

CITY OF SUNBURY
PUBLIC NUISANCE ABATEMENT ORDINANCE
§ 2023 - _____

New Legislation

First Reading: April 17, 2023 Second Reading: March 27, 2023

Adopted: _____

Ordinance Number: _____ Effective _____

§ _____ -1 Legislative findings.

A. The City Council finds that public nuisances exist in the City of Sunbury in the use and operation of certain buildings, structures, and property used for business, commercial, industrial or related purposes in flagrant and persistent violation of federal, state, and local laws and ordinances, which nuisances substantially and seriously interfere with the interest of the public in enhancing the quality of life and community environment in the City, and in fostering and facilitating commerce, maintaining and improving property values, and preserving and protecting the public health, safety, and welfare.

B. 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 Sunbury.

C. Various code and statutory provisions, including, but not limited to, those found in the Commonwealth of Pennsylvania Crimes Code, and/or the City of Sunbury's Code pertaining to unreasonable noise, disorderly conduct, property maintenance, and litter and weeds, are enforced by the filing of charges and citations against the persons responsible for violations of the same.

D. Council finds that, in spite of enforcement efforts, recurring code and statutory violations on property can lead to the creation of public nuisances on said property. Therefore, it is necessary and desirable in the public interest to enact a public nuisance abatement law in order to: eliminate local public nuisances by removing parcels of real property in the City from a condition that consistently and repeatedly violates federal, state, or local law; make property owners vigilant in preventing public nuisances on or in their property; ensure that property owners are responsible for the use of their property by tenants, guests and occupants; provide locally enforceable remedies for violations of local ordinances; and otherwise deter public nuisances.

E. Council further finds that the sanctions and penalties that may be imposed by the Sunbury Code Office pursuant to this chapter constitute an additional and appropriate law enforcement response to the proliferation of the above-described public nuisances.

F. The sanctions and penalties set forth herein are reasonable and necessary in order to protect the health and safety of the people of the City and to promote the general welfare.

§ _____-2 **Public nuisance defined.**

A. For purposes of this chapter, a public nuisance shall be deemed to exist whenever, through violation of any of the following provisions resulting from separate documented incidents at a building, structure, property or place:

(1) Twelve or more points are accumulated within a period of six months; or

(2) Eighteen or more points are accumulated within a period of 12 months, in accordance with the point system detailed herein.

B. Where more than one violation occurs during a single documented incident, the total points for the incident shall be the highest point value assigned to any single violation. For the purposes of this chapter, an "incident" will be defined as the execution of an enforcement action in response to a violation of the law.

C. This chapter shall not be applicable to the properties within the City of Sunbury for those parcels of property where an outdoor sports or entertainment venue is owned or maintained by a government entity or nonprofit corporation such as a church or school.

D. In addition, any property that is determined to be blighted, as defined in the Pennsylvania Urban Redevelopment Law, 35 P.S. § 1712.1(c), or the Eminent Domain Code, 26 Pa.C.S.A. § 205(b), is declared to be a nuisance.

§ _____-3 **Assessment of points.**

A. The following violations shall be assigned a point value of 12 points:

(1) Corrupt Organizations Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 911 and 5131.

(2) Terrorism Related Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 2714 to 2717, 3302 to 3303 and 5516.

(3) Human Trafficking Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 3001 to 3025, 4305.

(4) Homicide under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 2501 et seq.

B. The following violations shall be assigned a point value of eight points:

- (1) Kidnapping Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 2901 to 2910.
- (2) Sexual Assault Related Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 3101 to 3144, 6312, 6320 to 6321.
- (3) Uniform Firearms Act of 1995 Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 6101 et seq.
- (4) Felony violations of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 et seq.
- (5) Methamphetamine Related Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 3313 and 7508.2.

