

TIONESTA BOROUGH
FOREST COUNTY, PENNSYLVANIA

NUISANCE ORDINANCE
ORDINANCE NO. 301
(AMENDING ORDINANCE NO. 276)

AN ORDINANCE OF TIONESTA BOROUGH, FOREST COUNTY, PENNSYLVANIA, AMENDING ORDINANCE NO. 276 WHICH DEFINES AND REGULATES NUISANCES AND PRESCRIBES PENALTIES FOR VIOLATIONS.

AND NOW, this 5th day of October, 2021, the Borough Council of Tionesta Borough, Forest County, Pennsylvania, does hereby enact and ordain as follows:

WHEREAS, the Borough Council of Tionesta Borough is by virtue of the laws and Constitution of the Commonwealth of Pennsylvania, including the provisions of the Borough Code, 8 Pa.C.S.A. Section 1202(4), as may be amended, empowered to prohibit nuisances.

NOW, THEREFORE, the Borough Council does Enact and Ordain, and it is hereby ENACTED and ORDAINED, for Tionesta Borough, Forest County, Pennsylvania, as follows:

ARTICLE I - GENERAL

SECTION A. TITLE

This Ordinance shall be known and may be cited as the Tionesta Borough Nuisance Ordinance.

SECTION B. DEFINITIONS

The following words when used in this Ordinance or any accompanying resolution shall have the meaning ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

BOROUGH: Tionesta Borough, Forest County, Pennsylvania.

BOROUGH COUNCIL: The Borough Council of Tionesta Borough, Forest County, Pennsylvania.

GARBAGE: Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

JUNK: Any material, including but not limited to old rope, appliances, machinery, metal, parts of machinery, glass, wood, containers, equipment, and the like no longer suited or suitable for its intended use but which may be turned to some minor, incidental or other use.

LESSEE: The person to whom the owner of the property has granted possession, either by express statement or by implication.

MOTOR VEHICLE: Every device of motive power in, upon, or by which any person or property may be or at one time might have been transported.

NUISANCE: Any condition, structure, or improvement which shall constitute a threat or potential threat to the health, safety, or welfare of the citizens of the Borough.

OPEN STORAGE: Storage or accumulation that is visible from any public street, alley or sidewalk or from any adjacent property.

OWNER: The actual owner or custodian of the property on which vehicles, machinery, equipment, or materials are stored; where buildings, structures, or operations are located; or where other alleged hazards or nuisances are in existence, whether individual, partnership, association, or corporation.

PERSON: Every natural person, association, partnership or corporation. The singular shall include the plural. Whenever used in connection with prescribing or imposing penalty, or both, the term as applied to a partnership shall mean the partners or any one of them and as applied to corporations or associations shall mean the officer(s) thereof.

PLAINLY AUDIBLE: - Any sound that can be clearly heard at a distance of fifty (50) or more feet, based on a direct line of sight, by a person using his or her unaided hearing faculties of normal acuity.

PORCH, DECK, PATIO OR BALCONY: A platform, whether or not elevated, which is located at and attached to or abutting any building or structure, which may be either completely or partially covered by a roof and/or completely or partially enclosed by glass or a similar material and/or screens. Screens are framed wire mesh or framed plastic mesh used to prevent intrusion by insects, but permitting air flow.

RUBBISH: All putrescible solid wastes (except body wastes), including solid market and industrial wastes and all non-putrescible solid wastes consisting of both combustible and non-combustible wastes, such as solid market and industrial wastes, paper, wrappings, cigarettes, cardboard, tin cans, glass, bedding, crockery, and similar materials, no longer suitable for its intended use and which cannot be turned to some minor, incidental or other use.

SHELTERED: Being enclosed by a permanent structure impervious to vermin.

UNSHELTERED: Not being covered or protected by a permanent structure.

ARTICLE II (NUISANCES)

SECTION A. NUISANCES PROHIBITED

It shall be unlawful for any person to create or maintain any condition upon their property which could directly or indirectly cause a nuisance or health hazard to the residents of the Borough. No person within or upon any property situated within the municipal limits of Tionesta Borough shall store, collect, park, leave, deposit, maintain, reserve, put aside for future use, permit or allow to remain other than in a completely enclosed building or structure, any of the following items listed herein. While not necessarily intended to be a comprehensive list, the establishment, maintenance, operation, or continuance of any of the following at any time within the Borough is hereby declared to be a nuisance under the terms of this Ordinance:

1. The unsheltered maintenance and storage by an owner or lessee of a motor vehicle which is unable to move under its own power or has any of the following physical defects:
 - a. broken windshields, mirrors, or other glass with sharp edges
 - b. one or more flat or open tires or tubes which could permit vermin harborage
 - c. missing doors, windows, hood, trunk, or other parts which could permit vermin harborage
 - d. any exposed parts with sharp edges, including holes resulting from rust
 - e. missing tires resulting in unsafe suspension of the motor vehicle
 - f. upholstery which is torn or open which could permit vermin harborage
 - g. broken headlamps or tail lamps with sharp edges
 - h. disassembled chassis parts apart from the motor vehicle, stored in a disorderly fashion, or loose in or on a vehicle
 - i. protruding sharp objects from the chassis
 - j. any vehicle or part thereof suspended from the ground in an unstable manner
 - k. leaking or damaged oil pan or gas tank
 - l. exposed battery containing acid
 - m. inoperable locking mechanism for doors or trunks
 - n. open or damaged floor boards, including truck and firewall
 - o. damaged bumpers pulled away from the parameter of the vehicle
 - p. broken grill with protruding edges
 - q. loose or damaged metal trim and clips
 - r. broken communication equipment antenna
 - s. such other defects which the Enforcement Officer and/or Borough Council might deem to be a threat to the health, safety or welfare of the citizens of the Borough.

2. The unsheltered storage or maintenance of junk or the storage or maintenance of garbage, rubbish or any other material if any of the following conditions exist with respect thereto:
 - a. Broken glass or metal parts with sharp or protruding edges.
 - b. Openings or areas which are conducive the harboring of vermin.

- c. Storage in any manner which would allow the junk, garbage, rubbish or material, or any part thereof, to easily shift, tilt, or fall from its original position.
 - d. The presence of any liquid or material of a hazardous or potentially hazardous nature including, but not limited to, gasoline, oil, battery acids, refrigeration agents or poisons.
 - e. Any other condition which the Enforcement Officer and/or Borough Council may, upon investigation, determine to be a threat to the health, safety, or welfare of the citizens of the Borough.
3. The maintenance of abandoned or neglected buildings, structures, sidewalks, or premises, which shall pose or constitute any of the following conditions or hazards:
 - a. a fire hazard to adjoining structures and other property within the Borough
 - b. a danger of collapse or infestation by vermin
 - c. an area which is or which might potentially serve as an area of play or attraction for children of the Borough or the public in general
 - d. any other condition which the Enforcement Officer and/or Borough Council may, upon investigation, determine to be a threat to the health, safety, or welfare of the citizens of the Borough.
4. Any of the following with regard to noise:
 - a. It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace, or safety of others, within the limits of the Borough, provided that noises created in the normal and reasonable course of a legitimate business activity shall not be deemed illegal.
 - b. The following acts, among others, are declared to be loud, disturbing, and unnecessary noises in violation of this Ordinance, but said enumeration shall not be deemed to be exclusive, namely:

- (1) Horns, signaling devices, etc.: Sounding any horn or signaling devices on any automobile, motorcycle, truck or other vehicle on any street or place of the Borough except as a danger warning; creating, by means of such signaling device, any unreasonably loud or harsh sound; or the sound of any such device for any unnecessary or unreasonable period of time.
- (2) Radios, phonographs, television sets, etc.: Using, operating or permitting the playing, use or operation of any radio, radio receiving set, television set, instrument, phonograph, tape player or other machine or device for the producing or reproducing of sound in such manner as to disturb the peaceful enjoyment and comfort of neighboring inhabitants or at any time with a volume that is louder than is necessary for the convenient hearing for the person or persons for whom such machine or device is being operated. The operation of any such radio, set, instrument, phonograph, machine or device between the hours of 10:00 p.m. and 7:00 a.m., Sunday through Thursday, and 12:00 a.m. and 7:00 a.m., on Fridays, Saturdays, and holidays, in such a manner as to be plainly audible from the building, structure or vehicle which it is located shall be prima facie evidence of a violation of this section.
- (3) Loudspeakers, amplifiers for advertising: Playing, using, operating or permitting the playing, use or operation of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure except in the course of legitimate business activity or auction sales.
- (4) Speaking, yelling, shouting, etc.: Speaking, yelling, shouting, hooting, whistling, singing or any other type of noise or vocalization between the hours of 10:00 p.m. and 7:00 a.m., Sunday through Thursday, and 12:00 a.m. and 7:00 a.m., on Fridays, Saturdays, and holidays, or at

- any time or place to the annoyance or disturbance of the comfort, peaceful enjoyment, or repose of persons in any dwelling, hotel or other type of residence or of any persons in the vicinity, whether indoors or outdoors.
- (5) The discharge into the open air of the exhaust of any stationary internal combustion engine, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- c. The making of any noise or the possession, harboring, or controlling of any animal or bird which makes any noise, continuously and/or incessantly, for a period of ten (10) minutes or makes such noise intermittently for one-half (1/2) hour or more to the end that such noise is excessively loud and unreasonably disturbing to the citizens of the Borough or the general public. Provided, however, that this Ordinance shall not be deemed to prohibit or otherwise declare unlawful any agricultural operations protected from nuisance suits by Act No. 1982-133. Further, with respect to noise created by any animal or bird, the same shall not be a nuisance if, at the time the animal or bird is making such noise, a person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated or if there is any other legitimate cause which justifiably provokes the animal or bird.
- d. Any other condition which the Enforcement Officer and/or Borough Council may, upon investigation, determine to be a threat to the health, safety, or welfare of the citizens of the Borough.
5. Permitting the growth of grass or weeds on any property within the Borough to exceed a height of six inches (6") or permitting the growth of any grass, weeds, noxious weeds, or any vegetation whatsoever, not edible or planted for some useful, legal or ornamental purpose, to conceal any rubbish, garbage, trash or any other violation of this Ordinance.

SECTION B. PROCEDURE:

1. Whenever it shall be reported or come to the attention of the Borough that a nuisance may exist, the Borough Council, the Borough Ordinance Enforcement Officer, or any other person designated by the Borough Council shall investigate said alleged nuisance. Upon receiving the report of said investigation, Borough Council may, by Resolution, declare any or all of the conditions defined or set forth in Article II, Section 1, of this Ordinance to be a nuisance in fact.
2. No further action shall be taken in the event that Borough Council shall fail to pass a Resolution declaring said condition(s) to be a nuisance in fact.
3. Except as set forth in Article II, Section B, Paragraphs 4 and 5, below, upon resolving that any of the above conditions is a nuisance, the Enforcement Officer and/or Borough Council shall give the owner or lessee (or both) of the property upon which said nuisance is located and any person permitting the maintenance of such nuisance, at least fifteen (15) days notice to completely remove or abate the same. Said notice shall be sent by Certified Mail, Return Receipt Requested; may be delivered in person; or may be posted upon the premises if the mailing address of said person, lessee, or owner of the property cannot be found.
4. If, upon inspection of the alleged nuisance, the Enforcement Officer, a Borough Council member, or any other person designated by the Borough determines that the alleged nuisance constitutes a serious and immediate danger to the health, safety, welfare and/or property of any Borough resident, the procedural and notice requirements contained in the preceding paragraphs shall not apply and the Enforcement Officer, Borough Council member, or other person designated by Borough Council shall have the power to declare the violation a nuisance and immediately proceed with the enforcement provisions contained in Article III of this Ordinance.
5. If the alleged violator of this Ordinance has been investigated within two (2) years of the current alleged violation and the notice requirements contained in Paragraphs A, B, and C of this section were complied with for the previous violation(s), the procedural and notice requirements contained in Paragraphs A, B, and C of this section shall not apply to the current violation, and the Enforcement Officer,

Borough Council member, or other person designated by Borough Council shall have the power to declare the violation a nuisance and immediately proceed with the enforcement provisions contained in Article III of this Ordinance.

