

KENNETT TOWNSHIP,
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 245

AN ORDINANCE OF THE TOWNSHIP OF KENNETT, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES OF KENNETT TOWNSHIP TO REMOVE PROVISIONS GOVERNING "NUISANCES" AND "INVASIVE AND NOXIOUS WEEDS" FROM CHAPTER 168, "PROPERTY MAINTENANCE", AND TO CREATE NEW CHAPTERS GOVERNING "NOISE", "NUISANCES", AND "WEEDS"; TO AMEND THE OPEN BURNING PROVISIONS OF CHAPTER 84 TO EXPAND THE PROHIBITION AGAINST OPEN BURNING IN KENNETT TOWNSHIP; AND TO ADD A SIDEWALK MAINTENANCE SAFETY PROVISION TO CHAPTER 202, "STREETS AND SIDEWALKS"; REPEALING ALL INCONSISTENT ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Board of Supervisors of Kennett Township has enacted the Code of Ordinances of Kennett Township which contains, *inter alia*, provisions governing property maintenance, open burning, and streets and sidewalks; and

WHEREAS, on recommendation of the code enforcement officer, the Board of Supervisors desires to remove reference to "Nuisances" and "Invasive and Noxious Weeds" from Chapter 168, "Property Maintenance" and desires to create new Chapters governing "Noise", "Nuisances", and "Weeds", in order to provide for easier reference to these distinct topics in the Code of Ordinances; and

WHEREAS, on recommendation of the code enforcement officer, the Board of Supervisors desires to amend the open burning provisions of the Code of Ordinances to expand the prohibitions against open burning in Kennett Township and to provide for the extinguishment of dangerous fires; and

WHEREAS, on recommendation of the code enforcement officer, the Board of Supervisors desires to amend Chapter 202, "Streets and Sidewalks" to add a sidewalk maintenance safety provision that requires the removal of snow and ice within 24 hours of the cessation of any storm; and

WHEREAS, the Board of Supervisors is authorized to provide for the general health, safety and welfare of the residents of Kennett Township and the general public pursuant to Section 1506 of the Second Class Township Code, and hereby deems the additions and amendments to the Code of Ordinances of Kennett Township set forth herein to be in the best interests of the health, safety and welfare of the residents of Kennett Township and the general public;

NOW, THEREFORE, be it, and it is hereby **ORDAINED** by the Board of Supervisors of Kennett Township, Chester County, Pennsylvania, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

- I. Chapter 168 of the Code of Ordinances of Kennett Township is amended to delete Articles II and III in their entirety.
- II. A new Chapter 148 is added to the Code of Ordinances of Kennett Township as follows:

"Chapter 148.

NOISE

§ 148-1. Scope.

This Chapter shall apply to the control of all sound originating within the limits of Kennett Township.

§ 148-2. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated herein:

COMMERCIAL CONSTRUCTION

The operation of heavy construction equipment in construction or demolition projects.

CONSTRUCTION

Any site preparation, assembly, erection, repair, alteration, remodeling, or similar action, including demolition and removal of buildings or structures.

CONTIGUOUS LAND USE

Any land use bordering or abutting, whether divided by a real property boundary or by a real property boundary and a public street.

CONTINUOUS SOUND

Any sound which is static, fluctuating or intermittent with a recurrence greater than one time in any fifteen-second interval.

DECIBEL (DB)

A numerical expression of the relative loudness of a sound.

DEMOLITION

Any dismantling, destruction, or removal of buildings, structures or roadways.

EMERGENCY

Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

HEAVY CONSTRUCTION EQUIPMENT

Trucks with three or more axles, earthmoving and/or grading equipment.

IMPULSIVE SOUND

Sound of short duration with an abrupt onset and rapid decay and an occurrence of not more than one time in any fifteen-second interval.

LAND USE

The actual real use of land and buildings thereon situated regardless of the zoning or other classification attributed to such land and buildings.

MOTOR VEHICLE

A vehicle which is self-propelled except for one which is propelled solely by human power or by electric power obtained from overhead trolley wires.

NOISE

Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

PLAINLY AUDIBLE SOUND

Any sound that can be detected by a person using his or her unaided hearing facilities.

PURE TONE

Any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of this Chapter, a pure tone shall exist if the 1/3 octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous 1/3 octave bands by 5 dB for center frequencies of 500 Hz and above, by 8 dB for center frequencies between 160 Hz and 400 Hz and by 15 dB for center frequencies less than or equal to 125 Hz.

