

**ORDINANCE NO. 2018 - 2
HOLDING TANK ORDINANCE**

**AN ORDINANCE OF WEST NOTTINGHAM TOWNSHIP, CHESTER
COUNTY, PENNSYLVANIA, PROVIDING FOR AND REGULATING
USE OF HOLDING TANKS IN WEST NOTTINGHAM TOWNSHIP, AND
IMPOSING FINES FOR VIOLATIONS OF THIS ORDINANCE.**

BE IT ENACTED AND ORDAINED by the Supervisors of West Nottingham Township of Chester County, Pennsylvania, and it is hereby enacted and ordained as follows:

Section 1. Purposes. The purpose of this Ordinance is to establish procedures for the use, maintenance, and removal of existing and new holding tanks designed to receive and retain sewage whether from residential or commercial uses. It is hereby declared that the enactment of this Ordinance is necessary for the protection, benefit and preservation of the health, safety and welfare of the inhabitants of this Township.

Section 2. Definitions. Unless the context specifically and clearly indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

- A. **"Board"** shall mean Supervisors of West Nottingham Township, Chester County, Pennsylvania.
- B. **"DEP"** shall mean Commonwealth of Pennsylvania Department of Environmental Protection.
- C. **"Health Department"** shall mean the Chester County Health Department.
- D. **"Holding Tank"** shall mean a watertight receptacle, whether permanent or temporary, which receives and retains sewage conveyed by a water carrying system and is designed and constructed to facilitate the ultimate disposal of the sewage at another site.
- E. **"Improved Property"** shall mean any property within the Township upon which there is erected a structure intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sewage shall or may be discharged.
- F. **"Owner"** shall mean any person vested with ownership, legal or equitable, sole or partial, of any property located in the Township.
- G. **"Person"** shall mean any individual, partnership, company, association, corporation or other group or entity.
- H. **"Sewage"** shall mean any substance that contains any of the waste products or excrement or other discharge from the bodies of human beings or animals and any noxious or deleterious substance being harmful or inimical to the public health, or to animal or aquatic life or to the use of water for domestic water supply or for recreation or any

substance which constitutes pollution under the Clean Stream Law (35 PS §§ 691.1-691.1001).

I. "Township" shall mean West Nottingham Township, Chester County, Pennsylvania.

Section 3. Right and privileges granted. That the Township is hereby authorized and empowered to undertake within the Township the control and methods of holding tank use, sewage disposal and sewage collection and transportation thereof.

Section 4. Rules and Regulations. That the Township is hereby authorized and empowered to adopt such rules and regulations concerning sewage which it may deem necessary from time to time to effect the purposes herein.

Section 5. Rules and Regulations to be in Conformity with Applicable Law. All such rules and regulations adopted by the Township shall be in conformity with the provisions herein, all other ordinances of the Township, and all applicable laws, and applicable rules and regulations of administrative agencies of the Commonwealth of Pennsylvania.

Section 6. Rates and Charges. The Township shall have the right and power to fix, alter, charge and collect rates, assessments, and other charges in the area served by its facilities at reasonable and uniform rates as authorized by applicable law.

Section 7. Exclusiveness of Rights and Privileges.

- A. The collection and transportation of all sewage from any improved property utilizing a holding tank shall be done solely by a hauler that is currently listed as an approved hauler by the County Health Department, and the disposal thereof shall be made only at such site or sites as may be approved by the Department of Environmental Protection of the Commonwealth of Pennsylvania.
- B. The Township will receive, review and retain pumping receipts from permitted holding tanks.
- C. The Township will retain the annual inspection reports for each permitted holding tank that are submitted to the Township.
- D. Periodic inspection of the Holding tank facilities may be made by the Township in order to ensure that all components of the holding tank facilities are in good working condition. Such inspections, however, shall not relieve the Applicant of its obligation to inspect and properly maintain the holding tank facilities.

Section 8. Use of Holding Tanks

- A. Holding tanks may be used for low-flow non residential and low flow residential applications subject to the provisions of this Ordinance to serve as sewage disposal from existing or proposed properties when one of the following conditions is met to the satisfaction of the Township:

- the on-lot septic system which serves the property has failed and no other viable alternative means of sewage collection and disposal is available to the property;
- there is a reasonable expectation that a connection to a public or community sewer system will become feasible within five years;
- the land use meets the provisions of 25 Pa. Code §71.63(e); or
- the Township determines, in its sole discretion, that a permit is warranted based on unique circumstances of the property or the landowner as represented by the landowner to the Township.