ARTICLE III (ENFORCEMENT)

SECTION A. VIOLATIONS OF THIS ORDINANCE:

Any person who, after the delivery or posting of the notice provided for in Article II continues the maintenance of conduct declared to be a nuisance or fails to take remedies to abate said nuisance when directed to do so shall be determined to be guilty of a criminal violation of this Ordinance. Additionally, any person whose conduct constitutes a nuisance in violation of either Paragraphs 4 or 5 of Article II, Section B, as determined by the Enforcement Officer, Borough Council, or any other person designated by Borough Council, shall be determined to be guilty of an immediate violation of this Ordinance. Upon conviction thereof before a District Justice by a summary proceeding, any person found to be in violation of this Ordinance shall be sentenced to pay a fine of not less than Three Hundred (\$300.00) Dollars and not exceeding One Thousand (\$1,000.00) Dollars, in addition to reasonable attorney's fees and all costs incurred by the Borough, and, in default of payment thereof, may be sentenced to the County Jail for a period not exceeding thirty (30) days. Each day that a violation of this Ordinance continues shall constitute a separate offense. All of said proceedings and sentencing shall be in accord with the provisions of the Borough Code as the same shall be amended.

SECTION B. ABATEMENT OF NUISANCE BY BOROUGH COUNCIL:

In addition to or instead of invoking the penalties set forth in the preceding paragraph, the Borough Council may, in the event of any continued violation of this Ordinance, remove any nuisance, hazard, or dangerous structure on public or private grounds or otherwise abate the nuisance and collect the cost of such removal for abatement together with any penalties as may have been rendered in summary proceedings, from the owner and/or lessee of the premises. The costs of such removal, together with the penalties, reasonable attorney fees, and all costs incurred by the Borough, may be

levied against the property and recovered by the Borough in the manner prescribed for the levying and collection of municipal liens.

SECTION C. SEVERABILITY:

The provisions of this Ordinance shall be severable, and if any provision or phrase shall be held to be unconstitutional or invalid, such decision shall not affect the validity of any of the remaining provisions or phrases hereof, it being the intention of the Borough Council to enact and adopt each section independently of every other section.


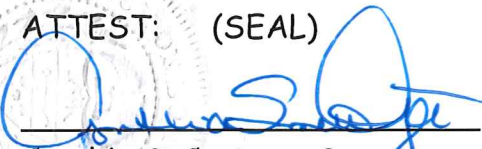
SECTION D. REPEALED:

All Ordinances or parts of Ordinances previously enacted by the Borough, including Ordinance Number 241 and 276, are hereby repealed insofar as they may be inconsistent herewith.

SECTION E. EFFECTIVE DATE:

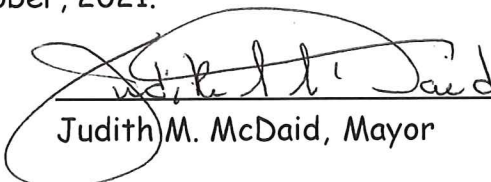
This Ordinance shall become effective upon the expiration of five (5) days from its enactment.

ORDAINED AND ENACTED into law by the Borough Council of Tionesta Borough in lawful session assembled this 5th day of October, 2021.

ATTEST: (SEAL)


Cynthia S. Crytzer, Secretary


Robert G. Holzer, President
Tionesta Borough Council

Approved this 5th day of October, 2021.


Judith M. McDaid, Mayor