RECEIVING LAND USE

The land use which is a contiguous land use to the noise source.

SOUND

An oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

SOUND LEVEL

The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971, or the latest approved revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

SOUND LEVEL METER

An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels. The sound level meter used for testing purposes in accordance with this Chapter shall meet the current American National Standard Institute specifications.

§148- 3. Administration and enforcement.

The Kennett Township Police and Code Enforcement Officers shall have the power to administer the terms of this Chapter, investigate complaints and prosecute violations of this Chapter in accordance with **§148- 6** of this Chapter.

§148- 4. Noise standards.

A. Specific prohibited acts. The following actions are specifically prohibited regardless of the sound level which is emitted, unless otherwise exempted in this Chapter:

(1) No person shall operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, cassette player, electronic recording device, sound amplifier or similar device which produces, reproduces or amplifies sound in such a manner as to be plainly audible across a property line except between the hours of 7:00 a.m. until 9:00 p.m. every day of the week.

(2) No person shall operate or permit the outdoor operation of any tools, equipment or machinery used for commercial construction, drilling or demolition, or in the sweeping of parking lots in such a manner as to be plainly audible across a property line except between the hours of 7:00 a.m. until 7:00 p.m. Monday through Friday and 9:00 a.m. until 5:00 p.m. on Saturday. It shall be unlawful to operate or permit the outdoor operation of any tools, equipment or machinery used for commercial construction, drilling or demolition, or in the

sweeping of parking lots in such a manner as to be plainly audible across a property line on Sundays and legal holidays.

(3) No person shall load or unload trucks or other motor vehicles or open, close or otherwise handle boxes, crates, containers, building materials, garbage cans or other objects in such a manner as to be plainly audible across a property line except between the hours of 7:00 a.m. until 7:00 p.m. Monday through Saturday, or at any time on Sundays and holidays.

(4) No person shall own, possess, harbor or control any animal or bird which howls, barks, meows, squawks or makes other sounds continuously and/or incessantly for a period of 10 minutes or makes such noise intermittently for 1/2 hour or more to the disturbance of any person at any time of the day or night, regardless of whether the animal or bird is situated in or upon private property; provided, however, that at the time the animal or bird is making such noise, no person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated or for any other cause which teased or provoked the animal or bird.

(5) No person shall remove or render inoperative a sound-dissipative device from motor vehicles, equipment or machinery, other than for purposes of maintenance, repair or replacement when such motor vehicle, equipment or machinery is not in use; intentionally move or render inaccurate or inoperative any sound-monitoring instrument or other device positioned by or for the Township or other governmental entity or agent thereof; or use any motor vehicle, equipment or machinery which has had a sound-dissipative device or any part thereof removed or rendered inoperative.

(6) No person shall repair, rebuild or test or otherwise work on any motorcycle, motor vehicle, motorboat or aircraft outdoors in such a manner as to be plainly audible across a property line except between the hours of 7:00 a.m. until 7:00 p.m. every day of the week.

(7) Except for emergencies, no person shall intentionally sound or permit the sounding outdoors of any fire, burglar or civil defense alarm or any similar stationary emergency signaling device intended for public notification.

B. General performance standards/noise levels.

(1) In those cases not specifically controlled by § 148-4.A., above, no person shall operate or cause to be operated on private or public property any source of continuous sound (any sound which is static, fluctuating or intermittent with a recurrence greater than one time in any fifteen-second interval) in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in the following table when measured at or within the property boundary of the receiving land use. All measurements shall be made with a sound level meter which is in conformance with American Standards Association specifications.

(2) Continuous sound levels by receiving land use.

Continuous Sound Levels by Receiving Land Use		
Receiving Land Use Category	Time	Sound Level Limit

Residential, public space, open space, agricultural or institutional	7:00 a.m. – 10:00 p.m. 10:00 p.m. – 7:00 a.m., plus <i>Sundays and legal holidays</i>	65 dBA 60 dBA
Commercial or business	7:00 a.m. – 10:00 p.m. 10:00 p.m. – 7:00 a.m., plus <i>Sundays and legal holidays</i>	65 dBA 60 dBA
Industrial	At all times	70 dBA

(3) Correction for character of sound. For any source of sound which emits a pure tone, the maximum sound-level limits set forth in the above table shall be reduced by five dBA. For any source of sound which emits an impulsive sound (a sound of short duration, with an abrupt onset and rapid decay and an occurrence of not more than one time in any fifteen-second interval), the excursions of sound pressure level shall not exceed 20 dBA over the ambient sound pressure level, regardless of the time of day or night or receiving land use, using the "fast" meter characteristic of a Type II meter, meeting ANSI Specification S1.4-1971.

