

BILL NO.: 8
INTRODUCED: November 16, 2021
BY: Robert Topper, Jr.
ENACTED: December 21, 2021
ORDINANCE NO.: 1560

**CITY OF CONNELLSVILLE
FAYETTE COUNTY, PENNSYLVANIA**

AN ORDINANCE OF THE CITY OF CONNELLSVILLE, FAYETTE COUNTY, PENNSYLVANIA, DEFINING PUBLIC NUISANCES FOR STRUCTURES AND PROPERTIES; PROVIDING FOR THE REPORTING AND INVESTIGATION OF PUBLIC NUISANCES; PROVIDING FOR SUMMARY ABATEMENT AND ABATEMENT BY PRIOR NOTICE OF PUBLIC NUISANCE; PROVIDING FOR STATEMENTS OF COSTS, ADMINISTRATIVE FEES, AND CIVIL PENALTIES FOR ABATEMENT OF PUBLIC NUISANCES; ENABLING LIENS AND ESTABLISHING OWNER PERSONAL LIABILITY; PROVIDING PROCEDURES FOR NOTICE AND APPEAL OF PUBLIC NUISANCE ACTIONS AND STATEMENTS OF COST; REPEALING ALL INCONSISTENT ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Third Class City Code, 11 Pa.C.S.A. § 141A04, empowers the City to enact a property maintenance code, and in accordance with such power, the City has adopted a property maintenance code; and

WHEREAS, the Third Class City Code, 11 Pa.C.S.A. § 141A03, provides that a structure or property erected, altered, extended, reconstructed, removed or maintained contrary to a provision of certain ordinances, including a property maintenance code ordinance, enacted for a purpose specified in Chapter 141A of the Third Class City Code, may be reported in accordance with Chapter 127A (relating to nuisance abatement) of the Third Class City Code, to the department designated to determine whether a public nuisance exists;

WHEREAS, the Third Class City Code, 11 Pa.C.S.A. § 141A03, provides that if a public nuisance is determined to exist, the public nuisance may be abated in accordance with Chapter 127A of the Third Class City Code);

WHEREAS, the Third Class City Code, 11 Pa.C.S.A. § 12320, et seq., and § 127A01, et seq., provides for the investigation, determination, and abatement, including summary abatement, of public nuisances; and

WHEREAS, the Third-Class City Code, 11 P.S. § 12435, affords the City of Connellsville with the power to enact ordinances that are “(1) [e]xpedient or necessary for the proper management, care and control of the city and its finances and the maintenance of the peace, good government, safety and welfare of the city and its trade, commerce and manufactures; or (2) [n]ecessary to the exercise of the powers and authority of local self-government in municipal affairs.”

BE IT ENACTED AND ORDAINED by the City Council of the City of Connellsville, Fayette County, Commonwealth of Pennsylvania, and it is hereby enacted and ordained as follows:

Section 1. Short Title. This Ordinance may be cited as the City of Connellsville “Nuisance Abatement Ordinance.”

Section 2. Purpose. The Third Class City Code requires an ordinance to effectuate and implement its public nuisance investigation, determination, and abatement provisions. Furthermore, nuisance properties present grave health, safety, welfare, and financial concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition. Nuisance properties have a tremendous negative impact upon the quality of life, safety, and health of the neighborhoods where they are located. This Ordinance is enacted to supplement and further define, effectuate, and implement portions of the Third Class City Code relating to the investigation, determination, and abatement of public nuisances, including, without limitation, 11 Pa.C.S.A. § 127A01, et seq., in order to ameliorate those conditions which exist on nuisance properties, and hold accountable the property owners of nuisance properties for those conditions.

Section 3. Definitions. When used in this Ordinance, the following terms, words, and phrases shall have the following meanings unless the context clearly indicates otherwise or unless such definition is superseded by any definition contained in Chapter 127 of the Third Class City Code, 11 Pa.C.S.A. § 127A01, et seq. (which superseding definitions shall be incorporated herein by reference).

“**Abatement**” shall mean the removal, stoppage or destruction by any reasonable means of the cause or constitution of a public nuisance.

“**Department**” shall mean the City Board of Health (or the City Council acting as a Board of Health pursuant to 11 Pa.C.S.A. § 12301), the City Engineer, and the City Code Enforcement Office, acting in cooperation with each other, or any other City department(s) designated by resolution of City Council to determine the existence of and to abate a public nuisance in accordance with this Ordinance.

“**Owner**” shall mean, with regard to the property on which the alleged public nuisance exists, the owner of record, based upon the city's real estate registry if the city maintains a registry or, if the city does not maintain a real estate registry on the tax assessment records of the city or of the county in which the city is located. The term may include any person in whom is vested all or any part of the legal or equitable title to the property or who has charge, care or control of the property as agent, executor, administrator, assignee, receiver, trustee, guardian, lessee or mortgagee in possession.

“**Property**” shall mean personal property or real property and any improvements to real property.

“Public nuisance” shall mean any of the following:

(1) Conduct or property, or the condition or use of property, defined or declared to be a public nuisance under any provision of this Ordinance or other law.

(2) Conduct or property, or the condition or use of property, if the department determines that it endangers the health or safety of, or causes hurt, harm, inconvenience, discomfort, damage or injury to, a person or property in the City by reason of the conduct or property or the condition or use of the property, being any of the following:

- (i) A menace, threat or hazard to the general health and safety of the community.
- (ii) A fire hazard.
- (iii) A building or structure that is unsafe for occupancy or use.
- (iv) Property that is so inadequately or insufficiently maintained that it diminishes or depreciates the enjoyment and use of other property in its immediate vicinity to the extent that it is harmful to the community in which the property is situated.

(3) Unauthorized accumulations of garbage and rubbish and the unauthorized storage of abandoned or junked automobiles or other vehicles on private or public property, and the carrying on of any offensive manufacture or business.

“Summary abatement” shall mean abatement of a public nuisance by the City without prior notice to the owner of the property in accordance with the Third Class City Code and this Ordinance.

Section 4. Report and Investigation of Public Nuisance. In conjunction with the Third Class City Code, the City Code Enforcement Office, and the City Engineer may receive reports of a possible nuisance. Reports may be submitted by a member of the public, City employee, or elected or appointed City official or result from inspections made by the department.

(A) Criteria. Any violation of the City property maintenance code, building code, or other ordinance relating to the health and welfare of residents and property in the City may constitute and be determined to be a public nuisance following investigation of said reports. The City may establish additional written policies or criteria for investigating said reports made for the purpose of determining the existence of a public nuisance.

(B) Notification. If the department, either as a result of a report or an investigation, reasonably believes the reported property involves a building that appears to be structurally unsafe, the department shall notify the City's building inspector or other appropriate official who shall cause the property to be inspected, subject to constitutional standards in a similar manner as those relating to powers of the City Board of Health and submit a written report to the department.

(C) Determination. Upon completing its investigation and receiving any written reports required under this section, the department shall determine all of the following:

- (1) If a public nuisance exists.
- (2) If the public nuisance is of such a severe and substantial nature that it presents a clear, immediate and substantial danger to public health or safety or to the health or safety of any occupant of a property on which a public nuisance exists or of any property in the vicinity of the public nuisance that it is sufficient to justify extraordinary and immediate action without prior notice to the owner of the property to avoid personal injury, death or substantial loss of property.

(D) Retention of Records. Following an investigation, the department shall retain a copy of its findings, including any reports and any photographs of the property or condition investigated.

Section 5. Summary Abatement. The City of Connellsville hereby expressly adopts and authorizes the power to utilize summary abatement of public nuisances, pursuant to the procedures set forth in the Third Class City Code and this Ordinance.

(A) Conditions. In the case of a reported public nuisance, the department shall have authority to utilize summary abatement if all of the following occur:

- (1) The department determines the existence of the criteria provided in section 4 herein or in accordance therewith.
- (2) The mayor or the mayor's designee provides express authorization to utilize summary abatement.

(B) Notice Not Required. If summary abatement is implemented pursuant to this section, the department, including the authorized City Public Works Department, the City Redevelopment Authority, or any contractor of the City, shall have the authority to enter upon the property for the purpose of abatement without prior notice to the owner of the property or to the holders of liens on the property.

(C) Procedure. The following shall apply:

- (1) Within 10 days following a summary abatement, the department shall post on the property upon which the abatement has occurred a notice describing the action taken to abate the nuisance.
- (2) Within 20 days following a summary abatement, the department shall determine the identity of the owner of the property by reference to the City's real estate registry if the City maintains a registry or, in the absence of a registry, by reference to county assessment records, and the identity of the

holders of all liens upon the property which are properly indexed among the records of the county and provide to the owner and to all lienholders written notice, by first class mail or hand delivery, of the action taken to abate the nuisance.

- (3) Within 30 days following a summary abatement, the department shall file with the City Treasurer or other financial officer of the City designated by City Council a statement of costs of the abatement, which shall include the administrative fee and civil penalty provided by Chapter 127A of the Third Class City Code. After filing with the City Treasurer, notice of the statement of costs shall be provided to the owner and lienholders in accordance with Chapter 127A of the Third Class City Code.

Section 6. Prior Notice of Abatement; Abatement by Owner. The department shall have the authority to abate a public nuisance with prior notice as provided by this section if, after inspecting the property or condition reported to be a public nuisance, subject to constitutional standards in a similar manner as those relating to powers of the City Board of Health, the department determines, as provided for in section 4 herein, that the public nuisance exists.

(A) Method of notice.

- (1) If the department proceeds with abatement pursuant to this section, it shall identify the owner of the property by reference to the City's real estate registry if the City maintains a registry or, in the absence of a registry, by reference to county assessment records and shall immediately serve a written notice on the owner by any of the following methods:
 - (i) Personal service.
 - (ii) Leaving a copy of the notice at the place of residence or business of the owner or the address of the owner shown in the City's real estate registry or in the records in the office of the recorder of deeds.
 - (iii) Mailing a copy by United States certified mail, return receipt requested, to the owner at the owner's current address shown in the City's real estate registry or in the records in the office of the recorder of deeds.
- (2) If service of the written notice is unable to be perfected by any of the methods under paragraph (1), the department shall publish a copy of the notice in a newspaper of general circulation once a week for two consecutive weeks and shall provide a copy of the notice to the individual in possession of the property on which the department has determined that the public nuisance exists, or, if there is no individual in possession of the property, the department shall post a copy of the notice at the structure, location or premises.

- (3) The department shall determine from the records in the offices of the recorder of deeds the identities of all lienholders of the property and serve a written notice on all lienholders by United States certified mail, return receipt requested.

(B) Contents of Notice. The notice to the owner and lienholders shall state clearly and concisely the findings and determination of the department with respect to the existence of a public nuisance. The notice shall further state that the public nuisance shall be abated by the City at the expense of the owner unless it is otherwise abated within 30 days of the notice or within any extension of that period granted by the department.

(C) Duty of Owner. Within 30 days after written notice has been provided pursuant to this section, the owner shall remove and abate the nuisance.

(D) Liability. A person who is the owner of the premises, location, or structure at the time a notice to abate a public nuisance is issued and served upon the person shall be responsible for complying with the notice and shall be liable for any costs incurred by the City in connection with the notice, notwithstanding if the person conveyed the person's interest in the property to another after the notice was issued and served.

(E) Defense. It shall not be a defense to the determination that a public nuisance exists that the property is boarded up or otherwise enclosed.

Section 7. Appeal After Notice and Hearing. An owner of the property who has been served with a notice pursuant to section 6 herein shall have the right of appeal and may request and have a timely hearing on the question of whether a public nuisance as described in such notice, in fact, exists. All such appeals must be in writing, signed, and be received by the City within 30 days of the date of such notice and shall contain the mailing address of such owner sufficient for purposes of providing any legal notice. Appeal hearings shall be scheduled and heard in a timely manner. City Council, or a committee of three council members appointed by City Council, shall constitute the public nuisance appeals board which, if an appeal is taken, shall conduct the hearing on the question of whether a public nuisance as described in such notice, in fact, exists. The appeals board may uphold, amend or modify the determination of the department or extend the time for compliance with the department's order if the extension is limited to a specific time period.

Section 8. Abatement By City After Notice; Statement of Costs. If a public nuisance has not been abated at the expiration of 30 days after notice has been provided, or within additional time as the department or appeals board may grant, taking into consideration the provisions of section 7 herein (relating to appeal after notice and hearing), the department, including the authorized City Public Works Department, the City Redevelopment Authority, or any contractor of the City, shall have the authority to enter upon the property for the purpose of abatement.

(A) Abatement Assistance. In abating a public nuisance, the department may call upon any of the City departments or divisions for assistance, as shall be deemed necessary, or may abate the public nuisance by private contract.

(B) Statement of Costs. Upon abatement in accordance with this section, the department shall file with the City Treasurer or other financial officer of the City designated by City Council a statement of costs of the abatement, which shall include the administrative fee and civil penalty provided by the Third Class City Code and this Ordinance.

(C) Administrative Fee and Civil Penalties. Whenever a public nuisance is abated by the City, the statement of the costs of the public nuisance shall include the City's actual cost of abatement, plus an administrative fee, not to exceed 10%, and a civil penalty. For the first abatement of a public nuisance upon any owner's property within the City in any two-year period, the civil penalty shall be \$250. For second and subsequent abatements upon any properties of any owner within the City during any two-year period, the civil penalty shall be \$500. The increased civil penalty shall be imposed and collected regardless of whether the second and subsequent public nuisances upon property or properties of an owner involve the same property or the public nuisances are of the same or different character.

(D) Salvage of Materials. If deemed practicable by the department, the department may salvage and sell at private or public sale any material derived from an abatement of a public nuisance. Pursuant to this Ordinance, all of the following shall apply to the proceeds obtained from the sale of any material salvaged as a result of an abatement:

- (1) The proceeds shall be deposited into a non-interest-bearing escrow account of the City.
- (2) The proceeds may be applied against the amount of the costs, fees and penalties relating to the abatement.
- (3) If the amount of the proceeds exceeds the amount of the costs, fees and penalties, any excess shall be paid to the owner.

Section 9. Notice of Assessment and Appeal of Charges.

(A) Notice of Assessment. Upon receipt of the statement of costs from the department, either for a summary abatement pursuant to section 5 herein (relating to summary abatement) or for an abatement with notice pursuant to section 6 herein (relating to prior notice of abatement), the City Treasurer or other financial officer of the City designated by council shall, in accordance with the methods of service in section 6 herein, give notice of the amount set forth in the statement of costs to the owner and lienholders of the property upon which the public nuisance has been abated. The notice shall state that the City proposes to assess against the property the amount set forth in the notice and that objections to the proposed assessment must be in writing, signed, and be received by the designated officer within 20 days from the date of mailing the notice and shall contain the mailing address of such owner sufficient for purposes of providing any legal notice.

(B) Lien. Upon the expiration of the 20-day period if no written objections have been received by the designated officer, the total amount of costs, fees and penalties specified in the statement of costs may be entered as a lien against the property on which the nuisance was abated

and shall be collected in the manner provided for the collection of municipal claims and liens, subject to rights of appeal provided in this section.

(C) Administrative Review. If objections of the owner or a lienholder are received by the designated officer prior to the expiration of the 20-day period, the officer shall refer the matter to the department for administrative review. Objection hearings shall be scheduled and heard in a timely manner by the public nuisance appeals board, as described in Section 7 herein.

(D) Final Administrative Decision. The determination of the public nuisance appeals board on any objection or appeal shall be a final administrative decision within the City.

(E) Reduction or Cancellation of Assessment. The department, in administrative review, or the public nuisance appeals board, on objection or appeal, may reduce or cancel a proposed assessment if it is determined that any of the following did not conform to the provisions of Chapter 127A of the Third Class City Code or this Ordinance:

- (1) The notice to remove the nuisance.
- (2) The work performed in abating the nuisance.
- (3) The computation of charges.

(F) Elimination of Civil Penalty. The department, in administrative review, or the public nuisance appeals board, on appeal, may reduce a proposed assessment by eliminating the civil penalty portion of the statement of costs if any of the following apply:

- (1) The current owner did not own the property at the time the notice required in section 6 herein was posted.
- (2) The owner did not receive the notice to remove the public nuisance, did not have knowledge of the public nuisance and could not, with the exercise of reasonable diligence, have had knowledge of the public nuisance.

Section 10. Personal Liability. Notwithstanding the right of the City to utilize in rem proceedings to pursue collection of the costs, fees, and penalties in the statement of costs as a municipal claim, the person who is the owner of the property at the time of a summary abatement at which the notice required is given, or, in the case of an abatement pursuant to section 6 herein, the person who was the owner of the property at the time notice of the existence of the public nuisance was given, shall be personally liable for the amount of the assessment, including all interest, other charges, and, except as provided in section 9 herein, civil penalties.


Section 11. Severability. It is herein declared that the provisions of this Ordinance are severable, and if any provisions, portions, or sections of this Ordinance are declared to be illegal, invalid, or unconstitutional, the decisions of any court, which makes declarations, shall not impair or affect any of the remaining portions of this Ordinance.

Section 12. Repealer. Any ordinance or part of any ordinance that conflicts with the provisions of this Ordinance is hereby repealed to the extent of any such conflict on the effective date of this Ordinance.

Section 13. Effective Date. This Ordinance shall become effective immediately after its enactment.

This Ordinance is duly **ORDAINED AND ENACTED** by a majority of the members of the City Council of the City of Connellsville at a duly advertised public meeting held on the 21st day of December, 2021.

CITY OF CONNELLSVILLE

By: 

Gregory Lincoln
Mayor and President of Council

ATTEST: (SEAL)



Vernon Ohler
City Clerk

