

**BOARD OF SUPERVISORS
NORTH WHITEHALL TOWNSHIP
LEHIGH COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2009-4

AN ORDINANCE OF THE TOWNSHIP OF NORTH WHITEHALL, LEHIGH COUNTY, PENNSYLVANIA REGULATING THE OPERATION OF CERTAIN ENGINE-POWERED RECREATIONAL VEHICLES AND DECLARING THE OPERATION OF SUCH VEHICLES IN VIOLATION OF THIS ORDINANCE TO BE A PUBLIC NUISANCE

WHEREAS, the use and operation of engine-powered recreational vehicles within North Whitehall Township may create a public nuisance and adversely affect the public's health, safety and welfare by the creation of excessive noise, dust and fumes; and

WHEREAS, the purpose of this Ordinance is to provide for the reasonable regulation of certain engine-powered recreational vehicles in North Whitehall Township so as to reduce noise and air pollution, protect the public's health, safety and welfare, and to provide for the peaceable and quiet enjoyment of property; and

WHEREAS, the Board of Supervisors of North Whitehall Township desires to enact an ordinance regulating the use of certain engine-powered recreational vehicles in North Whitehall Township to protect the health, safety and welfare of the general public and residents of North Whitehall Township.

NOW, THEREFORE, be it enacted and ordained, by the Township of North Whitehall, County of Lehigh and Commonwealth of Pennsylvania, pursuant to the general powers permitted by the Second Class Township Code (53 P.S. Section 65101, et seq.) and it is hereby enacted and ordained by authority of the same, as follows:

Section I. Name

This ordinance shall be known and may be cited as the "North Whitehall Township Engine-Powered Recreational Vehicle Nuisance Ordinance."

Section II. Definitions

Engine-powered recreational vehicle – This term includes all wheel-driven and belt-driven vehicles powered by an engine, including but not limited to motorbikes, trail bikes, dirt bikes, all-terrain vehicles, snowmobiles and similar vehicles. This term shall not be construed to include properly licensed motor vehicles operated upon the public highways, streets, roads and private driveways, and in the pursuit of game, in accordance with law, nor golf carts, nor agricultural equipment used in the course of agricultural activities or husbandry, nor commercial equipment being properly used in the trade or business of the owner by such owner, their employees or agents, nor lawn cutting and other reasonable real property maintenance and landscaping, nor snow removal equipment.

Person – This term includes an individual, group of individuals, partnership, firm, association or any other entity.

Section III. Operation and Use of Engine-powered Recreational Vehicles on Private Property

The following regulations shall apply for the use of Engine-powered Recreational Vehicles on private real property:

A. Visible dust, mud or debris shall not leave the property boundaries of the parcel where vehicles governed by this Ordinance are operated.

B. A minimum distance of 50 feet shall be maintained from all property lines for the operation of vehicles governed by this Ordinance, regardless of the relationship of the property owner to the operator.

1. An exception to this regulation is the common boundary line between the owner and an adjacent property owner granting permission for another operator to use his or her property or ride up to the common boundary line. Said permission must be stated in writing and must contain the notarized signature of the land owner(s) granting permission.

2. It shall not be a violation of this Ordinance to operate an engine-powered recreational vehicle within the required setback for purposes of ingress and egress from or onto a driveway, nor ingress and egress from a garage or other structure that houses said engine-powered recreational vehicle situate within the required setback.

C. The use of vehicles otherwise governed by this Ordinance are exempt from the minimum distance requirements while performing property maintenance.

Use of vehicles otherwise governed by this Ordinance for the plowing of snow or other winter maintenance are exempt from minimum distance and time restrictions under this Ordinance, while performing such winter maintenance tasks.

D. Snowmobiles are exempt under this Ordinance when operated in accordance with regulations of the Commonwealth of Pennsylvania with regard to exemptions for emergency response, special road conditions, and similar situations.

E. It shall be unlawful for any person to operate an engine-powered recreational vehicle for recreational purposes other than that time from 9:00 a.m. to 9:00 p.m., prevailing time in the Township, regardless of whether the operator is upon the private property of the operator or upon the private property of some third person who has granted permission to the operator for its use.

F. It shall be unlawful for any person to operate any recreational vehicle governed by this Ordinance at a sound intensity that exceeds 99 decibels, when measured 20 inches from the vehicle, with the exception of snowmobiles, which sound intensity shall not exceed 82 decibels measured in accordance with SAE Recommended Practice, in accordance with Pennsylvania law and regulation, as may be amended.

Section IV. Violations, Penalties and Enforcement

A. Any person, whether as principal, agent or employee, who violates or permits a violation of this Ordinance, upon being found liable therefore in a civil enforcement proceeding, shall upon the first offense, be sentenced to pay a fine

of not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200.00) Dollars, plus all court costs, including reasonable attorney's fees, incurred by North Whitehall Township in the enforcement of this Ordinance. For a subsequent offense, a person who violates this Ordinance shall be required to pay a fine of not less than One Hundred (\$100.00) Dollars nor more than Three Hundred (\$300.00) Dollars, plus all court costs, including reasonable attorney's fees, incurred by North Whitehall Township in the enforcement of this Ordinance. No judgment shall be imposed until the date of the determination of the violation by the District Magistrate Judge and/or Court. If the defendant neither pays nor timely appeals the judgment, North Whitehall Township may enforce the judgment pursuant to the applicable rules of civil procedure.

B. The operation of any engine-powered recreational vehicle in violation of this Ordinance is declared to be a public nuisance enjoined in a court of equity, and the appropriate officers or agents of North Whitehall Township are hereby authorized to seek equitable relief, including injunction, to enforce compliance herewith.

C. The Codes Enforcement Officer or other agent of the Township, designated by the Board of Supervisors, as well as the Pennsylvania State Police, are authorized to issue citations for violation of this Ordinance.

Section V. Repealer

All other ordinances or parts thereof, which are in conflict with this Ordinance, are hereby repealed. Ordinance 2008-4 is specifically hereby repealed.

Section VI. Severability

The provisions of this Ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

Section VII. Effective Date

The within provisions shall become effective five (5) days after the adoption hereof.

DULY ENACTED AND ORDAINED THIS 16th DAY OF DECEMBER, 2009, BY THE BOARD OF SUPERVISORS OF NORTH WHITEHALL TOWNSHIP, AT A DULY ADVERTISED, NOTICED, PUBLISHED AND LAWFULLY ASSEMBLED REGULAR PUBLIC MEETING AND HEARING.

ATTEST:

BOARD OF SUPERVISORS OF
NORTH WHITEHALL TOWNSHIP

BY: Brenda Norder
Brenda Norder,
Secretary

BY: Ronald E. Stahley
Ronald E. Stahley, Chairman

BY: Terry P. Stoudt
Terry P. Stoudt, Supervisor

BY: Ronald J. Heintzelman
Ronald J. Heintzelman,
Supervisor