§148- 5. Exceptions.

The following noises are exempted from the provisions set forth in § 148-4 of this Chapter:

- A. Blasting, only if performed in accordance with a permit issued by the Pennsylvania Department of Environmental Protection. Such blasting may occur only between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, unless specifically authorized at different times by the DEP permit.
- B. Alarms or other devices used for the purpose of alerting people to the existence of an actual emergency or devices such as a horn or siren installed in a motor vehicle and used to warn persons of an imminent danger.
- C. Emergency work to provide electricity, water or other public utilities or restore essential public services, including construction activities directly related to the abatement of an emergency.
- D. Authorized emergency vehicles responding to an emergency.
- E. A snowplow, snow blower or other similar device in operation used to remove snow or ice.
- F. Work or activities performed or sponsored by schools and governmental agencies or their contractors in the performance of public service.
- G. Noises made by bells, chimes, carillons used for religious purposes or in conjunction with national celebrations or public holidays; existing bells, chimes and carillons and clock strike mechanisms that are currently in use for any purpose.
- H. Motor vehicle operations shall not exceed the noise levels established in Chapter 450 of Title 67 of the Pennsylvania Code of Regulations, SubChapter B, and Established Sound Levels
Note: See 67 Pa. Code § 157.11 et seq. – Vehicle Code

I. Public celebrations specifically authorized by the Township.

J. Agriculture.

§148- 6. Violations and penalties.

Any person who shall violate any provision of this Chapter, upon conviction thereof in summary proceedings brought before a magisterial district judge shall be sentenced to pay a fine not less than \$300.00 and not to exceed \$1,000.00 together with the costs of prosecution including reasonable attorney fees and on default thereof suffer imprisonment of not more than thirty (30) days. Each section of this Chapter shall constitute a separate offense, and each day or portion thereof in which a violation of this Chapter is found to exist shall constitute a separate offense, each of which violations shall be punishable by a separate fine imposed by the magisterial district judge of not less than \$300.00 and not to exceed \$1,000.00 together with the costs of prosecution including reasonable attorney fees and on default thereof suffer imprisonment of not more than thirty (30) days.”

III. A new Chapter 150 is added to the Code of Ordinances of Kennett Township as follows:

“Chapter 150.

NUISANCE

§ 150-1. Nuisances Enumerated.

The following uses of and activities upon real property in the Township of Kennett are hereby declared to be nuisances and are hereby prohibited:

- A. The use of any premises as a trash or garbage dump.
- B. The depositing or dumping of any amount of trash or garbage upon the premises of another or upon public property.
- C. The burning of or setting fire to trash, rubbish, refuse or garbage brought upon and accumulated or stored on any premises from any other location or locations.
Note: See also Ch. 84, Burning, Open.
- D. The accumulation or storage of junked or wrecked automobiles.
- E. The accumulation or storage of scrap metal or other waste material as a junkyard.
- F. Any use of or activity upon property that, by reason of flames, smoke, odors, fumes, noise or dust, unreasonably interferes with the reasonable use, comfort and enjoyment of a neighbor's property or endangers the health or safety of the occupants of a neighboring property.
- G. The excessive or unreasonable accumulation of scrap, junk, trash, garbage or rubbish upon any premises causing odors, fumes or unsightly appearance to neighboring property owners.

§ 150-2. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

GARBAGE - The accumulation of discarded animal or vegetable waste, resulting from handling, preparing and cooking of food.

JUNK VEHICLES - Any one or more abandoned or junked motor vehicles, including vehicles that are wrecked, disabled, inoperable, unregistered or without current inspection sticker, excepting only:

- (a) Vehicles which are actively being rebuilt or repaired and which are stored in structures, behind buffers or under covers; and
- (b) Vehicles which are stored so as not to violate the outdoor storage provisions set forth elsewhere in the Kennett Township ordinances.

