

Legislation Text

File #: 140452, **Version:** 1

Amending Title 6 of The Philadelphia Code, known as the "Health Code," by amending Section 6-103, entitled "Penalties and Cease Operations Orders," by adding a new Chapter 6-1100, entitled "Nuisance Health Establishments," and by amending Section 19-2602, entitled "Licenses," providing for identification and closure of nuisance health establishments, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 6-103 of The Philadelphia Code is amended to read as follows:

§ 6-103. Penalties and Cease Operations Orders.

* * *

(5) When the Department finds that a public nuisance exists, as provided in § 6-402(9)(a) *or* § 6-1103(1), and when such nuisance is not corrected and removed by the person responsible therefor, the Department may, in addition to invoking any other sanction or remedial procedure provided:

(a) Certify to the continuing existence of such nuisance to the Department of Licenses and Inspections which shall itself or by contract abate and remove such nuisance; charge the cost of such abatement and removal to the person responsible therefor; and with the approval of the Law Department, collect such cost by lien or otherwise as may be authorized by law.

(b) Apply through the Law Department, to any Court of Common Pleas or the County Court of Philadelphia for appropriate relief at law or in equity against any person responsible for such nuisance, or against any person who knowingly participates in the creation and maintenance of such nuisance by another person.

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SECTION 2. Chapter 6-1100 of The Philadelphia Code is hereby added to read as follows:

CHAPTER 6-1100. NUISANCE HEALTH ESTABLISHMENTS.

§ 6-1101. Definitions.

(1) *Controlled Substance.* Any drug, substance, or immediate precursor included in Schedules I through IV of the Pennsylvania Controlled Substance Drug, Device and Cosmetic Act, P.L. 233, No. 64 of 1972, 35 P.S. § 780-104.

(2) *Health Establishment.* Any Establishment owned by or employing a Practitioner at which Controlled Substances are administered, dispensed, delivered, given as gifts, or prescribed.

(3) *Nuisance Health Establishment.* Any Health Establishment determined by the Department to be a menace to public health because of controlled substance use, sale or the exchange of compensation for prescriptions for Cotrolled Substances or because of conditions arising from those activities.

(4) *Practitioner.* A physician, osteopath, dentist, veterinarian, pharmacist, podiatrist, nurse, scientific investigator, or other person licensed, registered or otherwise permitted to prescribe, distribute, dispense, administer or conduct research with respect to a controlled substance in the course of professional practice or research in the Commonwealth of Pennsylvania.

§ 6-1102. Identifying Nuisance Health Establishments.

(1) *The Commissioner and his designees may enter and inspect at reasonable times and in a reasonable manner any Health Establishment within the City for the purpose of determining whether it is a Nuisance Health Establishment.*

(2) *A Health Establishment shall not be considered a Nuisance Health Establishment unless the Department finds that the Health Establishment provides for the administration, dispensing, delivery, gift or prescription by any Practitioner of a Controlled Substance other than in accordance with generally accepted standards of care for medical practices. Additional factors to be considered by the Department in determining whether a Health Establishment is a Nuisance Health Establishment include, but are not limited to:*

(a) *Loitering or idling, as those terms are commonly understood, in the vicinity of the Health*

Establishment;

(b) *The presence of armed guards and/or large quantities of cash or money orders in the Health Establishment;*

(c) *Criminal activity in the immediate vicinity of the Health Establishment that reasonably can be linked to Controlled Substance use, sale or the exchange of compensation for prescriptions for Controlled Substances.*

§ 6-1103. *Response to Nuisance Health Establishments.*

(1) *Upon identifying a Nuisance Health Establishment, the Department shall be authorized to proceed against that public nuisance under § 6-103(5); and*

(2) *Upon identifying a Nuisance Health Establishment, the Department shall promptly notify the appropriate federal and Commonwealth authorities, as well as local law enforcement.*

SECTION 2. Section 19-2602 of The Philadelphia Code is amended to read as follows:

§ 19-2602. Licenses.

* * *

(4) Every person required to procure a license under this Section shall as a condition to the receipt or retention of the license:

* * *

(d) refrain from causing or permitting an owner or occupier to cause a public or private nuisance, including the Operation of a Nuisance Health Establishment as defined in §6-1101(3), either directly or indirectly, or by permitting third persons or conditions to do so when such nuisances may be minimized or prevented by reasonable measures.

(.1) The Department of Licenses and Inspections shall refrain from issuing, or shall revoke, the commercial activity license of any person, who, under color of such license intends to operate,

or is operating, in violation of the provisions of subsections 19-2602(4)(b), 4(c), 4(d), 4(e) or 4(f), and shall take all steps necessary to terminate the business operations of any business establishment that has violated any of such subsections, including, but not limited to the following:

(a) The seizure of the illegal drugs and/or drug paraphernalia located at such establishment, and the delivery of the material taken to appropriate law enforcement personnel for forfeiture proceedings pursuant to the provisions of the Act of April 14, 1972, P.L. 233, No. 64, §§ 28 and 29, as amended, 35 P.L. 780-128, and 129; and

(b) padlocking and physical closure of the business enterprise; and

(c) the initiation of proceedings to enjoin preliminarily and/or permanently the further operation of the business enterprise which has violated or intends to violate such subsections. A person, business or community-based organization shall also have standing to initiate such proceedings. 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;

(d) 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 affect the community or the petitioner who obtained the injunction;

(e) 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. § 8355.

(.2) Any person who operates a business notwithstanding the denial or revocation of a license to operate such business under this subsection shall be subject to a fine of three hundred dollars (\$300) and up to ninety (90) days imprisonment for each day such business continues to operate without possessing a valid license.

* * *

SECTION 3. This Ordinance shall be effective immediately.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.