C. The following violations shall be assigned a point value of six points:

- (1) Gambling and Related Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 5512 to 5514.
- (2) Public Indecency Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 5510, 5901 to 5904.
- (3) Theft Related Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 3901 to 3935, 5111.
- (4) Forgery Related Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 4101 to 4120.
- (5) Motor Vehicle Chop Shop and Illegally Obtained and Altered Property Act Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 7701 to 7708.
- (6) Criminal Mischief Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. § 3304.
- (7) Offenses Involving Minors under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 6301-6311, 6313-6319.
- (8) Offenses Involving Trade or Commerce under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 7301 to 7331, 7361 to 7365.
- (9) Prohibited Offensive Weapons Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 908 and 908.1
- (10) Assault Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 2701 to 2713, 2718.
- (11) Riot Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. § 5501.
- (12) Endangering Welfare of Children Offenses, 18 Pa.C.S.A. § 4304.
- (13) Failure to Comply with Registration of Sexual Offenders Requirements Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. § 4915.1.
- (14) Obstructing Administration of Law or Other Governmental Function Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 4904 to 4906.1, 4910, 4913 to 4914, 5101 to 5102, 5105, 5107 to 5108
- (15) Violations of the Pennsylvania Liquor Code, Title 47 of the Pennsylvania Statutes resulting in license suspension.

D. The following violations shall be assigned a point value of four points:

(1) Violations of the Federal Water Pollution Control Act as amended (Clean Water Act), Title 33 of the United States Code. *See 33 U.S.C. § 1251 et seq.*

(2) Violations of the Protection of Environment Regulations, Title 40 of the Code of Federal Regulations.

(3) Violations of the Clean Streams Law, 35 P.S. § 691.1 et seq.

(4) Violations of the Environmental Protection Regulations, Title 25 of the Pennsylvania Code.

(5) Misdemeanor violations of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 et seq.

(6) Nuisance Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 6501 to 6505.

(7) Cruelty to Animals Related Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. § 5531 et seq.

(8) Disorderly Conduct Related Offenses under the Pennsylvania Crimes Code, 18 Pa.C.S.A. §§ 5502 to 5503, 5505.

(9) Violations of the Pennsylvania Dog Law, 3 P.S. §§ 459-101 et seq.

(10) Violations of the Pennsylvania Liquor Code, Title 47 of the Pennsylvania Statutes, resulting in fines greater than \$1,000.

(11) Violations of Chapter 53, Air Pollution, of the Code of the City of Sunbury.

(12) Violations of Chapter 58, Animals and Fowl, of the Code of the City of Sunbury.

(13) Violations of Chapter 68, Building Construction and Occupancy, of the Code of the City of Sunbury.

(14) Violations of Chapter 79, Dumping, of the Code of the City of Sunbury.

(15) Violations of Chapter 89, Fireworks, of the Code of the City of Sunbury.

(16) Violations of Chapter 113, Noise, of the Code of the City of Sunbury.

(17) Violations of Chapter 121, Peace and Good Order, of the Code of the City of Sunbury.

(18) Violations of Chapter 130, Property Maintenance, of the Code of the City of Sunbury.

(19) Violations of Chapter 131, Property, Nuisance, of the Code of the City of Sunbury.

(20) Violations of Chapter 166, Vehicles, Inoperable, of the Code of the City of Sunbury.

(21) Violations of Chapter 169, Waste Management, of the Code of the City of Sunbury.

(22) Violations of Chapter 172, Water, of the Code of the City of Sunbury.

(23) Violations of the Pennsylvania Liquor Code, Title 47 of the Pennsylvania Statutes, resulting in fines less than \$1,000.

E. Points shall also be assessed when charges are filed on the federal level instead of the state or local level for any of the activities or violations listed.

F Points may be assessed against a property, owner or tenant if the nuisance behavior occurs on the surrounding sidewalk, street, or other property and is traceable to the property, owner or tenant.

G No points shall be assessed against a property, owner, or tenant for noise violations should a special events permit be obtained for the property and event occurring giving rise to any alleged noise violation.

H. No points shall be assessed against a property, owner, or tenant if the violation was discovered as a result of a legitimate request for emergency assistance by the owner, tenant, or guest (which does not include a paying customer, nor business invitee or licensee), if the contact was made based upon the reasonable belief of the person making the contact that intervention or emergency assistance was necessary to prevent the perpetration or escalation of the abuse, crime or emergency or if the intervention or emergency assistance was actually needed in response to the emergency. For the purposes of this chapter, "emergency" shall mean threats to life, physical and personal safety, or damage to real property and vehicles.

§ _____-4 Conviction not required.

For purposes of this section, a conviction for an offense in a court of competent jurisdiction shall not be required to establish that a specified violation of law has occurred at a building, erection, dwelling or place. Instead, the City shall be required to prove a specified violation by a preponderance of the evidence. However, a conviction in any court of competent jurisdiction shall constitute conclusive proof of such a violation of law. Conviction of an attempt to commit a violation of any of the specified provisions shall be equivalent to a conviction for a violation of the specified provision.

§ _____-5 Powers of Code Official with respect to public nuisances.

A. Upon information of a violation enumerated above by an issuing official, Code Department Supervisor or his/her designee shall serve a notice of assessment of points in accordance with this Ordinance.

B. Upon information of a violation enumerated above by an issuing official that puts a property over a threshold enumerated herein, the Code Department Supervisor or his/her designee shall serve a notice of determination of public nuisance in accordance with this Ordinance.

C. In addition to any other enforcement procedures established elsewhere in federal, state or local law, upon a determination of public nuisance, the Code Department Supervisor or his/her designee shall be authorized to seek a court-ordered injunction to have the property be closed immediately.

D. Upon one of the following events occurring: i) a court ordering the closing and/or securing of any building, structure, erection, property or place in order to abate the nuisance; ii) the expiration of the time to appeal a notice of determination of public nuisance and no appeal being filed; iii) the failure to remit the required bond along with such appeal; or iv) such appeal is unsuccessful, the Code Department Supervisor or his/her designee will cause the revocation of a certificate of occupancy and/or any City of Sunbury issued license.

(1) The Supervisor or his/her designee is authorized to cause the premises to be closed and/or secured by the City or by contract or arrangement with private persons.

(2) The costs of closing and/or securing the premises, including any reasonable administrative fees, shall be charged against the real estate upon which the structure is located and shall be a lien upon said real estate.

E. If the property is a multiunit building, the Supervisor or his/her designee shall only secure the offending unit or units and not the entire building.

F. The Supervisor or designee shall maintain on the City website and/or in written form, available for public view, a current list of all properties against which points have been assessed, the dates that points were assessed, the number of points against the property, an indication of points that are under review for reconsideration or under appeal to the Board of Appeals, and the appropriate office to contact for detailed information on the alleged violations.

G. The length of time that the premises are closed and/or secured pursuant to this section shall be for one year unless otherwise determined by court order. Upon expiration of the time period for closure, owner or tenant must re-obtain all necessary certificates and licenses before reopening, which may include any and all necessary inspections.

H. If a building, structure, erection, property or place is ordered closed and/or secured pursuant to this section, such order shall be posted at the building, structure, erection, property or place where the public nuisance exists. If the property is a multiunit building, such order shall be posted on the offending unit or units. The order shall also be served upon the property owner pursuant to the terms of this Ordinance.

I. Points shall continue to accrue for violations listed herein even if the property has been ordered closed pursuant to this section.

§ _____-6 **Notice.**

A. Points become officially assessed against a property when the City serves a notice of assessment of points as provided herein to the property owner and/or tenant.

B. Whenever the Code Department Supervisor or his/her designee is informed that there exists a violation of law enumerated herein, or that a property or premises has accumulated enough points to be determined a public nuisance as defined herein, he/she shall serve notice as provided below.

(1) The notice shall specify the type of nuisance being maintained or permitted on the premises, summarize the evidence, including:

(a) Advising the property owner and any lessees of the violation(s) that are alleged to have occurred on the property and the date of the violation(s);

(b) The points that were assessed to the property as a result of the violation(s);

(c) The total amount of points accumulated in the past 18 months;

(d) Inform the owner and any lessees that failure to abate the violation(s) may subsequently lead to the closure and securing of the property;

(e) If enough points are accumulated, the property is determined to be a public nuisance and the City of Sunbury will begin the process to close the property to abate such public nuisance; and

(f) Inform the owner and any lessees of his/her/their right(s) to appeal such notice of assessment of points or notice of determination of public nuisance to the Nuisance Abatement Board of Appeals.

(2) In addition, with respect to any appeal, the notice shall advise the owner that, should the owner take all reasonable and available steps to terminate the public nuisance activity, including immediately repairing the property if the property is in violation of any local or state codes or commencing an eviction action to terminate the lease of any tenant who is permitting or maintaining the public nuisance activity on the property, the City and the Nuisance Abatement Board of Appeals will positively consider such remedies taken by the owner when determining whether to remove the initial assessment of points from the property.

C. Method of service. Such notice shall be deemed to be properly served if a copy is:

(1) Delivered personally;

(2) Sent by certified and/or first-class mail addressed to the last-known address;
or,

(3) If personal service cannot be achieved and the notices are returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in, on or about the structure affected by such notice.

D. A property owner or tenant may, within ten (10) business days of the date of the notice of assessment of points or notice of determination of public nuisance, appeal in writing to the Nuisance Abatement Board of Appeals challenging the assessment of points. The written appeal shall be mailed or delivered to:

City of Sunbury Nuisance Abatement Board
of Appeals
c/o Code Department Supervisor
Market Street
Sunbury, PA 17801

§ _____-7 **Nuisance Abatement Board of Appeals.**

A. There is hereby established a Nuisance Abatement Board of Appeals.

(1) The Nuisance Abatement Board of Appeals shall consist of five members: a member of City Council, a City employee from the Executive department, a City employee from the Sunbury Police Department, a private citizen owning a business with the City of Sunbury, and a private citizen residing within the City of Sunbury, who are nominated by the Mayor and the nominations are confirmed by the City Council.

(2) The initial terms of the members of the Nuisance Abatement Board of Appeals are as follows:

- (a) City employee in the Executive Department: four years.
- (b) Member of City Council: three years.
- (c) City employee of the Sunbury Police Department: three years.
- (d) Private citizens business owner and an alternate citizen business owner: two years.
- (e) Private citizen resident and an alternate citizen resident: two years.
- (f) Board members consisting of a City employee from the Executive

Department, the Sunbury Police Department and a City Council member must each designate an alternate Board member. This alternate is to appear on their behalf in case they must excuse themselves from hearing a specific case due to an immediate conflict. Two permanent alternates shall be named to substitute for the private citizen members of the Board, in the event of a conflict.

(3) After the initial terms have expired, members of the Nuisance Abatement Board of Appeals shall be appointed for terms of four years.

(4) 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.

(5) Thereafter, an organizational meeting shall be held annually.

B. It shall be the responsibility of the Nuisance Abatement Board of Appeals to hold hearings to review all appeals of assessments of points or determinations of public nuisance for properties.

C. Hearings shall occur at monthly public meetings. Monthly meetings may be cancelled if there are no pending appeals as of 10 days prior to the scheduled meeting.

(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) All hearings for appeals of assessment of points shall occur within 90 days of the date of service of the appeal.

(3) Notice of the date, time and place of the hearing shall be served upon the appellant and the City Code Department pursuant hereto.

D. The Nuisance Board of Assessment Appeals shall issue its decision to either grant or deny the appeal within five business days of the date of the hearing. Notice of the decision shall be served upon the appellant and the Bureau of Building Standards and Safety pursuant to the terms of this Ordinance.

E. Failure to hold an appeal hearing and/or issue a decision within the allotted time shall result in the appeal being granted, unless the Board and the property owner or tenant agree otherwise.

F. All hearings shall be conducted pursuant to the requirements of the Local Agency Law^[1] (Subchapter B of Chapter 5 and Subchapter B of Chapter 7 of Title 2 of the Pennsylvania Consolidated Statutes).

(1) At its first and annual organizational meetings, the Nuisance Abatement Board of Appeals shall decide whether to engage stenographic services to record hearings for the ensuing year.

(2) An appellant has the right to retain the services of a court reporter or stenographer for the hearing at the appellant's sole cost should such service not be provided by the Nuisance Abatement Board of Appeals.

G. Any appellant whose appeal of a notice of determination of public nuisance is denied by the Nuisance Abatement Board of Appeals may continue to remain open during a pendency of appeal with the Northumberland County Court of Common Pleas by posting a bond of \$5,000.

H. Any and all posted bond money shall be returned to the appellant upon the completion of the appeal to the Nuisance Abatement Board of Appeals and any appeal to the Northumberland County Court of Common Pleas so long as no further enumerated violations occur during the appeal period. Should a violation occur during the appeal period, any posted bond money shall be forfeited to the City of Sunbury.

§ _____-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 Northumberland County, Pennsylvania.

§ _____-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.

§ _____-10 **Removal of points.**

Points shall be removed from a property 12 months after the violation occurred.

§ _____-11 **Transfer of ownership.**

A. It shall be unlawful for the owner of any building, structure, dwelling, erection or place that has points currently assessed to it pursuant to this chapter to sell, transfer, mortgage, lease or otherwise dispose of the premises to another individual or entity until the owner has furnished the grantee, transferee, mortgagee or lessee with a true copy of any notices of assessment of points or notices of determination of public nuisance issued by the City pursuant to this chapter within the last two years, and with any written decisions issued by the Board within the last two years declaring the premises to be a public nuisance.

B. The owner shall furnish to the City Code Office a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notices of points assessments, notices of closure, or Board decisions and fully accepting the responsibility without condition for making the necessary repairs or taking such necessary actions so as to prevent the premises from becoming or remaining a public nuisance.

C. Within 30 days of the date of agreement of sale, the prospective buyer may appeal to the Nuisance Abatement Board of Appeals to have the property reopened or to have points removed from the property upon good cause shown. A hearing shall be held within 60 days of such petition.

§ _____-12 **Nuisance abatement agreement.**

At any time and at the City's discretion, the City may enter into a written nuisance abatement agreement with the property owner wherein the property owner agrees to take specific actions, as approved by the City, to abate, terminate or eliminate the public nuisance activity on the property in exchange for the City of Allentown reserving its rights and agreeing not to initiate any of its enforcement remedies pursuant hereto against the property during the term of the agreement, provided that the property owner complies with the terms and conditions of the

nuisance abatement agreement and the conditions or violations causing the public nuisance activity on the property are abated, terminated or eliminated.

§ _____-13 **Severability.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provisions to other persons and circumstances shall not be rendered invalid thereby.

§ _____-14 **Violations and penalties.**

A. In addition to any other remedy provided by state, federal or local law, it shall be a violation of this chapter for any person to use or occupy any building, erection, dwelling or place, or portion thereof, which has been closed or secured pursuant to § 406-5 above. Each date of use or occupancy shall be considered a separate offense.

B. It shall be a violation of this chapter for any owner to permit or fail to prevent any person from using or occupying any building, erection, dwelling, place or portion thereof which has been closed or secured pursuant hereto. Each date of use or occupancy shall be considered a separate offense.

C. It shall be a violation of this chapter for any person to mutilate or remove a posted order provided hereunder.

D. Any person who is found to be in violation of this chapter shall be sentenced to pay a fine of not less than \$1,000 per offense nor more than \$2,500 per offense, plus costs of prosecution, or to imprisonment for not more than 90 days, or both.

City of Sunbury:

Joshua A. Brosious, Mayor

Attest

Jolinn Barner, City Clerk