RUBBISH - Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke, and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials, excepting only:

- (a) The accumulation of leaves, grass, wood or brush pile for seasonal fireplace use, a compose heap of vegetable matter or the manure of animals for agricultural or horticultural purposes shall not be construed as unlawful.

§ 150-3. Creating, permitting or maintaining nuisances unlawful.

It shall be unlawful and a violation of this Chapter for any person, partnership, association, corporation, firm or other entity to create, permit or maintain any nuisance within Kennett Township.

§ 150-4. Removal or abatement of nuisances.

Any person(s) who shall create, continue, cause, maintain or permit any nuisance within Kennett Township shall, after written notice from the Township which contains a description of the nuisance and a date or time period for its cessation, remove, abate and remediate such nuisance. If appropriate action is not taken by the person(s) violating the provisions of this article by the date or within the time period set forth, the Township may, at its discretion, cause the removal, abatement or remediation of such nuisance, including entrance upon the premises upon which the nuisance is located. However, notwithstanding the above provisions relating to dates and time periods, in any instance where the nuisance is perceived to be of such a nature or severity that it could or does jeopardize the health or safety of any person if not promptly addressed, the written notice shall contain a statement to that effect, and the Township may, at its discretion, act immediately to cause the necessary removal, abatement or remediation. All costs and expenses reasonably incurred together with a penalty as hereinafter provided shall be charged against and collected from the person(s) violating the provisions of this Chapter. The Board of Supervisors may also institute proceedings in the courts of equity.

§ 150-5. Violations and penalties.

Any person who shall violate any provision of this Chapter, upon conviction thereof in summary proceedings brought before a magisterial district judge, shall be sentenced to pay a fine not less than \$300 and not to exceed \$1,000, together with the costs of prosecution, including reasonable attorney fees, and on default thereof suffer imprisonment for no more than thirty (30) days. Each day such nuisance continues unabated beyond the date or time period set forth in the written notice shall constitute a separate and distinct offense under this Chapter, and shall be punishable accordingly.”

IV. A new Chapter 232 is added to the Code of Ordinances of Kennett Township as follows:

Chapter 232.

WEEDS

§ 232-1. Controlled, prohibited and exempted growths.

A. The following plants are declared to be noxious weeds and shall be removed by the owner from each lot, parcel or tract of ground (the “lot”) located within Kennett Township (the “Township”) as often as necessary to prohibit their growth:

NOXIOUS WEED CONTROL LIST

	Proper Name	Common Name
1.	Cannabis sativa	Marijuana
2.	Carduus nutans	Musk or Nodding thistle
3.	Cirsium arvense	Canada thistle
4.	Cirsium vulgare	Bull or Spear thistle
5.	Pueraria lobata	Kudzu — vine
6.	Rosa multiflora	Multiflora rose
7.	Sorghum bicolor	Shattercane
8.	Sorghum halepense	Johnson grass
9.	Lythrum salicaria complex	Any nonnative cultivar
10.	Datura stramonium	Jimson weed
11.	Polygonum perfoliatum	Mile-a-minute
12.	Heracleum mantegazzianum	Giant hogweed
13.	Galega officinalis	Goatsrue

Such growth is hereby declared to be a public nuisance and a danger to the public health, safety and general welfare and is, therefore, prohibited.

B. Between May 1 and September 30 of each calendar year, the owner of each lot shall control excessive vegetation by mowing or cutting such lot as often as is necessary to keep grass, brush, weeds and similar vegetation, not otherwise controlled by Subsection A. or exempted by Subsection C. of this § 232-1, growing on a lot to a height not to exceed 10 inches or less.

C. The provisions of Subsection B of this § 232-1 shall not apply to wildflowers and cultivated flowers, inclusive of annuals, biennials, and perennials, farm-grown grains, vegetables and similar plants

intended for animal and human consumption, vegetable gardens, trees, and cultivars, all of which are exempted from the provisions of this chapter.

§ 232-2. Notice to Violators

Upon receipt of a formal written complaint by a resident or landowner in Kennett Township or by direct observation of a Township official, the code enforcement officer, police officer, or other Township personnel shall send the owner or person in control of the lot a written notice and post the written notice on the lot whereon the offending growth is found to exist. The notice shall specify the location and the type of noxious weed and require its removal within 10 days of the date of the notice unless the owner of the lot in question can demonstrate to the applicable Township official just cause as to why the offending growth cannot be removed. Failure of the landowner to comply with the requirements of such notice within 10 days of the date of the notice shall be *prima facie* evidence of a violation of this Chapter.

