



TITLE #: 37

Ordinance #: 02-07-12-037

Date: 02-07-2012

ORDINANCE for the ESTABLISHMENT of REGULATIONS CONCERNING PUBLIC NUISANCES

DESCRIPTION: This ordinance shall be known as the “Town of Cheswold Public Nuisance Ordinance”, as it establishes standards of behavior for persons while they are in the Town of Cheswold, and is herein sometimes referred to as the Public Nuisance Ordinance or Public Nuisance Code and shall apply to and include the entire corporate limits of the Town of Cheswold, Delaware, Kent County – State of Delaware.

Section 1. PURPOSE

The purpose and intent of this Ordinance is to establish an orderly procedure for the determination and abatement of public nuisances within the Town of Cheswold.

Section 2. APPLICABILITY

The provisions of the Public Nuisance ordinance shall apply to all persons within the corporate limits of Cheswold, whether residents, visitors or transitory traffic.

Section 3. DEFINITIONS

As used in this ordinance, the following terms shall have the specified meaning:

- 3.1 Owner** - shall mean any person in whom is vested the ownership and title of property, and who is the owner of record.

Owner shall also include any local, city, county, state or federal governmental entity.

- 3.2 Person** – shall mean a human being who has been born and is alive, and, where appropriate, a public or private corporation, a trust, a firm, a joint stock company, a union, an incorporated or unincorporated association, a partnership, a government or a governmental instrumentality.

- 3.3 Premises** – shall mean a lot, or parcel of land, including the buildings or structures thereon.

- 3.4 Private Property** – shall mean land owned by a person or group and kept for their exclusive use.

Section 3. DEFINITIONS – “continued”

3.5 Public Property – shall mean property owned by the government or one of its agencies, divisions or entities.

3.6 Property – shall mean any place, site or premises and includes any building, structure, erection, or any separate part or portion thereof, whether used as a residence, or for commercial purposes or a house of worship, or the ground itself.

3.7 Public Nuisance – shall mean any conduct or condition which endangers the life, health, safety, or the general welfare of the Town of Cheswold, or any conduct or condition which obstructs the reasonable and comfortable use of any property, or gives offense to the senses and includes the following:

3.7.1 The physical condition or use of any premises regarded as a public nuisance at common law;

3.7.2 Any physical condition, use or occupancy of any premises or its appurtenances considered an attractive nuisance to children, including, but not limited to:

3.7.2a abandoned wells

3.7.2b shafts

3.7.2c basements

3.7.2d excavations

3.7.2e unsafe fences

3.7.2f structures

3.7.2g pools

3.7.2h residential basketball nets/courts

3.7.3 Any premises designated as having unsanitary sewerage or plumbing facilities;

3.7.4 Any premises designated as unsafe for human habitation or use;

3.7.5 Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or insecure so as to endanger life, limb or property;

3.7.6 Any premises from which the plumbing, heating or other facilities, have been removed, or from which utilities such as water, sewer, gas and electricity have been disconnected, destroyed, removed or rendered ineffective, or the required precautions against trespassers have not been provided; (see Town of Cheswold Ordinance #08-05-11-025 International Property Maintenance Code, Sections 5, 6 and 7)

3.7.7 Any premises which are unsanitary, or which are littered with rubbish or garbage or which have an uncontrolled growth of weeds; or

3.7.8 Any structure or building that is in:

3.7.8a an advanced state of dilapidation

3.7.8b deterioration or decay

3.7.8c faulty construction condition

3.7.8d an overcrowded condition

3.7.8e an open condition

Section 3. DEFINITIONS – “continued”

3.7 Public Nuisance - “continued”

- 3.7.8 Any structure or building that is in:
 - 3.7.8f a vacant or abandoned condition
 - 3.7.8g a condition that is so damaged by fire that it is capable of providing adequate shelter
 - 3.7.8h danger of collapse
 - 3.7.8i structural failure
 - 3.7.8j a condition as to present a danger to anyone on or near the premises.

3.8 Structure – shall mean that which is built or constructed, including, without limitation because of enumeration,

- 3.8.1 buildings for any occupancy or use whatsoever,
- 3.8.2 fences,
- 3.8.3 signs,
- 3.8.4 billboards,
- 3.8.5 fire escapes
- 3.8.6 chute escapes
- 3.8.8 railings
- 3.8.9 water tanks
- 3.8.10 towers
- 3.8.11 open grade steps
- 3.8.12 sidewalks or stairways
- 3.8.13 tents
- 3.8.14 anything erected and framed to component parts which is fastened, anchored or rests on a permanent foundation or on the ground.

