

ORDINANCE NO.

FILE OF CITY COUNCIL

BILL NO. - 2023

JANUARY 4, 2023

AN ORDINANCE

Repealing and replacing Chapter 406, Administrative Code, Nuisance Abatement.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

WHEREAS, City Council finds that public nuisances diminish the quality of life and the community environment in the City;

WHEREAS, City Council further finds that the persistence of such activities and violations is detrimental to the health, safety, and welfare of the people of the City of Allentown;

WHEREAS, the City of Allentown is a Third-Class City operating under a Home Rule Charter;

WHEREAS, the Third-Class City Code provides procedures well established in the law for the ascertaining and addressing of public nuisances; and

WHEREAS, the City of Allentown as a Home Rule Charter community states its intent to repeal the existing nuisance abatement provisions in Chapter 406 of the Codified Ordinances of the City of Allentown, and replace these provisions with nuisance abatement procedures drawn from the Third-Class City Code,

SECTION ONE: That Chapter 406 is repealed in its entirety and replaced with the following:

CHAPTER 406 NUISANCE ABATEMENT

§406-1 Legislative Findings

§406-2 Definitions

§406-3 Report and Investigation of Public Nuisance

§406-4 Powers of Building Code Official with Respect to Public Nuisances

§406-5 Summary Abatement

§406-6 Notice

§406-7 Nuisance Abatement Board of Appeals

§406-8 Presumption of ownership

§406-9 Lack of knowledge

§406-10 Nuisance abatement agreement

§406-11 Severability

§406-12 Violations and penalties

§406-1 Legislative Findings.

Public nuisances diminish the quality of life and the community environment in the City.

The persistence of such activities and violations is detrimental to the health, safety, and welfare of the people of the City of Allentown;

The City of Allentown as a Home Rule Charter community, states its intent to adopt the following public nuisance provisions.

These provisions are drawn from the nuisance provisions of the Third-Class City Code. 11 Pa.C.S. §§ 127A01 - 127A12. The interpretation of this Ordinance should be guided by the application of precedent arising from the provisions of the Third Class City Code.

§406-2 Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

ABATEMENT - The removal, stoppage or destruction by any reasonable means of the cause or constitution of a public nuisance.

ADMINISTRATION – Executive Branch of the City of Allentown.

DEPARTMENT – City of Allentown Department of Community and Economic Development

DIRECTOR – The Director of the Department.

EMERGENT PUBLIC NUISANCE - A public nuisance of such a severe and substantial nature to justify extraordinary and immediate action, without prior notice to the owner, to avoid personal injury, death or substantial loss of property. Extraordinary and immediate action is authorized if the conditions of the property present a clear, immediate, and substantial danger to (any single one of these criteria, or any number of these criteria in combination): public health, public safety, occupant health, occupant safety; or neighboring properties.

OCCUPANCY. The purpose for which a building or portion thereof is utilized or occupied.

OPERATOR. Any person who has charge, care or control of a structure or premises.

OWNER - Any person, agent, operator, firm, corporation, or other legal entity, having legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

PROPERTY - Personal property or real property and any improvements to real property.

PUBLIC NUISANCE -

- A. Conduct or property, or the condition or use of property, defined or declared to be a public nuisance under any provision of this part or other law.
- B. 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:
 - (1) A menace, threat or hazard to the general health and safety of the community.
 - (2) A fire hazard.
 - (3) A building or structure that is unsafe for occupancy or use.
 - (4) 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.
- C. 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.

REPORT – A submission averring the existence of a public nuisance.

SUMMARY ABATEMENT - Abatement of a public nuisance by the City without prior notice to the owner of the property in accordance with this chapter.

TENANT - A person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

§406-3 Report and Investigation of Public Nuisance.

