

ORDINANCE NO. 538

AN ORDINANCE OF THE BOROUGH OF MUNCY TO PROTECT RESIDENTIAL PROPERTIES FROM ADVERSE IMPACTS OF WASTE FACILITIES AND AIR POLLUTING FACILITIES AND TO DECLARE AND PROHIBIT CERTAIN ACTIVITIES AS NUISANCES

The following ordinance is hereby adopted by the Council of the Borough of Muncy:

Section 1. Purposes and Findings

(a) Purposes. This Ordinance is intended to serve and further the following purposes:

To protect and advance the public health, safety and welfare of residents of the Borough;

To ensure that waste facilities and air polluting facilities do not adversely impact the health, safety and welfare of residents of the Borough;

To create a minimum isolation and buffer distance between residential, educational, and recreational activities and industrial facilities this may be incompatible with one another;

To minimize the potential for nuisance conditions created by commercial and industrial operations, including noise, odors, dust, smoke, fumes, gases, pollution, emissions of air contaminants, and other similar effects;

To declare and prohibit certain activities and conditions which may, or do, constitute nuisances;

To exercise the Borough's powers which are conferred upon it by the Borough Code, and the Pennsylvania Air Pollution Control Act.

(b) Findings. In considering the adoption of this Ordinance, the Borough of Muncy makes the following findings:

1. Pennsylvania Borough Code (at 53 P.S. § 46202), states that Borough Councils are empowered to protect the health, safety and welfare of the borough.
2. This Ordinance is also enacted under the authority of the Pennsylvania Air Pollution Control Act, 35 P.S. §4012(a), which reserves to municipalities, including Boroughs, the power to enact Ordinances "with respect to air pollution which will not be less stringent than the provisions of this Act, the Clean Air Act, or the rules and regulations promulgated under either this Act or the Clean Air Act."

3. The public health, safety and welfare of the residents of the Borough require that waste facilities and air polluting facilities not be conducted in close proximity to residential, educational, or recreational uses, which are inherently incompatible.
4. The Borough's current ordinances do not adequately protect residents of the Borough from the adverse effects of waste facilities or air polluting facilities.
5. Waste facilities and air polluting facilities are, or can be with substantial probability, incompatible with the comfort, convenience, health, safety, and welfare of residents of the Borough if conducted in close proximity of residential, educational, or recreational properties.
6. Waste facilities or air polluting facilities that cause noise, odors, and releases of air contaminants, when conducted in close proximity to residential, educational, or recreational properties, constitute a nuisance.
7. Prohibiting air polluting facilities in close proximity to properties on which residents reside, learn, or recreate can minimize the potential for nuisance conditions and the potential for adverse effects upon the public health, safety and welfare.
8. In conformity with 35 P.S. §4012(a), the requirements imposed by this Ordinance are not "less stringent than the provisions of this [Pennsylvania Air Pollution Control] Act, the Clean Air Act, or the rules and regulations promulgated under either this Act or the Clean Air Act."
9. The Commonwealth of Pennsylvania's regulations prohibit the following facilities within 300 yards of a school, park or playground: municipal waste landfills (Pa. Code § 273.202 (a)(18)(i)), construction/demolition waste landfills (Pa. Code § 277.202 (a)(15)(i)), waste transfer facilities (Pa. Code § 279.202 (a)(6)(i)), composting facilities (Pa. Code § 281.202 (a)(8)(i)), incinerators or other waste processing facilities (Pa. Code § 283.202 (a)(6)(i)). Incinerators or other waste processing facilities are also prohibited within 300 yards of any occupied dwelling (Pa. Code § 283.202 (a)(3)(ii)).
10. Pennsylvania's Environmental Rights Amendment, Article 1, § 27 of the Pennsylvania Constitution states: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."
11. Pennsylvania's Supreme Court, in its 2013 *Robinson Twp. v. Commonwealth* decision, reminds us that this "constitutional obligation binds all government, state or local, concurrently," and goes on to state that "The Commonwealth is named trustee and,

notably, duties and powers attendant to the trust are not vested exclusively in any single branch of Pennsylvania's government. The plain intent of the provision is to permit the checks and balances of government to operate in their usual fashion for the benefit of the people in order to accomplish the purposes of the trust. This includes local government;"

Section 2. Definitions.

(a) As used in this Ordinance, the following terms shall have the following meanings. If a term is not defined herein, but is defined in the Pennsylvania Air Pollution Control Act, or the federal Clean Air Act, then the definition in such Acts shall apply to this Ordinance.

1. "Air polluting facilities" shall mean:

(a) Any commercial or industrial facility requiring any sort of permit under the Pennsylvania Air Pollution Control Act, or the Federal Clean Air Act, for the release of contaminants to the air.

(b) Facilities shall not be defined as "air polluting facilities" solely due to the use (or proposed use) of combustion systems used only to heat the air and/or water in the facility's buildings.

2. "Disposal" shall mean the deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of this Commonwealth.

