

NEWLIN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 2018-01

**AN ORDINANCE TO REGULATE THE USE OF RETAINING TANKS IN
NEWLIN TOWNSHIP.**

BE IT ENACTED AND ORDAINED BY THE BOARD OF SUPERVISORS OF NEWLIN TOWNSHIP THAT THE FOLLOWING ORDINANCE TITLED "REGULATION OF RETAINING TANKS" BE ADOPTED AS FOLLOWS:

SECTION 1. Introduction; purpose.

The purpose of this Ordinance is to establish procedures for the use and maintenance of retaining tanks designed to receive and retain sewage whether from residential or commercial property uses, when the property owner adequately demonstrates that no other viable alternative means of sewage disposal is available to the property. It is specifically intended that such retaining tanks are temporary in nature and permitted only in accordance with the criteria in this Ordinance.

SECTION 2. Definitions.

As used in this Ordinance, the following terms shall have the meanings indicated:

BOARD- The Board of Supervisors of Newlin Township.

LICENSED SEWAGE HAULER - A sewage hauler licensed by the Chester County Health Department and registered with Newlin Township.

OWNER —Any person vested with ownership, legal or equitable, sole or partial, of any property located within the municipal boundaries of Newlin Township.

PERSON - Any individual, company, association, public or private corporation for profit or not for profit, partnership, firm, trust, estate, department, board, bureau or agency of the Commonwealth, political subdivision, municipality, district, authority or any other legal entity whatsoever which is recognized by law as having rights and duties.

Whenever used in any clause prescribing and imposing a penalty or imposing a fine, the term "person" shall include the members of an association, partnership or firm and the officers of any local agency or municipal, public or private corporation for profit or not for profit.

RETAINING TANK —A watertight receptacle, whether permanent or temporary, which receives and retains sewage and is designed and constructed to facilitate the ultimate disposal of the sewage at another site. This term is synonymous with the term "holding tank."

SEWAGE —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 Laws, as amended.

SEWAGE ENFORCEMENT OFFICER- The official or designee of the Township who is licensed by the Commonwealth of Pennsylvania to act in such capacity and who issues and reviews permit applications and conducts such investigations and inspections as are necessary to implement the provisions of the Pennsylvania Sewage Facilities Act, 1966, Jan. 24, P.L. (1965) 1535, 35 P.S. § 750.1 et seq. ("Act 537").

SECTION 3. Use of retaining tanks.

The use of a retaining tank may be permitted by the Board of Supervisors, provided that the following criteria are met:

- A. The property owner shall provide evidence to the Township that the on-lot septic system which serves the property has failed and that no other viable alternative means of sewage collection and disposal are available to the property.
- B. The property is otherwise suitable for a retaining tank, and the use, if approved, will be susceptible to regulation or restriction by appropriate conditions and safeguards, including but not limited to, audible and visual warning devices (visible from street level) to indicate when the retaining tank is within 75% of its capacity.
- C. The retaining tank shall be constructed and maintained in conformance with the provisions of Title 25 of the Pennsylvania Code, as may be amended and supplemented from time to time.
- D. The use of a retaining tank will serve as a temporary measure only until a suitable alternative method of sewage disposal is available to the property.
- E. The use of a retaining tank will serve to abate a nuisance or public health hazard.
- F. The retaining tank shall be installed below grade.

SECTION 4. Permit Application; inspections.

Any person desiring to own, construct, operate or maintain a retaining tank shall file an application therefore with the Township, together with all plans and other materials necessary to demonstrate compliance with all of the provisions of this Ordinance. Upon approval by the Township, the application shall be forwarded to the Chester County Health Department ("CCHD"), which shall process the application in accordance with the regulations administered by the Department of Environmental Protection, and, upon approval, issue permits.

SECTION 5. Rules and regulations.

The Board is hereby authorized and empowered to adopt by resolution, from time to time, such rules and regulations concerning sewage and retaining tanks which it may deem necessary from time to time to effect the purpose hereof. All such rules and regulations adopted by the Board shall be in conformance with the provisions herein, all other ordinances of the Township, and all applicable laws and rules and regulations of administrative agencies of the Commonwealth of Pennsylvania and United States.

SECTION 6. Imposition of charges; escrow fees, reimbursement of Township expenses.

A. The Board shall have the right and power to fix, alter, charge and collect rates, assessments and other charges at reasonable and uniform rates as authorized by applicable law for the costs of administering this Ordinance and the issuance of permits for the use of retaining tanks in the Township. All unpaid rates, assessments and other charges, together with penalties as set by resolution of the Board thereon for nonpayment, shall be a municipal claim and a lien on the property. Interest at the rate of 6% per annum is hereby imposed and shall be collected on all such charges from the date of filing of a lien therefor in the manner provided in the Municipal Lien Law.