- A. **Designation of Department.** – All reports of the existence of a possible public nuisance shall be made to the Department.
- B. **Who May Submit Reports.** The reports may be submitted by a: member of the public; city employee; elected official; or appointed city official. Any City department that, through the normal course of its activities, identifies a property that may constitute a public nuisance, shall submit a report to the Department through the department's director or designee.
- C. **Form of Reports.** The Department shall establish a procedure for receiving, documenting and maintaining reports. This procedure shall, at a minimum, be posted on the City of Allentown webpage. The Department shall provide the City Clerk with a copy of these procedures for inclusion on the City's online code database.
- D. **Investigation.** The Department shall investigate in a timely basis all reports it receives. The Department shall establish criteria for investigating reports to determine the existence of a public nuisance. The Director, or the Director's designee, may enter upon any premises within the city which are reported to be a public nuisance for the purpose of examining the premises or of preventing, confining or abating public nuisances. The following apply:
 - (1) In the event that entry upon any premises is refused by an owner, an agent of an owner or tenant, the Director or the Director's designee shall obtain an administrative search warrant from a magisterial district judge within the judicial district where the premises to be inspected is located.
 - (2) It shall be sufficient to support the issuance of a warrant for the Director or the Director's designee to provide to the magisterial district judge evidence of any of the following:
 - (a) Reasonable standards and an administrative plan for conducting inspections.
 - (b) The condition of the premises or general area and the passage of time since the last inspection.
 - (c) Facts, supported by an oath or affirmation, alleging that probable cause exists that a law, regulation or ordinance of the City of Allentown or the Commonwealth of Pennsylvania, has been violated, or is being violated.

E. **Determination.**- Upon completing its investigation the department shall determine all of the following:

- (1) If a public nuisance exists; and
- (2) If a public nuisance exists, whether it is an *emergent public nuisance*.

F. **Abatement.**

- (1) Process Under this Ordinance. Emergent public nuisances shall be handled by the procedures for summary abatement in Section 406-4. Non-emergent public nuisances shall be handled using the procedures for abatement with prior notice in Section 406-5.
- (2) Ordinance not the exclusive process for relief. The Ordinance provisions adopted here are not intended to supplant any other form of relief available to the City under other applicable ordinances, statutes, regulations, common law, or other legal authority. Rather, this ordinance provides a means for relief in addition to all other available remedies.
- (3) Executive Branch choice as to the available mean of relief to pursue. Notwithstanding the use of the word "shall" in 406-3 F(1), at all times the Administration has authority and discretion to use whatever other means of legal relief are available under ordinance, statute, regulations, common law or other legal authority, in order to address emergent or non-emergent nuisances. Nothing shall require the Executive Branch to use one particular form of relief over another. Nothing shall prevent the Executive Branch from using multiple forms of relief to address emergent or non-emergent nuisances.

§ 406-4 Summary Abatement.

A. **General rule.**- The City shall have the power to utilize summary abatement in accordance with this section.

B. **Conditions.**- In the case of a reported public nuisance, the Director or designee shall have authority to utilize summary abatement if both of the following occur:

- (1) The Director or expressed designee determines the existence of an emergent public nuisance; and
- (2) The Mayor provides express authorization to utilize summary abatement.

C. **Prior notice not necessary.**- If summary abatement is implemented pursuant to subsection (b), the department 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.

D. **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 emergent public 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 of Allentown Director of Finance a statement of costs of the abatement, which shall include the administrative fee and civil penalty provided by this chapter. The Director shall then provide notice of the statement of costs to the owner and lienholders.

§ 406-5 Abatement with Prior Notice

- A. Abatement with notice. The City of Allentown is authorized to abate non-emergent public nuisances using the procedures of this section.
- B. **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 or by reference to county assessment records, and shall immediately serve a written notice on the owner by any of the following methods:
 - (a). Personal service.
 - (b) 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.
 - (c) 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.
- C. **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. This should include advising the property owner: the reasons for the public nuisance determination including any criminal violation(s) that are alleged to have occurred on the property and the date of the violation(s); that failure to abate the violation(s) may subsequently lead to the closure and securing of the property;

and that the owner may appeal the notice of determination of public nuisance to the Public Nuisance Appeal Board. 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.

- 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.

§ 406-7 Appeals.

- A. **Nuisance Abatement Board of Appeals** — There is hereby established a Nuisance Abatement Board of Appeals which, if an appeal is taken, shall conduct the hearing on the question of whether a public nuisance, 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.