3.9 Yard – shall mean an open unoccupied space on the same lot with a building extending along the entire length of the street, or rear or interior lot line.

Section 4. PUBLIC NUISANCES PROHIBITED

4.1 It shall be unlawful for any person, firm, corporation, association or any other entity to cause or allow to exist any public nuisance, as defined in Section 3.7 et al, of this Ordinance, within the corporate limits of the Town of Cheswold.

Section 5. AUTHORITY TO ACT

5.1 The Police Department of the Town of Cheswold is hereby authorized to take appropriate action as set forth herein for the determination and abatement of any public nuisance.

Section 6. DETERMINATION of a PUBLIC NUISANCE

6.1 The Town Council of the Town of Cheswold may, upon the written complaint of any resident of the Town of Cheswold or upon its majority vote, determine by Resolution that any particular conduct or condition constitutes a public nuisance, as defined by this Ordinance.

6.2 Upon approval and passage of the defined Public Nuisance Act, the Town Council or their designee is authorized to complete the process of providing notice to the offender as specified in Section 7 of this Ordinance.

Section 7. WRITTEN NOTICE of VIOLATION of PUBLIC NUISANCE ORDINANCE

7.1 Upon determination of the identification of the person violating the Public Nuisance Ordinance, the administrative office of the Town of Cheswold is to provide written notice to the person, firm, corporation, association or other entity causing or allowing of such public nuisance to exist.

7.2 Notice is to be delivered in person or via certified mail and a signature obtained to attempt to verify delivery.

7.3 The notice shall specify:

7.3.1 The conduct or condition constituting the public nuisance, and;

7.3.2 A statement that such conduct or condition has been determined to constitute a public nuisance and violates this Ordinance, and;

7.3.3 The action deemed necessary to remove or correct the conduct or condition constituting the public nuisance, and;

7.3.4 A statement that such action must be completed within thirty (30) days, from the receipt of said notice, and;

7.3.5 The action, if any, which the Town of Cheswold may take upon failure to remove or correct the conduct or condition constituting the public nuisance, and;

7.3.6 The penalties which may be imposed for violations of this Ordinance.

7.4 Such notice shall be presumed received upon personal delivery or upon the date such notice was deposited in the U.S. mail.

7.5 The fact that such notice is not actually received shall not be a defense to enforcement of this Ordinance.

Section 8. IMMEDIATE NOTICE of VIOLATION of PUBLIC NUISANCE ORDINANCE

8.1 In cases and/or situations where the Police Department of Cheswold deems the activities of a person to be an immediate public nuisance they are hereby authorized to render the necessary actions to remedy and relieve the nuisance and to administer fines to persons as specified in Section **13** of this Ordinance or to administer criminal justice as deemed necessary under the circumstances.

**Section 8. IMMEDIATE NOTICE of VIOLATION of PUBLIC NUISANCE ORDINANCE –
“continued”**

- 8.2** Actions administered by the Police Department of Cheswold, in the immediate notice of a violation will have precedence over the provisions of Section 7 of this Ordinance.
- 8.3** However, the Officer in charge at the time in these situations, or the highest ranking Officer of the Town of Cheswold Police Department will maintain the authority to invoke Section 7 of this Ordinance if deemed appropriate.

Section 9. PUBLIC HEARING OPPORTUNITY

- 9.1** Any person, firm, corporation, association, or other entity which receives any notice given pursuant to Section 6 of this Ordinance may request, in writing and within fifteen, (15), days of receipt of said notice, a public hearing before the Town Council of the Town of Cheswold, in order to show cause, if any, why the Town of Cheswold should not proceed pursuant to Section 11 of this Ordinance, with abatement of the conduct or condition deemed to constitute a public nuisance.

Section 10. PUBLIC HEARING PROCESS

- 10.1** If a public hearing is properly and timely requested pursuant Section 9, of this Ordinance, the Town of Cheswold shall not take any abatement action pursuant to this Ordinance, until such a public hearing has been held.
- 10.2** Such public hearing may be conducted at the next regularly scheduled meeting of the Town Council of the Town of Cheswold, or sooner if necessary, but in any event shall be conducted no later than sixty, (60) days, from the date upon which the Town of Cheswold receives the written request for said hearing.
- 10.3** If after said hearing by the Town Council of the Town of Cheswold determines that the Town of Cheswold should not proceed pursuant to Section 11 of this Ordinance with abatement of the conduct or condition deemed to constitute a public nuisance, then the Town of Cheswold shall take no abatement action pursuant to this Ordinance.
- 10.4** If after said public hearing however, the Town Council of the Town of Cheswold determines that the Town of Cheswold should proceed pursuant to Section 11 of this Ordinance with abatement of the conduct or condition deemed to constitute a public notice, then the Town of Cheswold may proceed pursuant to Section 11 of this Ordinance with abatement of the conduct or condition deemed to constitute a public nuisance provided, nevertheless, that no abatement action shall commence any sooner than thirty, (30), days after receipt of the notice required by Section 6 of this Ordinance.
- 10.5** If a public hearing is not properly and timely requested pursuant to this Section, then the Town of Cheswold may proceed pursuant to Section 11 of this Ordinance with abatement of the conduct or condition deemed to constitute a public notice.