Section 9. Application for Permit

- A. Any landowner seeking to use a holding tank for sewage disposal on any lot situated in the Township shall first obtain a holding tank permit from the Chester County Health Department or DEP.
- B. The permit application can be obtained from the Chester County Health Department.
- C. The landowner shall file the completed and executed application with the Health Department (or DEP) and shall pay to the Health Department (or DEP) the appropriate application fees.
- D. The landowner shall cooperate with the Health Department (or DEP) Sewage Enforcement Officer at all stages of the application process.
- E. Prior to the permit being issued, the landowner shall obtain and file with the Township and the Health Department a copy of each of the following documents and/or agreements:
 - 1) A written contract between the landowner and a Chester County Health Department Licensed Liquid Waste Hauler for the term of the holding tank permit which contract shall provide for a timely and regular removal of the contents of the holding tank by the liquid waste hauler and, for the removal of said contents to a DEP approved disposal site for disposition. The agreement shall include a provision requiring at least ninety (90) days written notice to the Township and the Health Department prior to termination;
 - 2) A certified copy of a written contract between the Chester County Health Department Liquid Waste Hauler and the DEP approved disposal site providing the liquid waste hauler with the right to dispose of the holding tank contents at their disposal site;
 - 3) An agreement to reimburse and indemnify for any liability, costs and expenses which shall or may be incurred by the Township in actions to enforce compliance by the landowner or to remove the contents of the holding tank, or the holding tank, upon default or failure of the landowner to perform or for any fines incurred

by Township or Health Department by reason of the landowner's failure to comply with this Ordinance, any properly enacted amendment hereto or the laws and regulations of the Commonwealth of Pennsylvania and Chester County. The agreement shall be in the form required by the Board.

- 4) The landowner (in the form of an agreement) agrees to reimburse the Township for its engineering and legal fees incurred in reviewing this application for permit and any revision of its Act 537 plan, and in the review and execution of the agreements hereunder, agrees to pay all Township fees for inspection of the holding tank as may be set from time to time by the Board of Supervisors and agrees that any costs incurred by the Township for inspections, repairs and/or replacement of the tank or in the removal of effluent or the connection to a sewer system, including legal fees, administrative and court costs, shall be recoverable by the Township from the landowner. In the event the landowner (or his heirs, successors or assigns) shall fail to pay the Township in such fees, costs or expenses, the Township shall have the right either to sue the said landowner in assumpsit for reimbursement of its costs or to cause a lien to be placed on the property in the amount of said expense, in addition to any other remedies set forth herein or otherwise available at law or equity.
- 5) Prior to the issuance of the permit, the landowner shall provide the Township with an adequate capital reserve fund (which shall also be accompanied by an agreement). The purpose of the fund is to have monies available for items including and not limited to; future connection to the sewer system (including, connection fees, tapping fees, etc.), costs of the proper closure [and removal if required] of the holding tank, and anticipated pumping costs for a period of one year, etc. Upon the breach of this Ordinance by the landowner, the Township shall have the right to use the capital reserve fund for the above purposes. The fund shall be maintained throughout the period of time that the holding tank is used. In the event that the Township draws upon the monies in the fund for the purposes set forth herein, the landowner agrees to make such payments into the fund as may be required to replenish the fund in order to fully accomplish its purposes. The amount of the capital reserve fund shall be determined by the Township and may be increased from time to time during the life of the permit.
- 6) An agreement which provides for a confession of judgment against the landowner in the event that the landowner fails to make any payments to the Township or to the capital reserve fund hereunder.
- 7) An agreement that the permit and all of the above agreements with the Township shall be recorded in the Recorder of Deeds Office in and for the County of Chester, and shall be binding upon the landowner, their heirs, administrators, executors, successors and assigns, including the landowner's successors in title to the property which is the subject of the permit, it being the express understanding of the landowner that any and all duties of the landowner with respect to the holding tank set forth in this Ordinance and in any agreement entered pursuant to this Ordinance shall also "run with the land" and remain the obligation of the landowner's successors in title.

- 8) The contracts required under subsections E(1) and E(2) above shall remain in force for the entire period of operation of the system and failure by owner to renew such contracts or submit proof of another contract or contracts satisfactory to the Board shall constitute a violation of this Ordinance.

Section 10. Removal of Holding Tank

- A. In the event a holding tank has been determined to no longer be required, the landowner shall remove [or properly abandon said tank] within thirty (30) calendar days. The Chester County Health Department and the Township shall be given prior notice of this action.
- B. The Township, at its election, shall have the right to enter upon the premises of a landowner for the purpose of removing or causing the removal of any holding tank which remains in place in violation of this Ordinance. "Township" as used herein shall mean the Township, its employees or third parties contracted by the Township for the purpose of removing the holding tank. All costs and expenses of removal shall be borne by the landowner. The Chester County Health Department shall be given prior notice of this action.

