

“AN ORDINANCE OF THE BOROUGH OF LAKEHURST, OCEAN COUNTY, NEW JERSEY, CREATING NEW CHAPTER 9 OF THE BOROUGH CODE TO ESTABLISH REGULATIONS AND PRESCRIBE PENALTIES FOR EXCESSIVE CONSUMPTION OF MUNICIPAL SERVICES”

ORDINANCE 2023-01

BE IT ORDAINED by the Borough of Lakehurst, Ocean County, New Jersey, as follows:

SECTION 1. Chapter 9 is hereby created to add a new chapter, entitled “Excessive Consumption of Municipal Services,” to provide as follows:

§ 9-1. FINDINGS & PURPOSE.

- A. The Borough of Lakehurst finds and declares that there are properties located in the Borough where nuisances exist and other activities occur which have resulted in the excessive consumption of municipal services.
- B. The Borough of Lakehurst finds and declares that the cost of the excessive consumption of municipal services relating directly to these nuisance properties should be paid by the property owner and not through general tax revenues.
- C. This chapter is intended to establish regulations and procedures identifying and providing for the assessment and timely payment of the cost of excessive consumption of municipal services, associated with these nuisance properties.

§ 9-2. DEFINITIONS

As used in this chapter, the following terms are defined as set forth herein:

- A. **EXCESSIVE MUNICIPAL SERVICES:** Any qualifying Lakehurst Borough Police Department calls made to a property while that property is on probationary nuisance status.
- B. **NUISANCE PROPERTY:** Properties on which activities occur that result in qualifying Lakehurst Borough Police Department calls for municipal services during any 60-day period in excess of the number of calls listed on the schedule in §9-5 are considered nuisance properties and are subject to the penalties and procedures as set forth in this Article.
- C. **PROBATIONARY NUISANCE STATUS:** The designation applied to properties which, as determined by a public officer, have received the requisite number of

qualifying calls within a 60-day period. Probationary nuisance status is effective for a 12-month period beginning on the date of the public officer's determination. During probationary nuisance status, the property owner is liable to the Borough of Lakehurst for user charges from each qualifying call.

D. **QUALIFYING CALLS:** Calls resulting from Lakehurst Borough Police Department responses to potential violations of state or local laws, regulations, or ordinances, including, but not limited to those cited in the following list, and others not so identified, but specifically determined to be qualifying by the hearing officer. Not included in the following list are calls for permitting, licensing, inspections, or similar administrative functions and calls from or on behalf of victims who reside at the property which is the subject matter of the call:

- (1) The sale, service, or consumption of alcoholic beverages; drunkenness
- (2) Disorderly conduct, disturbing the peace, littering or excessive noise.
- (3) Damage to property or injury to a person.
- (4) Improperly parking a vehicle, or any motor vehicle violation on private property.
- (5) Possession of a barking, howling, biting, or dangerous animal.
- (6) Possession, distribution, or use of a controlled substance.
- (7) Prostitution.
- (8) Public Urination, defecation, indecent exposure.
- (9) Criminal Activity.
- (10) ~~Overdoses~~

E. **USER FEE:** A fee of \$300 for each additional qualifying call made to the subject property within the 12-month period following the date a complaint is issued for excessive consumption of municipal services.

§ 9-3. DESIGNATION OF PUBLIC OFFICER.

The Borough Chief of Police, or his designee, shall administer the necessary record keeping and investigation required in connection with this Article.

§ 9-4. REPORTING OF MUNICIPAL SERVICE USE.

A. The Borough Chief of Police, or his designee, must keep and maintain records documenting the following information concerning the properties serviced:

- (1) The exact address and tax-map designation of the subject property.
- (2) The name and address of property owners.

- (3) The date(s) of the incident(s).
 - (4) A full description of the nature of the incident and the violation(s).
 - (5) The identity of the public employee providing the services.
- B. The Lakehurst Borough Police Department providing the excessive municipal services shall coordinate as needed, with other municipal agencies and the Municipal Attorney to enforce this Article.

§ 9-5. DETERMINATION OF EXCESSIVE USE.

During any 60-day period, properties that necessitate qualifying calls for municipal services that exceed the amounts set forth in the following schedule are designated nuisance properties and subject to penalties and procedures established under this Article.

- A. Residential Properties of 1 through 4 dwelling units: 5 qualifying calls.
- B. Multi-family dwelling and hotel/motel uses:
 - (1) Five through 40 dwelling units: 10 qualifying calls
 - (2) 41 through 80 dwelling units: 20 qualifying calls
 - (3) 81 through 200 dwelling units: 30 qualifying calls
 - (4) Over 200 dwelling units: 40 qualifying calls
- C. Convenience, grocery, liquor, and retail stores: 10 qualifying calls.
- D. Restaurants, bars, and entertainment establishments: 30 qualifying calls.
- E. All other properties not included in the preceding categories: 10 qualifying calls.

§ 9-6. NOTICE REQUIREMENTS COMPLAINT PROCEDURE.

