

Legislation Text

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Amending Title 10 of The Philadelphia Code, entitled "Regulation of Individual Conduct and Activity," Chapter 10-800, "Safety," by adding a new Section 10-840, "Criminal and Defiant Trespassers," establishing and clarifying procedures to remove criminal and defiant trespassers from real property, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 10 of The Philadelphia Code is hereby amended to read as follows:

TITLE 10. REGULATION OF INDIVIDUAL CONDUCT AND ACTIVITY.

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CHAPTER 10-800. SAFETY.

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§ 10-840. *Criminal and Defiant Trespassers.*

(1) *Legislative Findings.*

(a) *Criminal and defiant trespassers create a condition that could erupt in violence endangering lives and promoting the prospect of injuries to persons and damage to properties, all of which poses a serious risk to the public health, safety and welfare.*

(b) *Criminal and defiant trespassers have no rights to occupy residential property as against the rights of the current owner or authorized agent of said residential property.*

(c) *There is also confusion about whether criminal and defiant trespassers are tenants. They are not, and have none of the rights of tenants.*

(2) *Definitions.*

(a) *Alleged Criminal and Defiant Trespasser. A criminal and defiant trespasser is a person who the owner of a property or authorized agent of said residential property alleges is criminally and defiantly trespassing on the owner's residential property under this Section 10-840.*

(b) *City of Philadelphia Appropriate Eviction, Ejectment Proceedings, and Emergency Housing Fact Sheet. A fact sheet created by the Law Department in consultation with appropriate City offices and departments, which shall, at a minimum:*

(.1) *Explain the procedures for eviction or ejectment available before the Court of Common*

Pleas and Municipal Court, and emergency preliminary injunction proceedings in the courts.

(.2) Explain the procedure set forth in this Section 10-840 as well as the limitations on self-help evictions set forth in Chapter 9-1600.

(.3) Provide contact information for legal resources available to homeowners such as local legal services agencies and the county bar association's lawyer referral service.

(.4) Provide contact information for agencies that may be able to assist in obtaining housing services.

(.5) Provide contact information for legal resources available to persons seeking shelter such as local legal services agencies and the county bar association's lawyer referral service.

(c) Criminal and Defiant Trespasser. A "criminal and defiant trespasser" is a person who occupies residential property without any of the following:

(.1) title, including by twenty-one (21) years of adverse possession of the residential property or as acquired through Sheriff's Sale and fully paid for;

(.2) permission of the owner or authorized agent of said residential property; or

(.3) any other interaction with the owner of said residential property, a prior owner of said residential property, or an agent of either of the foregoing, that would indicate a relationship recognized as a landlord-tenant relationship pursuant to the Pennsylvania Landlord-Tenant Act of 1951, April 6, 1951 (P.L. 69, No. 20), as amended, 68 P.S. § 250.101, et seq. (the "Landlord-Tenant Act"), with respect to said residential property.

(d) Owner or Authorized Agent Affidavit Alleging Criminal and Defiant Trespassing. A signed affidavit by the owner or authorized agent of residential property that states the following and shall include such other information as prescribed by the Police Department.

(.1) The affiant is the owner or authorized agent of the residential property located at a given address.

(.2) A person who is not licensed or privileged to do so has entered and remained on said residential property.

(.3) The affiant has never had a landlord-tenant relationship regarding the property with the person currently occupying the property, or provided oral or written authorization or permission to the person or persons currently occupying the property to occupy the property, nor has any agent or personal representative established such a relationship on the affiant's behalf.

(.4) To the affiant's knowledge, information, and belief, no other owner of the property, including a prior owner, established a landlord-tenant relationship, or provided oral or written authorization or permission to authorize the person or persons to occupy the property, nor has any agent or personal representative done so on such other owner's behalf.

(.5) The affiant is requesting assistance from the Philadelphia Police because the affiant believes a crime is being committed.

(e) Residential Property. All property legally used or held out for individuals to live in, regardless of whether such property is occupied by the owners of said property, rented, or vacant. The term shall also include the residential portion of a mixed-use building or development. For purposes of §10-840, "residential property" shall not include a plot of ground exclusively used to cultivate herbs, fruits, flowers, or vegetables.