B. The owner of the property shall be required to establish an escrow account with the Township in an amount determined by the operation and maintenance agreement which is required by the terms of Section 8.E below. The escrow fees shall be used to guarantee the property owner's compliance with the terms of the operation and maintenance agreement.

C. The owner of the property where a retaining tank is installed or shall be installed shall reimburse the Township for all of the Township's administrative costs, including legal and engineering fees that are incurred in connection with the preparation, approval and execution of the operation and maintenance agreement and issuance of approval for a retaining tank. In the event the owner of the property does not fully reimburse the Township for all of its costs and expenses, including legal and engineering fees, the Township is authorized to use the funds in the escrow account. The owner of the property shall be required to deposit additional funds in escrow to maintain a minimum balance as required by the operation and maintenance agreement.

SECTION 7. Exclusiveness of rights and privileges.

A. The collection and transportation of all sewage from any property utilizing a retaining tank shall be done only by a licensed sewage hauler, and the disposal thereof shall be made only at such site or sites as may be approved by the Department of Environmental Protection.

B. The Township or its authorized agent shall receive, review and retain pumping receipts from permitted retaining tanks, which shall be provided by the property owner or the licensed sewage hauler, within five days of the date the retaining tank was pumped.

SECTION 8. Duties of property owner.

The owner of a property that utilizes a retaining tank shall:

- A. Maintain the retaining tank in conformance with this Ordinance, the provisions of any applicable law, and the rules and regulations established by the Board by resolution and any administrative agency of the Commonwealth of Pennsylvania.

- B. Submit to the Township, on an annual basis, an executed contract for the maintenance of the retaining tank, with a licensed sewage hauler. Such contract shall be renewed or replaced and kept in full force and effect during the entire period in which a retaining tank is utilized. Failure to maintain such a contract or submit the contract to the Township shall be a violation of this Ordinance.

- C. Submit to the Township for its review and retention all pumping receipts.

- D. Repair and replace as necessary any component parts of the retaining tank as determined to be necessary for the retaining tank to function as designed and in accordance with all applicable laws.

- E. Execute an operation and maintenance agreement with the Township which outlines the property owner's obligations and responsibilities concerning the installation and maintenance of the retaining tank.

- F. Post financial security with the Township in an amount determined by the Board in the operation and maintenance agreement to guarantee the property owner's compliance with the terms of the operation and maintenance agreement.

- G. At the time a permanent sewer system is operational, fill the retaining tank with an approved material, remove and properly dispose of the tank or, with the permission of the Township, incorporate the tank in the permanent system.

SECTION 9. Violations and Penalties/enforcement of ordinance.

- A. Any person who violates or permits the violation of any provision of this Ordinance or who shall fail to comply with any order issued pursuant to any section thereof shall, upon conviction thereof in a summary proceeding brought before a District Justice, be guilty of a summary offense and shall be subject to the payment of a fine of not less than \$100 and not more than \$1,000, plus the costs of prosecution. Upon default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a period of not more than 30 days. Each section or provision of this Ordinance that is violated shall constitute a separate offense; and each day or portion thereof in which a violation of this Ordinance is found to exist shall constitute a separate offense; each of which violations shall be punishable by a separate fine imposed by the District Justice of not less than \$100 and not more than \$1,000 plus the costs of prosecution and, upon default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term not more than 30 days.

- B. In addition to any other remedies provided in this Ordinance, any violation of this Ordinance and any violation of the terms of an executed operation and maintenance agreement shall constitute a nuisance and may be abated by the Township by either seeking mitigation of the nuisance.

- C. In addition to the penalties provided in Section 9.A above, the Township is authorized to file appropriate actions at law or in equity in the Court of Common Pleas in and for Chester County or before any other body having jurisdiction over the persons and activities herein regulated to abate violations and remove any retaining tank not owned, operated, maintained or constructed in accordance with the provisions of this Ordinance. Violations of this Ordinance are declared to be public nuisances, abatable as such.

SECTION 10. Repealer.

Any ordinance or part of ordinances of the Township conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provisions.

SECTION 11. Severability.

If any provision of this Ordinance is, for any reason declared to be illegal, unconstitutional or invalid, by any court of competent jurisdiction, this decision shall not affect or impair the validity of the Ordinance as a whole or the remaining portions thereof. The Board of Supervisors of the Township hereby declares that it would have adopted this Ordinance irrespective of the portion that may be declared illegal, unconstitutional or invalid.

SECTION 12. Effective date.

This Ordinance shall become effective five (5) days after the date of enactment.

ENACTED AND ORDAINED this 15th day of January, 2018 by the Board of Supervisors of Newlin Township, Chester County, Pennsylvania.

ATTEST:



Gail A. Abel
Gail A. Abel, Secretary

**NEWLIN TOWNSHIP
BOARD OF SUPERVISORS**

Janie H. Baird
Janie H. Baird, Chair

William J. Kelsall
William J. Kelsall, Vice-Chair

Robert R. Pearson
Robert R. Pearson, Member