Section 11. Technical Requirements for Holding Tanks

- A. Any holding tank installed or maintained pursuant to a permit issued under this Ordinance shall comply, in all respects, to the specification set forth in regulations of the Department, 25 Pa.Code, Chapter 73, inclusive.

Section 12. Inspections and Certification of Pumping

- A. Any landowner who applies for and receives a permit for holding tanks shall be deemed to have granted his consent for inspection of the holding tank and facilities used in connection with the holding tank by representative of the Township or the Chester County Health Department. At reasonable times during the hours of 8 a.m. and 8 p.m., the landowner shall grant the Township or Chester County Health Department representative access to the premises for the purpose of making such inspections upon request of the representative verbally or in writing.
- B. Any landowner receiving a holding tank permit shall furnish to the Township a true and correct copy of all pumping receipts for cleaning or removing the contents of the holding tank. Such report shall be made to the Township's Secretary within ten (10) days after the contents of the holding tank are pumped out.
- C. The failure of the landowner to permit inspection of holding tanks or equipment or facilities used in connection with the holding tanks; or, the failure of the landowner to have the holding tanks properly maintained and pumped out; or, the failure of the landowner to furnish pumping receipts to the Township in a timely fashion, shall be grounds for the Township to contact the County Health Department, and may also be considered a violation.

Section 13. Appeals

- A. Any landowner aggrieved by denial of permit application shall first appeal to the Board.
- B. The procedure for appeal shall in all respects conform to the procedure for appeal from denial of sewage permit by the officer of the Township, as provided by law.

Section 14. Penalties.

- A. Any person violating or permitting the violation of the provisions of this Ordinance shall be subject to a fine of not more than \$1,000 for each violation, recoverable with costs. The establishment of a violation for purposes of setting fines or penalties for such violation shall be in accordance with a citation to a magisterial district judge with jurisdiction and venue over the location of the violation and such an action will be subject to the procedures provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. A separate offense shall arise for each day or portion thereof a violation is found to exist and may be determined for each section of this Ordinance which is found to have been violated.
- B. In addition, West Nottingham may, through its solicitor, institute injunctive, mandamus, or any other appropriate action or proceeding at law or in equity for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus, or other legal or equitable forms of remedy or relief. Such relief may include the costs, fees, and charges, including West Nottingham Township's attorney's fees [charged at the hourly rate approved by the Governing Body of West Nottingham Township] and costs, as may be permitted by law.
- C. Notwithstanding any other provision of this Ordinance, West Nottingham Township shall have the right at any or all times deemed necessary by the Municipal Engineer or designee to enter upon and property within West Nottingham Township to inspect and, upon determination of a violation of this Ordinance, to correct the violation, with all expenses associated with correcting the violation to be charged to the property owner responsible for the violation.
- D. The Township may elect to revoke the occupancy permit for a property in the event that a holding tank is not being maintained properly and/or becomes a nuisance or hazard.

Section 15. Abatement of Nuisances. In addition to any other remedies provided in this ordinance, any violation of Section 8 above shall constitute a nuisance and shall be abated by the Township by either seeking mitigation of the nuisance or appropriate equitable or legal relief from a court of competent jurisdiction.

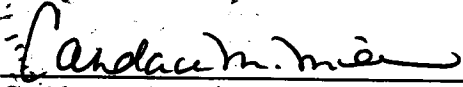
Section 16. Repeal. All ordinances or resolutions or parts of ordinances or resolutions, insofar as they are inconsistent herewith, by and the same are hereby repealed.

Section 17. Severability. If any sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this ordinance. It is hereby declared as the intent of the Board of Supervisors of the Township that this ordinance would have been adopted has such constitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

Section 18. Effective Date. This ordinance shall become effective January 1, 2019.

ENACTED AND ORDAINED into an ordinance this 27th day of March A.D., 2018 by the Supervisors of West Nottingham Township of Chester County in Lawful Session duly assembled.

ATTEST:


Candace Miller, Township Secretary

BOARD OF SUPERVISORS OF THE
TOWNSHIP OF WEST NOTTINGHAM

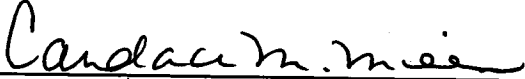

Tiffany L. Bell, Chair


William R. Winand, Vice Chair

Candace M. Miller, Member

CERTIFICATION OF ADOPTION

I hereby certify the foregoing to be an exact copy of an Ordinance adopted by the Supervisors of the West Nottingham Township, Chester County, Pennsylvania, at a regular meeting of the Board on March 27, 2018.



Candace Miller, Secretary/Treasurer