



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 110534

Introduced June 23, 2011

Councilmembers Tasco, Sanchez and Miller

**Referred to the
Committee on Licenses and Inspections**

AN ORDINANCE

Amending Title 9 of The Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," by adding a new Chapter 9-3600, entitled "Nuisance Abatement," to establish a Nuisance Abatement Team to regulate business establishments, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS.

* * *

CHAPTER 9-3600. NUISANCE ABATEMENT.

§9-3601. Definitions.

(a) "Nuisance activity" means any activity which constitutes an unreasonable and significant interference with public health, public safety, public peace, public comfort or public convenience, and which is either of a continuing nature or which produces a permanent or long-lasting effect or which constitutes a violation of any federal or state statute or local ordinance. Violations of federal or state statutes or local ordinances shall include:

(.1) Operation of sound producing equipment, in violation of Chapter 10-400 of The Philadelphia Code;

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(.2) *The display of dangerous weapons on or near the premises in violation of Section 8-818 of The Philadelphia Code;*

(.3) *The discharge of firearms on or near the premises in violation of Section 10-810 of The Philadelphia Code;*

(.4) *Sale of illegal drugs or paraphernalia on or near the premises;*

(.5) *Unauthorized drinking on public rights-of-way;*

(.6) *Violations of the Philadelphia Building, Construction and Occupancy Code relating to the property;*

(.7) *Violations of the Philadelphia Health Code relating to the property;*

(.8) *Storage and disposal of trash and garbage in common areas on or adjacent to the property in violation of the Philadelphia Zoning Code;*

(.9) *Littering in violation of Chapter 10-700 of The Philadelphia Code;*

(.10) *Interference with vehicle ingress and egress as prohibited by Section 10-823 of The Philadelphia Code;*

(b) *“Director” means the Director of the Nuisance Review Team.*

§9-3602. Nuisance Activity Violations.

It shall be a violation of this Chapter if during any continuous thirty (30) day period, any combination of three or more nuisance activities occur that are related to or arising out of the operations of the same business establishment. It shall be a defense to a violation under this Chapter that the business owner did not know nor reasonably should have known of the occurrence of these nuisance activities.

§9-3603. Creation of Nuisance Abatement Team.

A Nuisance Abatement Team is hereby established to review and substantiate the occurrences of nuisance activities at businesses. It shall be composed of employees of the Police Department, the Law Department, the Department of Licenses and Inspections and the District Attorney’s Office. The purpose of the Nuisance Abatement Team is to provide a coordinated and effective response to nuisance complaints brought by affected neighbors and neighborhood organizations against businesses in their community.

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The Nuisance Review Team shall collaborate with City and State agencies and programs that receive nuisance complaints, including the State Bureau of Liquor Control Enforcement and the Pennsylvania Liquor Control Board, to develop a coordinated and centralized tracking system to accurately document all nuisance complaints received by these City and State agencies. Following an investigation, the Nuisance Review Team will make recommendations to the Director for appropriate actions to abate any nuisance activities which it determines is related to or arises out of the operations of a business establishment.

§9-3604. Investigation of Nuisance Complaints.

(a) The Nuisance Review Team shall collect all information which the Team deems relevant to determine if a violation of this Chapter has occurred.

(b) In developing its recommendation to the Director as to an appropriate remedy for the nuisance activity, the Nuisance Review Team shall evaluate each complaint to determine whether the complaint can be substantiated in the following areas:

(.1) Demonstrate through factual documentation how the activities which are the subject of the complaint impact neighborhood livability;

(.2) Demonstrate that the nuisance activities are ongoing;

(.3) Determine whether that there have been previous attempts to address the nuisance activities and whether they have been unsuccessful; and

(.4) Determine whether the complainant is available to offer testimony and evidence to the Nuisance Review Team and any subsequent appeals to substantiate these facts.

(c) The Nuisance Review Team shall consider the following criteria to evaluate the nature of each nuisance complaint and the appropriate nuisance abatement remedy:

(.1) The length of time the business owner has maintained the business and whether the business owner owns multiple businesses within the City;

(.2) The willingness and ability of the business owner to manage the identified nuisance activities;

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(.3) *The character of the neighborhood and population, including the level of crime in the area immediately surrounding the business premises;*

(.4) *The significance of a history or pattern of repeated citations for the same violation or a combination of nuisance activities;*

(.5) *Whether the incidents occurred in the business establishment or began in the establishment and continued outside the business establishment;*

(.6) *Whether the incidents occurred when the business establishment was open for business;*

(.7) *Whether the incidents involved the business owner, his or her employees, or the patrons of the business;*

(.8) *Whether the business owner or his or her employees have contacted the impacted neighbors, neighborhood association or Police Department and whether the business owner has cooperated with the investigation;*

(.9) *Whether documentation exists, in the form of logs of phone calls to law enforcement or governmental agencies, police reports, noise citations, photographs or video recordings; and*

(.10) *Whether, upon further investigation, the Director has found that a past notice of confirmed nuisance activity was issued in error.*

§9-3605. Notice of Confirmed Nuisance Activity.

Upon determining that there is substantial and credible evidence that a nuisance activity is related to or arises out of a business establishment's operations, the Nuisance Review Team shall report such findings to the Director, along with its recommendations for a remedy for the nuisance activity. After reviewing these findings, if the Director concurs that the nuisance activity is related to or arises out of a business establishment's operations, the Director shall forthwith send a written notice to the owner of the business establishment containing a description of the nuisance activity and the date and time of its occurrence.

§9-3606. Notice of Three Confirmed Nuisance Activities Within a Thirty (30) Day Period.