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3. "Entity" shall include any partnership, corporation, association, limited liability company or similar entity, institution, cooperative, enterprise, municipal or state authority, Federal Government or agency, state government or agency, or any other legal entity which is recognized by law as the subject of rights or duties. Said term shall also mean any officer, director, partner, employee, trustee, or other person who acts on behalf of any of the foregoing with respect to a matter governed by this Ordinance, or who authorizes the Entity to act with respect to a matter governed by this Ordinance.

4. "Facilities" include the land, structures and other appurtenances or improvements where the relevant activities are allowed, permitted, or take place, including the entire lot, parcel or tract of land upon which the Facilities are located.

5. "Person" shall mean any natural person, including any individual.

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6. "Incineration" shall mean the act of reducing to ashes by combustion.

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7. "Incinerator" shall mean an enclosed device using controlled combustion for the primary purpose of thermally breaking down solid waste, and which is equipped with a flue as defined in Pa. Code § 121.1 (relating to definitions).
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8. "Processing" shall mean technology used for the purpose of reducing the volume or bulk of municipal or residual waste or technology used to convert part or all of the waste materials for offsite reuse. Processing facilities include, but are not limited to, transfer facilities, composting facilities and resource recovery facilities.
9. "Residential, Educational, or Recreational Properties" shall mean schools, parks, playgrounds, and all residential and institutional properties at which people (whether related or unrelated) reside, including but not limited to homes, dwellings, apartments, condominiums, boarding houses, hotels or motels, continuing care facilities, personal-care homes, intermediate-care facilities, or skilled nursing facilities, nursing homes or long term care facilities, prisons, correctional facilities, group homes, mobile homes and mobile home parks. The term shall refer to the entire lot, parcel or tract of land upon which the residential or institutional use is situated and shall not be limited to the dwelling or building footprint or curtilage.
10. "Storage" shall mean the containment of any waste on a temporary basis in such a manner as not to constitute disposal of the waste. It shall be presumed that the containment of waste in excess of 1 year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary.
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11. "Treatment" shall mean a method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of waste to neutralize the waste or to render the waste nonhazardous, safer for transport, suitable for recovery, suitable for storage or reduced in volume. The term includes an activity or processing designed to change the physical form or chemical composition of waste to render it neutral or nonhazardous.
- 6.
12. "Waste Facility" shall mean any facility commercial or industrial facility requiring general or site-specific permit from the Pennsylvania Department of Environmental Protection for the storage, collection, processing, treatment, or disposal of municipal, residual, hazardous, or radioactive wastes, with a capacity to handle more than five tons per day of any combination of such wastes.

Section 3. Prohibition of Waste Facilities and Air Polluting Facilities In Close Proximity To Residential, Educational, or Recreational Properties.

No Person or Entity shall maintain, erect, construct, utilize or operate any Waste Facility or Air Polluting Facility within three hundred (300) yards of any

Residential, Educational, or Recreational Property located within Borough of Muncy.

Section 4. Declaration of Nuisance and Provision for Abatement.

It is hereby declared that the operation of any Waste Facility or Air Polluting Facility within three hundred (300) yards of any Residential, Educational, or Recreational Property located within Borough of Muncy is a nuisance and is prohibited, and shall be abatable in the manner otherwise provided by law.

Section 5. Limitation of Ordinance to New Facilities and Exclusion of Existing Facilities

The requirements of this Ordinance shall not apply to Facilities that have all required local and state permits and have commenced commercial operation as of the effective date of this Ordinance.

Section 6. Enforcement, Violations and Penalties.

The enforcement of this Ordinance shall be by action brought before a district magistrate in the same manner as provided for the enforcement of offenses under the Pennsylvania Rules of Criminal Procedure. Penalties shall match the civil and criminal penalties of the Pennsylvania Air Pollution Control Act, 35 P.S. 4009, with fines paid to the Borough, and the corresponding local authorities taking the place of state authorities for enforcement purposes.

Each and every day, or portion thereof, of violation of the prohibitions contained in Sections 3 and 4 hereof shall constitute a distinct and separate offense. A distinct and separate offense shall arise for each section of the Ordinance found to have been violated. Each and every day during which such unlawful construction, utilization, or operation continues shall be deemed a distinct and separate offense. The imposition of the fines and penalties herein prescribed shall not preclude the Borough from instituting actions at law or in equity to restrain, correct or abate a violation of this Ordinance.

Section 7. Rights and Remedies Cumulative.

This Ordinance is intended to supplement existing law with respect to the subject matter contained herein and is not intended to restrict, limit, or supplant any other remedy for the conduct prohibited in Section 3 and 4 hereof. It is declared to be the purpose of this Ordinance to provide additional and cumulative remedies to protect the public interest. Nothing in this Ordinance shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the

common law or statutory law, criminal or civil with respect to air pollution or nuisances.

Section 8. Severability.

The provisions of this Ordinance are severable and if any provision, sentence, clause, section or part thereof shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the ordinance or any part thereof is inapplicable had not specifically been exempted therefrom.

Section 9. Repealer

All other Borough Ordinances or resolutions or parts thereof that were adopted prior to this Ordinance and which are inconsistent with this Ordinance are hereby repealed.

Section 10. Enactment and Effective Date.

That this Ordinance shall become effective upon enactment.

DULY ENACTED AND ORDAINED THIS     DAY OF     2016.

ATTEST: