

ORDINANCE NO. 1- 2023

AN ORDINANCE of McKean Borough in the County of Erie, Commonwealth of Pennsylvania, providing for the resolution of Nuisances within the Borough of McKean.

Section 1. Title.

This Ordinance shall be known and referred to as the “McKean Borough Nuisance Ordinance”

Section 2. Definitions and word usage.

- A. For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein:

BOROUGH COUNCIL OR “COUNCIL”.

The Borough Council of McKean Borough, Erie County, Pennsylvania.

DANGEROUS STRUCTURE.

Any building, dwelling, fence, or other structure which is determined to pose a hazard to the health, safety or general welfare of the residents and/or property of residents within McKean Borough. In determining whether the building, dwelling, fence or other structure is a dangerous structure, all relevant factors, including the following, shall be considered:

1. The extent to which a structure has been neglected or allowed to deteriorate in to a state of disrepair;
2. The presence of open or broken doors or windows allowing access to the interior of the structure;
3. The extent to which the structure has been damaged by wind, fire, flood, or other causes, and left unrepaired;
4. The overall soundness of the structure, including its foundation, framing floor, walls and ceilings;
5. The extent to which the structure poses a fire hazard;
6. The presence of vermin or other pests in or about the structure;
7. The presence of hazardous or explosive chemicals or other materials stored in an unsafe manner in or about the structure;
8. The proximity of the structure to areas frequented by children;
9. The proximity of the structure to other structures and residences; and
10. Whether the structure is vacant or occupied.

NUISANCE.

1. The use of any premises as a trash or garbage dump unless specifically authorized;
2. The depositing or dumping of any amount of trash or garbage, junked, wrecked or abandoned motor vehicles or other machinery brought upon and accumulated or stored on any premises;
3. The burning of or setting fire to trash, rubbish, refuse, garbage, motor vehicles or other machinery brought upon and accumulated or stored on any premises;
4. The accumulation or storage of scrap metal or other waste material as a junkyard unless specifically authorized;
5. Any use of, accumulation or activity upon property that, by reason of water flow, flames, smoke, odors, fumes, excessive noise or dust, or lawn growth above 10 inches, unreasonably interferes with the reasonable use, comfort and enjoyment of a neighbor’s property or creates a potential hazard to the Borough or its residents, all of listed nuisances within #5 will be corrected within five (5) days of notice, with no hearing required.
6. Any use of oversize or commercial vehicles upon Borough roadways which causes excessive damage to such roadways; and
7. The dissemination, distribution, exhibition, selling or presentation of lewd materials within the Borough, including the public display of human genitals.

OWNER.

Any person owning, leasing, occupying or having charge of any premises located within the Borough.

PERSON.

Any natural person, firm, entity, partnership, association, corporation, company or organization of any kind.

BOROUGH.

McKean Borough, Erie County, Pennsylvania.

BOROUGH ENGINEER.

A duly qualified engineer appointed by the McKean Borough Council.

- B. When not inconsistent with context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, words in the masculine include the feminine, and the word “shall” is always mandatory and not merely directory.

Section 3. Declaration of nuisances.

All “dangerous structures” or “nuisances” as defined herein are declared to be “public nuisances” and shall be repaired, vacated, demolished, eliminated or resolved as provided in this Ordinance.

Section 4. Identification of potentially dangerous structures and/or other nuisance.

The existence and location of a potentially dangerous structure and/or other nuisance shall be brought to the attention of Borough Council by one of the following methods:

- A. By a Borough official;
- B. By a written complaint signed by a resident/property owner of the Borough; or
- C. By any individual member of the Council.

Section 5. Investigation of potentially dangerous structures and/or other nuisance.

- A. Upon being notified of the existence and location of a potentially dangerous or other structure and/or other nuisance, the Council shall instruct the appropriate Borough representative to make an investigation of the allegation.
- B. The Borough representative shall examine the allegations and promptly file a brief written report with the Council outlining his/her findings and recommending whether or not the issue is deemed to be a nuisance within the meaning of this Ordinance.

Section 6. Preliminary determination of dangerous structures.

- A. The Council shall consider the written report, including the recommendation contained therein at the time it is brought to Council’s attention, and make a preliminary determination by vote whether the issue under investigation is deemed to be a violation of this Ordinance.
- B. In the event that Council determines that the issue is not actionable under this Ordinance, the owner shall be notified and no further action shall be undertaken for at least one year unless special circumstances occur which would make it reasonable to begin new proceedings. Such special circumstance may include the subsequent actual physical injury of a person caused by the defective condition of the structure, or the rapid and extreme deterioration of the structure as caused by fire, wind, flood, vandalism, or other action unrelated to mere passage of time.
- C. If the Council determines that the issue is a nuisance as defined in this Ordinance, it shall give notice thereof to the owner, which notice shall include the following:
 - 1. A statement that the Council has made a preliminary determination that a nuisance exists;

2. A statement that if the owner wishes to contest this preliminary determination he must appear before Borough Council at the time and date stated in the notice, at which time a due process hearing will be held. The time and date shall be scheduled in order to give the owner at least five (5) days' notice.
3. A statement that if the owner fails to appear, Council shall make a final determination based on the information it has available to it at that time.

Section 7. Hearings

- A. If the owner appears at the time and date appointed in the notice of preliminary determination, Council shall convene a hearing and take testimony on the issue of whether, and to what extent, the activity is a nuisance. A court reporter may be present to make a record of the proceedings at the expense of the requesting party.
- B. At this hearing, all interested parties, including the owner and any resident of the Borough, shall have the reasonable opportunity to give testimony or otherwise introduce evidence into the record.
- C. After the hearing has concluded, Borough Council shall issue a final determination.

Section 8. Final determination

- A. Within five days of the date scheduled for the hearing to reconsider Council's preliminary determination that a nuisance exists, Council shall issue its final determination, in writing, which determination may:
 1. Reverse Council's preliminary determination and find that no nuisance exists; or
 2. Affirm Council's preliminary determination and find that a nuisance does exist within the meaning of this Ordinance.
- B. If Council's final determination is that no nuisance exists, then no further action shall be taken at that time against the owner or structure.
- C. If Council's final determination is that a nuisance exists, then it shall so notify the owner, including a listing of the reasons for its determination, and must further state that the owner must correct the nuisance within thirty (30) days, with the exception of lawn care and maintenance which will be corrected within five (5) days, with repeat offenses having imposed penalties increased by 10% with each occurrence, and if the owner does not do so, that Council may act on its own and impose costs and penalties against the owner in accordance with this Ordinance. Borough Council may also order that any dangerous structure be vacated until such time as it is brought into compliance with this order.

Section 9. Owner's failure to comply; violations and penalties.

If the owner, after receiving notice of Council's final determination, fails to comply with the terms thereof within the allotted time:

- A. Council may proceed to repair the structure, if it is reasonable to do so, or otherwise demolish and remove the structure or eliminate the nuisance. In each such case, the costs of such repair, demolition, elimination or removal, plus a penalty of 10%, may be charged against the land on which the public nuisance is or was located as a municipal lien, or the Borough may recover the same against the owner in an action at law, or the Borough may proceed in an action at equity.
- B. In addition to any costs and penalties imposed pursuant to Subsection A of this Section, the creator of a nuisance who fails to comply with the terms of the Council's final determination shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough before a Magisterial District Judge, pay a daily fine of not more than \$1,000.00, plus all court costs, including reasonable attorney's fees, incurred by the Borough in the enforcement of this Ordinance. No judgment shall be imposed until the date of the determination of the violation by the Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense.
- C. In addition to the remedies set forth in Subsections A and B, the Borough may institute appropriate actions or proceedings at law or in equity to prevent and/or restrain any nuisance, to correct or abate the violation and to prevent the use or occupancy of any dangerous structure or continuation of a public nuisance.

Section 10. Emergencies and abandoned structures.

In those cases where Council specifically determines that the dangerous structure or other public nuisance poses an immediate and substantial risk to the health and welfare of persons in their vicinity, and in those cases where Council specifically determines that the owner cannot be found, then Council may issue a final determination stating the dangerous structure or other public nuisance was determined to be an emergency and then proceed to immediately repair, demolish, or eliminate the public nuisance without the need to wait 30 days to avail the owner with an opportunity to repair, remove, or eliminate the public nuisance. In such cases, costs and the penalty of 10% added thereto may be imposed against the owner or structure, but no fine shall be imposed.

Section 11. Notice; penalty for removal.

- A. Whenever notice is required under this Ordinance, it shall be in writing and shall be served upon the owner in one of the following ways:
1. By making personal delivery of the notice to the owner;
 2. By handing a copy of the notice at the residence of the owner to an adult member of the family with which he resides; but if no adult member of the family is found, then to an adult person in charge of such residence;
 3. By fixing a copy of the notice to the door at the entrance of an alleged dangerous structure;
 4. By mailing a copy of the notice to the last known address of the owner by certified mail; and/or
 5. By publishing a copy of the notice in the local newspaper of general circulation within Erie County, Pennsylvania, once a week for two successive weeks.
- B. Any person removing the notice provided for in this section shall, upon conviction before the Magisterial District Judge, be subject to a fine not exceeding \$100.00 plus costs for each offense, and in default of payment of the fine and costs shall be subject to imprisonment for a period not exceeding five days.

ENACTED AND ORDAINED by the Council of the Borough of McKean, Erie County, Pennsylvania this 9th day of October, 2023.

McKEAN BOROUGH COUNCIL

D. M. Obloski

[Signature]

Rose Seauter

[Signature]

Wesley A. Clapper-Krepps
Mayor



ATTEST: Teri Dillen
Teri Dillen, Secretary