- (1) The Nuisance Abatement Board of Appeals shall consist of
 - a. a member of City Council.
 - b. a private citizen who owns and operates a business within the City of Allentown.
 - c. a private citizen who owns and operates a business within the City of Allentown.
 - d. A private citizen who resides within the City of Allentown.
 - e. A private citizen who resides within the City of Allentown.
 - (2) The initial terms of the members of the Nuisance Abatement Board of Appeals are as follows:
 - a. Two years: the individuals identified in 406-7A(1)b and d.
 - b. One year: the individuals identified in 406-7A(1)a, c and e.
 - (3) After the initial terms have expired, each member of the Nuisance Abatement Board of Appeals shall be appointed for a term of two years.
 - (4) Appointments shall be made in accordance with the appointment procedures established by the City of Allentown Home Rule Charter.
 - (5) After all members have been appointed, the Nuisance Abatement Board of Appeals shall hold an organizational meeting within 30 days to appoint a Chair and Vice Chair. The Council member serving on the Board may not be appointed Chair or Vice Chair.
 - (6) Three members of the Board shall constitute a quorum for purposes of conducting Board business.
- B. **Time limitations.** — An appeal under this section shall suspend the period of time within which the nuisance is to be abated until a decision is rendered by the appeals board.

- C. **Right of Appeal.** A property owner, operator, or tenant may, within 30 business days of the date of the notice of a determination of public nuisance, appeal in writing to the public nuisance appeals board. The written appeal shall be mailed or delivered to:

City Clerk for the City of Allentown
435 Hamilton Street
Allentown, PA 18101

D. **Scheduling of Hearings**

- (1) All hearings for appeals of determinations of public nuisance shall be scheduled within 90 days of the date of service of the appeal.
- (2) Notice of the date, time and place of the hearing shall be served upon the appellant and the Director pursuant to § 406-5B. above.

E. **Decisions**

The Nuisance Board of Assessment Appeals shall issue its decision to either grant or deny the appeal within forty-five (45) business days of the date of the close of the last hearing before the Board. Notice of the decision shall be served upon the appellant and the Director pursuant to § 406-5B above.

F. **Time limits for a decision**

Failure to hold an appeal hearing within 90 days of the date of service of the shall result in the appeal being granted unless the Board and the property owner or tenant agree otherwise. Failure to issue a written decision within forty-five (45) business days of the close of the last hearing shall result in the appeal being granted unless the Board and the property owner or tenant agree otherwise in writing.

- G. **Final administrative decision.** — The determination of the appeals board shall be a final administrative decision within the city.

H. **Local Agency Law.**

All hearings shall be conducted pursuant to the requirements of the Local Agency Law, 2 Pa.C.S. §§751-754.

- I. **Board Solicitor for Hearings.** City Council Solicitor will serve as Solicitor to the Appeal Board for purposes of the appeal hearings.

§ 406-8 Presumption of ownership.

The owner of the property affected by the orders hereunder shall be presumed to be the person in whose name title real estate is recorded in the office of the Recorder of Deeds in and for Lehigh County, Pennsylvania.

§ 406-9 Lack of knowledge.

The lack of knowledge of acquiescence or participation in or responsibility for a public nuisance or violation of a closure under this chapter on the part of the owners, lessors, lessees, mortgagees and all those persons in possession or having charge of the property as agent or otherwise, or having any interest in the property, real or personal used in conducting or maintaining the public nuisance, shall not be a defense by such owners, lessors and lessees, mortgagees, and such other persons. Owners, lessors and lessees, mortgagees, and such other persons are responsible for their guests, invitees, licensees, and customers.

§ 406-10 Assistance in abatement.

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.

§ 406-11. Salvage of Material.

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. The proceeds of such a sale shall be placed in escrow. The escrowed proceeds may be applied against the amount of the City's costs, fees and penalties relating to the abatement. If the amount of the escrowed proceeds exceeds the amount of the costs, fees and penalties, any excess shall be paid to the owner.

§406-12. Notice of assessment and appeal of charges.

