

- B. Whenever a nuisance as declared by Section 136.2 of this ordinance is found on any public property or on any highway or any other public premises or place, notice in writing shall be given to the person in charge to remove or abate the same within such time as shall be specified therein.
- C. The cost of abatement shall be borne by the property owner.
- D. If such person fails to comply with such notice within the time specified therein, the Health Officer or other enforcing official may remove, abate or cause the clean up of the nuisance in the manner as hereinafter provided.

### 136-7 Recovery of Costs by Borough

Whenever the owner, tenant or occupant notified has not complied with the notice as specified and the nuisance has not been abated or removed under the direction of the Health Officer or other enforcing official, any cost or expense incurred for abating or removing or causing to be abated or removed the nuisance or condition, may be recovered in the following manner:

- (a) Such costs and expenses shall be certified to the tax assessor and shall become part of the taxes next assessed against the premises upon which the nuisance or condition was located;
- (b) Where it is not possible or practical to proceed under subsection (a) the cost or expense shall be recovered in an action at law in any court of competent jurisdiction;
- (c) Regardless of how costs are actually recovered, they shall be in addition to and shall not affect the imposition of any penalties for the violation of this chapter.

### 136-8 Enforcement

The provisions of this ordinance shall be enforced by the Health Officer or other enforcing officials as defined herein. Enforcement shall be in the municipal court having jurisdiction over proceedings to enforce and collect any penalty imposed because of a violation of any provision of this ordinance. The proceedings shall be summary and in accordance with the Penalty Enforcement Law (N.J.S.A. 2A: 58-1 et seq.). Process shall be in the nature of a summons or warrant and shall be issued by those authorized by the local Board of Health.

### 136-9 Violations and Penalties.

**136-9.1 Maximum Penalty.** Any person who shall violate any provision of this Code shall, upon conviction thereof, be punishable by one or more of the following: a fine not exceeding two thousand (\$2,000.00) dollars or imprisonment for a period not exceeding ninety (90) days or to a period of community service not exceeding ninety (90) days at the discretion of the Judge of the Municipal Court.

**136-9.2.1 Separate Violations.** Except as otherwise provided every day in which a violation of any provision of this chapter or any other ordinance of the Borough exists shall constitute a separate violation.

**136-9.2.2 Application.** The maximum penalty stated in this section is not intended to state an appropriate penalty for every violation. Any lesser penalty, including a nominal penalty or no penalty at all, may be appropriate for a particular case or violation.

**136-9.2.3 Minimum Penalty.** The Borough Committee may prescribe that, for the violation of any particular Code provision or Ordinance, at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding one hundred (\$100.00) dollars.

**SECTION II.**

In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable there from and shall not be affected.

**SECTION III.**

This ordinance shall take effect upon final passage and publication in accordance with the law.

Date Introduced: February 27, 2008

Dated Advertised: \_\_\_\_\_

Date Adopted: \_\_\_\_\_

Dated Advertised: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Stephen Papenberg, Chairperson  
Pennington Borough Board of Health

\_\_\_\_\_  
Beverly Tucker, Secretary  
Pennington Borough Board of Health

**CERTIFICATION**

I hereby certify that the foregoing is a true copy of the Ordinance adopted by the Pennington Borough Board of Health at a meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Beverly Tucker, Secretary  
Pennington Borough Board of Health

\_\_\_\_\_  
Date