§ 232-3. Township action.

In the event that the offending growth has not been removed or destroyed within the ten-day period after the date of the notice required in Section 232-2, above, the Township or a party contracted by the Township may mow, destroy or dispose of the offending growth in such a fashion as deemed appropriate. The owner of the lot whereon the work was undertaken shall bear the cost of the work and shall be required to reimburse the Township in full upon receipt of an itemized bill. Failure to pay any bill issued pursuant to this Section 232-3 shall result in the Township filing a lien against the affected lot.

§ 232-4. Violations and penalties.

Any person who shall violate any of the provisions of this Chapter shall, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rule of Criminal Procedures, be sentenced to pay a fine of not less than \$100 nor more than \$1,000 plus the costs of prosecution and reasonable attorneys' fees. In default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than 30 days. Each section or provision of this Chapter that is violated shall constitute a separate offense, and each day or portion thereof in which a violation of this Chapter is found to exist shall constitute a separate offense, each of which violations shall be punishable by a separate fine imposed by a magisterial district judge of not less than \$100 and not more than \$1,000, plus the costs of prosecution and reasonable attorneys' fees, and upon default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than 30 days."

V. Chapter 84 of the Code of Ordinances of Kennett Township is amended to read as follows:

Chapter 84.

BURNING, OPEN

§ 84-1. Burning prohibited.

It is unlawful to burn, or to authorize another to burn, any materials, natural or man-made, including but not limited to, leaves, twigs, brush, lumber, building materials, construction waste materials, municipal waste, recyclable materials and any commercial or industrial by-product waste materials of any kind, outdoors anywhere in Kennett Township.

§ 84-2. Controlled burn requirements.

By authorization from and the issuance of a permit by the Kennett Township fire marshal, in the fire marshal's sole discretion, controlled burning shall be permitted for agricultural purposes. Anyone who undertakes an authorized and permitted controlled burn in Kennett Township outside of any building shall at all times keep said fire under control and prevent it from spreading either by direct conflagration, sparks, burning embers or otherwise, and shall completely extinguish it, including sparks and smoldering embers before leaving it.

§ 84-3. Extinguishment of dangerous fires.

Any fire on public or private property may be extinguished by the local fire company having jurisdiction, either with or without the consent of the property owner or person in charge thereof if, in the opinion of the Kennett Township fire marshal, a Kennett Township police officer or the Township code enforcement officer, such fire constitutes a danger to persons or property, or is in violation of this Chapter. Neither the Township nor the applicable fire company shall have any liability whatsoever for damage caused by the extinguishment of such a fire.

§ 84-4. Violations and penalties.

Any person or business entity who shall violate the provisions of this Chapter shall be issued a citation, and if found guilty of violating the provisions of this Chapter by a Magisterial District Judge, shall pay a fine of not less than \$300 nor more than \$1,000, and, in default of payment thereof, shall be sentenced to imprisonment in the county jail for a period not exceeding thirty (30) days. Each violation of any individual provision of this Chapter, and each day that any violation of this Chapter continues, shall constitute a separate offense, punishable as stated herein."

VI. Chapter 202 of the Code of Ordinances of Kennett Township is amended to renumber existing § 202-36 as § 202-37, and to add a new § 202-36 as follows:

"§ 202-36. Sidewalk maintenance safety.

Failure to substantially clear sidewalks of accumulated snow, ice and any hazardous materials or debris within 24 hours after the cessation of any snowstorm, ice storm, windstorm or other event creating the accumulation. No snow, ice or debris may be shoveled or deposited onto adjacent property or onto any public road or highway."

VII. All ordinances or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency.

VIII. The provisions of this Ordinance are declared to be severable. If any provision of this Ordinance is declared by a court of competent jurisdiction to be invalid or unconstitutional, such determination

shall have no effect on the remaining provisions of this Ordinance, or on the provisions of the Code of Ordinances of Kennett Township.

IX. This Ordinance shall become effective five (5) days following its legal enactment.

ORDAINED and **ENACTED** this 18th day of November, 2015.

ATTEST:

BOARD OF SUPERVISORS OF KENNETT TOWNSHIP

Lisa M. Moore, Secretary/Manager

Scudder G. Stevens, Chairman

Richard L. Leff, Vice-Chairman

Robert A. Hammaker, Member