A. Notice of assessment. — The Director or the Director's designee shall provide the Director of Finance with a receipt of the statement of costs either for a summary abatement pursuant or for an abatement with notice. The Director of Finance or the Director of Finance designee, shall, in accordance with section 406-5 B, 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 made in writing and received by the designated officer within 20 days from the date of mailing the notice.

B. Lien. — Upon the expiration of the 20-day period, if no written objections have been received by the Director of Finance, 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 Finance Director prior to the expiration of the 20-day period, the Finance Director shall conduct an administrative review of the matter. This Administrative review shall consist of the Director or the Director's Designee meeting with the Finance Director and reviewing all the costs.

D. Director of Finance decision. After conducting an administrative review, the Director of Finance will issue a written memorandum or decision identifying whether the assessment amount set forth by the Director is maintained, reduced or increased.

E. Right of Appeal. Parties may appeal the Administrative Decision to the Appeals Board using the processes established in Section 406-7.

F. Reduction or cancellation of assessment. — The Finance Department in administrative review, or the Appeals Board on appeal, may reduce or cancel a proposed assessment if it is determined that any of the following did not conform to the provisions of this chapter:

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

G. Elimination of civil penalty. — The department, in administrative review, or the 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 127A04 (relating to prior notice of abatement) 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.

§406-13. Personal liability of owner.

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 the time the notice required by Section 406-4.D. is given, or, in the case of a non-summary abatement 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 406-12 (relating to notice of assessment and appeal of charges), civil penalties.

§406-14 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.

SECTION TWO: That this Ordinance takes effect ten (10) days after final passage.

SECTION THREE: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

Legislative Template

- What department or bureau is this bill originating from? Where did the initiative for the bill originate?

Mayor's Office

- Summary and facts of the bill.

The Bill is replacing the City's existing Nuisance Abatement Ordinance. The new ordinance replaces the current point system with the nuisance identification, analysis, and abatement requirements of the Third-Class City Code

- Purpose – Please include the following in your explanation:

- a. What does the bill do? What are the specific goals or tasks the bill seeks to accomplish?

The Bill incorporates the nuisance abatement provisions of the Third-Class City Code in the City of Allentown ordinances.

- b. What are the benefits of doing this? What are the drawbacks?

BENEFITS – The statutory system in the Third-Class City Code is a well-established process that has withstood judicial scrutiny. The City of Allentown's existing Nuisance Abatement Ordinance adopted a statutory system from another Pennsylvania community. This other community's ordinance had not been subject to judicial scrutiny. Allentown's ordinance was challenged in court. The presiding judge questioned significant components of the ordinance.

The proposed ordinance thus replaces a questionable statutory system with one well established in law.

The nuisance abatement procedures of the proposed ordinance allow the Department of Community and Economic Development (DCED) to develop internal criteria to identify when a property has become such a danger to the health and safety of the public and abatement procedures must be initiated. The Department will not be bound by the current rigid point system.

DRAWBACKS – Public nuisance enforcement actions deprive a property owner of the particular use of the property. As such, any enforcement action requires the gathering of significant evidence which requires an ongoing expenditure of personnel and time. Meaningful enforcement will require sustained, cooperation with other City Departments including Health, Police, Fire and potentially County and State organizations. Successful enforcement actions are dependent on the City Departments fulfilling the above obligations.

c. How does this bill relate to the City's vision/mission/priorities?

This will enable DCED to address persistent nuisance properties and make the City safer for residents.

- Financial Impact – Please include the following in your explanation:
 - a. Cost (initial and ongoing)

Currently there is no additional cost for the existing nuisance abatement ordinance.

There will be no cost connected to the proposed bill. There is potentially a cost for effective administration through the time and wages paid to DCED and other City personnel.

b. Benefits (initial and ongoing)

The removal of nuisance properties from the City.

- Funding Sources – Please include the following in your explanation:
 - a. If transferring funds, please make sure to give specific account names and numbers. If appropriating funds from a grant, please list the agency awarding the grant.

N/A

- Priority status – Are there any deadlines to be aware of?

No

- Why should Council unanimously support this bill?

This Bill will provide DCED with the ability to investigate and gather sufficient evidence to identify nuisance properties without the need to wait for the property to accumulate a set number of points.