

City of Philadelphia



Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia

(Resolution No. 060645)

RESOLUTION

Calling upon the Pennsylvania General Assembly to amend Act 39 of 2005 so that the City of Philadelphia can continue to play a vital role in regulating the sale of take-out beer within the City.

WHEREAS, Through passage of Act 39 of 2005, the Pennsylvania General Assembly granted a unique role to the City of Philadelphia in the regulation of take-out beer sales within the City. This Council has long recognized that while the vast majority of liquor licensed establishments make a unique contribution to the spirit and ambiance of our City, the presence of nuisance bars and stop-n-go's exacts a terrible toll on the quality of life in many of our neighborhoods; and

WHEREAS, While the City and its residents welcomed this new role of regulator of take-out beer sales, the language of Act 39, which mandated that Council be the body that adjudicates the merits of each take-out beer permit, posed many difficult challenges to the City in implementing Act 39. Amongst these challenges was the need for Council to create a system from scratch for receiving and processing an anticipated 1000 permit applications, the requirement that Council exercise adjudicatory powers and ensure that applicants receive due process of law and the requirement that Council's deliberations must be concluded within 45 days of the filing of an application; and

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WHEREAS, Despite the short lead time between the law's passage in June and the date it took effect in September, the City responded extremely well to these challenges. The Council received more than 500 applications within the first 3 weeks alone and a total of 880 during the first year of Act 39. Committed to minimizing the burden on law abiding establishments, Council streamlined the approval process for establishments without any protests, resulting in 733 applications being approved just 15 days after filing; and

WHEREAS, To ensure fairness in its deliberations, Council worked with leaders of the Philadelphia Bar Association to compile a list of qualified hearing examiners. Each of the 147 establishments whose applications were protested was assigned a due process hearing before one of these independent hearing examiners and each establishment was required by Council to be represented by an attorney of its own choosing at the hearing. At each hearing the burden of proof was on the protestors to prove that the granting of the application would harm the public health, safety, morals or welfare of the City or its residents. After carefully considering the testimony presented at the hearing and the recommendations of the hearing examiner, Council voted to approve permits for 98 of the establishments which were protested and denied permits to 49. In all, Council approved 831 of the 880 applications, an approval rate of over 94%; and

WHEREAS, As a result of denying applications to establishments proven to be significant public nuisances to their surrounding neighborhood, residents in those neighborhoods experienced tremendous relief from those nuisance activities; and

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WHEREAS, On May 17, 2006, two court of common pleas judges overturned the City's denial of 49 applications, ruling that because Council itself was the adjudicator, the manner in which the City implemented Act 39 violated those applicants' constitutional rights to due process. The court remanded these applications back to Council, and suggested that Council could cure these defects if it delegated its adjudicatory powers to another body; and

WHEREAS, Council is powerless to delegate its adjudicatory powers under Act 39 because Act 39 itself mandates that only Council can act as the adjudicatory body. Unless the General Assembly enacts an amendment to Act 39 to eliminate language specifying that only Council can be the adjudicator of each application, the court's ruling has effectively put an end to the City's efforts to regulate take-out beer sales; and

WHEREAS, This City and its residents have greatly benefited from the enforcement of Act 39 and it is imperative that a solution be found to allow the City to resume its role as regulator of take-out beer sales in the City; and

WHEREAS, This Council stands ready to work in close partnership with the Pennsylvania General Assembly and the Administration to develop a new paradigm for local adjudication of take-out beer permits which will ensure that both licensed establishments and near neighbors receive fair and impartial hearings and that the City retains its ability to effectively regulate nuisance establishments involved in the take-out sale of beer; now therefore

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RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, THAT this Council calls upon the Pennsylvania General Assembly to amend Act 39 of 2005 so that the City of Philadelphia can continue to play a vital role in regulating the sale of take-out beer within the City. In particular, Council calls upon the General Assembly to remove the phrase “governing body” from the text, so that the power to regulate take-out beer sales flows to the entire City of Philadelphia. In addition, because forty five (45) days is simply not enough time to adjudicate hundreds of applications when they are all filed within a few days of each other, Council calls upon the General Assembly to extend the review period for both new applications and renewals to ninety (90) days.

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CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the fourteenth of September, 2006.

Anna C. Verna
PRESIDENT OF THE COUNCIL

Patricia Rafferty
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmember Blackwell for Council President Verna

Sponsored by: Council President Verna, Councilmembers Blackwell, DiCicco, Miller, Reynolds Brown, Goode, Rizzo, Kelly, Ramos, Krajewski, Clarke, Tasco, O'Neill and Kenney