After the Director has sent three written notices of confirmed nuisance activities to the same business establishment within any continuous 30 day period, the Director shall

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send an additional written notice to the owner of the business establishment containing the following information:

- (a) The street address or legal description of the business establishment;*
- (b) A concise statement setting forth the date and time of each nuisance activity and the possible remedies which may be imposed under this Section;*
- (c) A request that the business owner provide a written response within 10 business days either disputing the occurrence of the nuisance activities or providing specific proposals to abate the nuisance activities and preventing such nuisance activities from reoccurring; and*
- (d) A notice informing the business owner that if the business owner's response does not satisfy the Director's concerns, the Nuisance Review Team may attempt to develop a nuisance abatement plan with the business owner or take any other actions authorized under this Chapter.*

§9-3607. Nuisance Abatement Plan.

(a) If a business owner who has received a notice of three confirmed nuisance activities within a continuous thirty (30) day period, responds to the Director, within ten (10) business days of the date of receipt of such notice, with a proposed course of action for abating the nuisance activities, the Director shall review the proposal. If the Director determines that the proposal may reasonably abate the nuisance activities, the Director and the business owner shall enter into negotiations toward concluding an enforceable nuisance abatement agreement, specifying the terms and conditions of the abatement plan.

(b) At a minimum, the nuisance abatement agreement shall identify the nature of the nuisance activities, the specific steps the business owner will undertake to abate the nuisance activity and the related resources the business owner will commit to the abatement, if applicable, and a mechanism for the Director to monitor compliance with the plan.

(c) Any such agreement shall be executed by the business owner and the Director within thirty (30) days of the date of the business owner's written response to the Director's notice. The Director may, upon request, extend this thirty-day period if it appears that the parties are working diligently to come to agreement.

§9-3608. Enforcement.

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(a) *If the business owner fails to submit a timely written response to the Director's notice of three confirmed nuisance activities within a thirty (30) day period or fails to propose or enter into an nuisance abatement plan that is acceptable to the Director, or, after entering into a binding nuisance abatement plan, fails to operate the business establishment in compliance with the written abatement plan, as evidenced by the issuance of one or more confirmed nuisance activity notices subsequent to the commencement of the nuisance abatement plan, then the Director shall transmit to the Department of Licenses and Inspections a recommendation for the imposition of any or all of the following remedies:*

(.1) *Limit the hours or days during which the establishment may operate.*

(.2) *Require the establishment to provide sufficient resources to monitor, control and respond to patron behavior at and around the establishment, including but not limited to hiring adequate security personnel to patrol in and around the establishment.*

(.3) *Restrict the activities at the establishment to prevent the reoccurrence of nuisance activities, including but not limited to, restrictions upon the time and manner in which entertainment is offered.*

(.4) *Revoke all health and food establishment licenses and issue a cease and desist operations order for a definite or indefinite term.*

(.5) *Revoke the business privilege license and issue a cease and desist operations order for a definite or indefinite term.*

(.6) *Padlock and physically close the business enterprise; or*

(.7) *Initiate proceedings to enjoin preliminarily and/or permanently the further operation of the business enterprise which has violated this Chapter. The taking of an appeal from an order granting a preliminary or permanent injunction pursuant to this Chapter shall not automatically stay the order granting the injunction. The Court granting the injunction may, upon application, grant a stay. In making a determination of whether a stay application shall be granted, the Court shall consider whether the proposed stay, if granted, will adversely impact the surrounding community or the petitioner who obtained the injunction. A prevailing petitioner shall be entitled to reasonable attorneys fees and costs. Any filing with the Court is subject to the sanctions provided by 42 Pa.C.S.A. §8355.*

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(b) Upon receipt of the request for enforcement actions from the Director, the Commissioner of Licenses and Inspections shall review the recommendations and determine which, if any, of the recommended remedies to impose upon the business establishment.

§9-3609. Penalties.

(a) Any person who operates a business notwithstanding the denial or revocation of a license or in violation of any other conditions imposed under this Chapter shall be subject to a fine of one thousand dollars (\$1,000) for each day such business continues to operate in violation of any remedy imposed.

(b) Repeat Offenders. Any person who, on more than one occasion, operates a business notwithstanding the denial or revocation of a license or in violation of any other conditions imposed under this Chapter, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation, shall be subject to a fine of not more than one thousand dollars (\$1,000), or imprisonment for not more than ninety (90) days, or both. A person shall be guilty of a separate Repeat Violation, regardless of whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate Repeat Violation offense.

§9-3610. Appeals.

(a) Any person who has been denied a license or whose license has been revoked, or who has been the subject of any other remedy imposed under this Chapter shall have the right to appeal to the Board of License and Inspection Review within ten (10) days after receipt of the notice of denial or revocation or imposition of other remedy. The filing of such appeal shall not act as a stay of the action or proceeding appealed from.

(b) If there is a change of ownership of the business, the new owner is subject to all remedies imposed upon the business establishment and must petition the Municipal Court for modification of any outstanding enforcement decrees.

§9-3611. Private Right of Action.

A person, business or community-based organization shall also have standing to initiate injunctive proceedings as set forth in §9-3608(a)(.7). No bond shall be required of such entity for seeking or obtaining preliminary injunctive relief. In addition, public officials currently empowered by law to file nuisance actions shall also have standing to file actions pursuant to this Chapter.

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§9-3612. Alternative Remedies.

No action taken by the Director pursuant to the provisions of this Chapter shall preclude the City of Philadelphia, or any of its agencies, from simultaneously pursuing any available remedies under any other provisions of The Philadelphia Code.

SECTION 2. This Ordinance shall take effect immediately upon becoming law.

Explanation:

Italics indicate new matter added.