

ORDINANCE NO. 2019-17

**AN ORDINANCE OF THE TOWNSHIP OF LACEY, COUNTY OF OCEAN, STATE OF NEW JERSEY, CREATING CHAPTER 243 OF THE TOWNSHIP CODE OF THE TOWNSHIP OF LACEY, WHICH SHALL BE ENTITLED "NUISANCES"**

**NOW, THEREFORE, BE IT ORDAINED**, by the governing body of the Township of Lacey, County of Ocean, State of New Jersey, as follows:

**SECTION 1.** The Township Code of the Township of Lacey is hereby amended and supplemented so as to create Chapter 243, which shall be entitled "Nuisances," so as to create Article I which shall be entitled "Excessive Consumption of Municipal Services," and which shall read as follows:

**§ 243-1. Findings and purpose.**

A. The Governing Body finds and declares that there are properties located in the Township where nuisances exist and other activities occur which have resulted in the excessive consumption of municipal services.

B. The Governing Body 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, if applicable, the responsible tenant or occupant, and not through general tax revenues.

C. This article 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.

**§ 243-2. Definitions.**

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

**EXCESSIVE MUNICIPAL SERVICES**

Any qualifying calls made to a property while that property is on probationary nuisance status.

**NUISANCE PROPERTY**

Properties on which activities occur that result in qualifying calls for municipal services during any sixty-day period in excess of the number of calls listed on the schedule in § 243-5 are considered nuisance properties and are subject to the penalties and procedures as set forth in this article.

### **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 sixty-day period. Probationary nuisance status is effective for a twelve-month period beginning on the date of the public officer's determination. During probationary nuisance status, the property owner and, if applicable, the tenant/occupant, is liable to the Township for user charges from each qualifying call.

### **QUALIFYING CALLS**

Calls resulting from 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, but not including calls for permitting, licensing, inspections, or similar administrative functions:

- A. The sale, service, or consumption of alcoholic beverages.
- B. Disorderly conduct, disturbing the peace, littering or excessive noise.
- C. Damage to property or injury to a person.
- D. Improperly parking a vehicle, or any motor vehicle violation, on private property.
- E. Possession of a barking, howling, biting, or dangerous animal.
- F. Possession, distribution, or use of a controlled substance.
- G. Prostitution.
- H. Public urination, defecation, or indecent exposure.
- I. Criminal activity.
- J. Township property maintenance, zoning, construction, fire, and health codes.

### **USER FEE**

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

### **§ 243-3. Designation of public officer.**

Each Township department, division, agency, or authority, providing municipal services to properties shall designate, either on a permanent or as-needed basis, one or more officials to serve as a public officer to administer and enforce this article. Officials that may serve in this capacity include, but are

not limited to, code enforcement officers, the Construction Official or his or her designee; the Chief of Police or his designee; an investigating police officer; the Zoning Officer; or the Fire Official.

**§ 243-4. Reporting of municipal services use.**

A. Each department, division, agency, or authority of the Township government providing municipal services to properties 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 and tenants, if known and applicable.
- (3) The dates of the incident.
- (4) A full description of the nature of the incident and the violations.
- (5) The identity of the public employee providing the services.

B. The department providing the excessive municipal services shall coordinate, as needed, with other municipal agencies and the Division of Law to enforce this article.

**§ 243-5. Determination of excessive use.**

During any sixty-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 the penalties and procedures established under this article.

A. Residential properties of one through four dwelling units: five qualifying calls.

B. Multifamily dwelling and hotel/motel uses:

- (1) Five through 40 dwelling units: 10 qualifying calls.
- (2) Forty-one through 80 dwelling units: 20 qualifying calls.
- (3) Eighty-one 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 adult entertainment establishments: 30 qualifying calls.

E. All other properties not included in the preceding categories: 10 qualifying calls.

**§ 243-6. 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 and the allegations supporting a finding of excessive use and a notice of hearing setting for the date and time and place for a hearing on the matter.

B. The complaint shall also provide notice:

(1) That the property is 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 and on the tenant or occupant, if applicable. Service shall be made by regular mail and either certified mail return receipt requested, or overnight delivery service to the last known address of the recipient as it appears in Township records.

D. If the whereabouts of the property owner or the tenant/occupant are unknown and 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 Township'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 multifamily dwelling has received five qualifying calls within a sixty-day period, the public officer shall notify the property owner and tenant/occupant as provided hereunder so that the property owner can take action to abate the nuisance. This notice shall be issued notwithstanding that the multifamily 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 § 243-5, the public officer may, but is not required to, so notify the owner, tenant, or occupant thereof.

**§ 243-7. Hearing procedure; costs to be assessed; violations and penalties.**

A. A hearing shall be held on the allegations recited in the complaint. The public officer or 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 Township Attorney shall serve as hearing officer. The hearing officer is charged with determining whether, in a sixty-day period, the subject property received qualifying calls in excess of those permitted under § 243-5. 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, that 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 or, as applicable, the tenant/occupant, or both.

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 administrative 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 involve 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 user fee of \$300 per call. A summons and complaint shall be filed in the Lacey 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.

**§ 243-8. Assessment of lien.**

A. Where permitted by law, 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 to 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 inconsistent herewith are hereby repealed.

**SECTION 3.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 4.** This ordinance shall take effect after second reading and publication as required by law.

**NOTICE**

**NOTICE IS HEREBY GIVEN** that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Lacey held on the 26th day of September, 2019, and will be considered for second reading and final passage at a regular meeting of the Township Committee to be held on the 10th day of October, 2019, at 7:00 p.m., at the Municipal Building located on Lacey Road in Forked River, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

---

VERONICA LAUREIGH, CMC, AAE  
Township Clerk, Township of Lacey