Section 11. PROCEDURE for ABATEMENT of PUBLIC NUISANCE

11.1 If any person, firm, corporation, association, or any other entity shall refuse or fail to remove or correct any conduct or condition constituting a public nuisance within thirty, (30), days from the receipt of any notice given pursuant to Section 6 of this Ordinance, then the Town of Cheswold may take whatever action is appropriate and reasonably necessary to abate such public nuisance, including, but not limited to the physical removal or correction of said conduct or condition, and;

11.2 The Town of Cheswold or its designated agent is hereby authorized to enter upon any private property within the Town of Cheswold without warrant to accomplish this purpose.

11.3 Any and all costs or expenses incurred by the Town of Cheswold shall be assessed against the property harboring the public nuisance, and;

11.4 Any such costs or expenses so incurred shall constitute a lien against said property which shall be collectible in the same manner as real property taxes within the Town of Cheswold.

Section 12. OTHER REMEDIES

12.1 In lieu or in addition to the aforesaid procedure for the abatement of any public nuisance, the Town of Cheswold may file a civil action for injunctive relief to enjoin any violation of this Ordinance or any appropriate civil or criminal action for enforcement of the penalty provided in Section 13 of this Ordinance, or both, in any court of competent jurisdiction.

Section 13. PENALTY for VIOLATIONS

13.1 Any person, firm, corporation, association, or other entity violating the provisions of this Ordinance may be sued or prosecuted before any court of competent jurisdiction, and;

13.2 Upon judgment or conviction shall be liable for, forfeit, or pay a penalty or fine to the Town of Cheswold in the amount of \$50.00, for the first violation, and;

13.3 Subsequent violations will be at a cost of \$100.00 each.

13.4 Each and every day that such violation occurs or continues shall constitute and be punishable as a separate offense.

Section 14. Severability

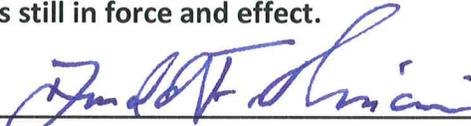
14.1 If any provision of this Ordinance or any application of this Ordinance to any particular entity or circumstance shall be deemed invalid, such invalidity shall not affect any other provision or application of this Ordinance, which may otherwise be given effect and to this end the provisions of this Ordinance are hereby declared to be severable.

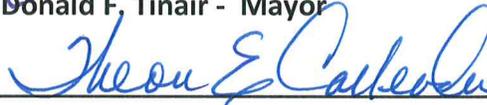
Section 15. EFFECTIVE DATE

This ordinance and the rules, regulations, provisions, requirements, orders, administration and management and matters established and adopted hereby shall take effect and be in full force and effect from July 1, 2012 and after the date of its final passage and adoption.

Ordinance No. 02-07-12-037 entitled, **Public Nuisance** was duly adopted by a majority vote of the Cheswold Town Council at the Council meeting held on June 4, 2012, at which a quorum was present.

I, Donald F. Tinari, Mayor of the Town of Cheswold, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by an affirmative majority vote of all elected members of the Town Council of Cheswold at a regularly scheduled Town Council Meeting, held on, Monday, March 5, 2012, at which a quorum was present and voting throughout, and that the same is still in force and effect.

CERTIFIED:  Date: June 4, 2012
Donald F. Tinari - Mayor

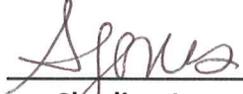
ATTEST:  Date: June 4, 2012
Theon E. Callender - Secretary/Treasurer

Agreed:  Date: June 4, 2012
Vice-Mayor Kenneth H. Brown

Agreed: Absent Date: June 4, 2012
Councilperson Sonia Gassaway

Agreed:  Date: June 4, 2012
Councilperson Mildred Johnson

Agreed:  Date: June 4, 2012
Councilperson Linda Perry

NOTARIZED:  Date: June 4, 2012
Shadina Jones – Town Clerk

Ordinance No.: 02-07-12-037

Primary Sponsor: Secretary/Treasurer Theon E. Callender
Co-Sponsor: n/a

Introduction: March 5, 2012