- A. Whenever the public officer determines that any property has become a nuisance property based on excessive consumption of municipal services, he or she shall issue a complaint and summons reciting the location of the property, stating that the property is on probationary nuisance status, and the allegations supporting a finding of excessive use and a notice of hearing setting forth the date and time and place for a hearing on the matter.
- B. The Complaint shall also provide notice:
 - (1) That the property will be on probationary nuisance status for the 12 months following the date of the complaint.

- (2) That during the probationary nuisance status period, each additional qualifying call to the property will be subject to a user-fee of \$300 per call.
 - (3) Listing the dates and the nature of the qualifying calls made to the subject property that gave rise to the determination of excessive use.
 - (4) Directing that the offending activities be immediately abated.
- C. The complaint and notice of hearing shall be served on the property owner. Service shall be made by regular mail and either certified mail return receipt required, or overnight delivery service to the last known address of the recipient as it appears in Borough records.
- D. If the whereabouts of property owner cannot be ascertained by reasonable diligence, service of the complaint and notice of hearing shall be effectuated as follows:
- (1) One-time publication of the complaint and notice of hearing in one of the Borough's official newspapers.
 - (2) Conspicuous posting of the complaint and notice of hearing on a building or structure located on the subject property.
- E. Whenever an individual dwelling unit within a multi-family dwelling has received five qualifying calls within a 60-day period, the public officer shall notify the property owner as provided hereunder so that the property owner can take action to abate the nuisance. This notice shall be issued notwithstanding that the multi-family dwelling did not receive the required number of qualifying calls that would trigger a notice of violation.
- F. Should the number of qualifying calls to any property meet or exceed 50% of the number specified in §9-5, the public officer may, but is not required to, so notify the owner, tenant, or occupant thereof.

§ 9-7. HEARING PROCEDURE; COST TO BE ASSESSED; VIOLATIONS & PENALTIES.

- A. A hearing shall be held on the allegations recited in the complaint. The public officer or other Police officers involved shall present evidence and testify at the hearing and may produce witnesses in support of the allegations recited in the complaint. The property owner and any interested party shall have the right to appear at the hearing and testify, produce witnesses, and be represented by an attorney.
- B. The Municipal Attorney shall serve as hearing officer. The hearing officer is charged with determining whether, in a 60-day period, the subject property

received qualifying calls in excess of those permitted under §9-5. If so, the hearing officer shall confirm that the property was on probationary nuisance status from the date of the complaint. If the hearing officer also determines that qualifying calls were made to the subject property during the probationary period, the fact shall be so noted in the hearing officer's findings. Based on these findings, the hearing officer shall enter an order against the property owner.

C. The following shall be memorialized in the hearing officer's order:

- (1) A finding that the subject property was on probationary nuisance status.
- (2) A determination that an excessive number of qualifying calls were made to the subject property during the probationary nuisance status period.
- (3) An assessment of the reasonable costs of litigation, including, but not limited to, the costs of a court reporter and transcript, and an administration fee of \$100.
- (4) An assessment of a user fee of \$300 per call for each qualifying call-in excess of the permitted number. If the qualifying calls involved the same tenant or occupant, this fee may be apportioned between the owner and the tenant/occupant.

D. Additional qualifying calls to the subject property following the hearing and within a one-year period from the date of the complaint constitute a further violation of this Article and are subject to a \$300 per call user fee. A summons and complaint shall be filed in the Lakehurst Municipal Court for each subsequent qualifying call, each being a separate violation, with the \$300 per call user fee the penalty to be imposed upon a guilty plea or conviction. Notice of this provision shall be incorporated in the hearing officer's order.

E. The hearing officer's order shall be served upon the appropriate parties in the same manner as service of the complaint and notice of hearing; except that, in the event the whereabouts of the property owner, tenant, or occupant cannot be ascertained, then the order shall also be recorded in the Ocean County Clerk's office.

§ 9-8. ASSESSMENT OF LIEN.

- A. Any fees, costs, or penalties that remain unpaid 60 days from the date of an order issued pursuant to this Article shall be assessed as a lien against the subject property, enforceable and collectible in the same manner as liens for delinquent real property taxes and municipal service charges.
- B. Pursuant of N.J.S.A. 40:52-1.2, municipal licenses, permits, and certificates of occupancy applied for or issued to the subject property may be revoked, suspended, withheld, or denied renewal for failure to comply with and satisfy any payment obligations under an order imposed pursuant to this Article.

SECTION 2. All ordinances or parts of ordinances which are inconsistent herewith are repealed, but only to the extent of the inconsistency.

SECTION 3. If any part of this ordinance is invalidated for any reason by competent authority, that part is severed, and the remaining provisions shall remain in full force and effect.

SECTION 4. This ordinance shall take effect following its final passage by the Mayor and Council and twenty days after the publication as required by law.

Hon. Harry Robbins
Mayor

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at the regular meeting of the governing body of the Borough of Lakehurst, County of Ocean, and State of New Jersey, held on the 2nd day of February 2023 and that said ordinance will be considered for final passage at the meeting of said governing body to be held at the Community Center, Center Street, Lakehurst, New Jersey on the 16th day of February 2023 at 7:30 p.m. or as soon thereafter as said matter may be reached, at which time and place any person desiring to be heard shall be given an opportunity to be so heard.

Maryanne Capasso, RMC
Municipal Clerk