(3) Prohibited Conduct.

(a) No person shall engage in activity that qualifies such person as a criminal and defiant trespasser.

(b) No person shall make a material statement such person does not believe to be true in an attempt to force a criminal and defiant trespasser to vacate a property or otherwise cause a criminal and defiant trespasser's removal from a property. A statement is material if it could or has affected a determination of whether an alleged criminal and defiant trespasser is a criminal and defiant trespasser under this Section 10-840.

(4) Police Procedures.

(a) General Rule. A law enforcement officer having probable cause to believe that a person on residential property is criminally trespassing within the meaning of 18 Pa.C.S. § 3503 (relating to criminal trespass) shall have the authority to make an arrest or take such other steps to investigate the situation as is appropriate under the circumstances, all in a manner consistent with the Police Department's internal protocol for investigating criminal and defiant trespassers, and shall obtain a warrant authorizing entry into the premises where appropriate. Nothing in this Section 10-840 shall limit the authority of the Police to conduct an investigation, or make an arrest, or in any other way diminish or interfere with the Police's authority to enforce the criminal laws in the City or Commonwealth concerning trespass, or otherwise.

(b) Owner or authorized agent initiated investigations. Once the owner or authorized agent of a property complains to the Police that a criminal and defiant trespasser is occupying his or her residential property, the Police shall promptly investigate the matter in accordance with its internal protocol for investigating criminal and defiant trespassers. The owner or authorized agent of a residential property may initiate such an investigation by providing to the Police an owner or authorized agent affidavit alleging criminal and defiant trespassing. Blank copies of such affidavits shall be publicly available on the Police Department and City website.

(c) Mandated report. A police officer conducting an investigation pursuant to this subsection 10-840(2) shall make an incident report, and such other reports as prescribed by Police Department policy and protocol, which shall at a minimum document:

(.1) the parties involved and any verifiable identification provided, or lack thereof;

(.2) the facts as alleged by the respective parties;

(.3) any visual or other observations made by the officer that support

statements made by any party; and

(4) any documentation concerning the alleged existence of a lease or other agreement concerning the current living arrangements.

(d) Provision of Information. A police officer conducting an investigation shall make owners or authorized agents and alleged criminal and defiant trespassers aware of the availability of the City of Philadelphia Appropriate Eviction, Ejectment Proceedings, and Emergency Housing Fact Sheet. This fact sheet shall be publicly available on the Police Department and City website.

(5) Court Procedures.

*(a) Upon the filing with the Court of Common Pleas of Philadelphia of a complaint for ejectment supported by an owner or authorized agent affidavit alleging criminal and defiant trespassing and a motion for emergency preliminary injunction pursuant to Pennsylvania Rules of Civil Procedure 1051-1058 and Philadelphia Court of Common Pleas Local Rule *208.3(a), the Court shall schedule an emergency hearing within five (5) business days, or such other time period as is necessitated by the circumstances presented or applicable court procedure.*

(b) A judge shall grant an emergency preliminary injunction, order the criminal and defiant trespasser to vacate the premises, and authorize the issuance of a writ of possession if the owner or authorized agent proves by a preponderance of the evidence that the owner or authorized agent is likely to prevail on the merits of the action for ejectment and a preliminary injunction is otherwise appropriate under applicable law.

(c) Court to adopt means of service. The Court shall adopt a means of prompt and effective service in those instances where the plaintiff avers that service cannot be safely effected by an adult individual other than a law enforcement officer or where the court so orders.

(d) Simplified Forms and Assistance. The Courts may:

(1) Provide simplified forms and clerical assistance in English and Spanish to help with the writing and filing of the complaint in ejectment, motion for emergency preliminary injunction, and responses thereto for individuals not represented by counsel.

(2) Provide the plaintiff and defendant with written and oral referrals in English and Spanish, to local legal services agencies and to the county bar association's lawyer referral service.

(6) Penalty. The penalty for a violation of §10-840 shall be a fine of not more than three hundred (300) dollars or imprisonment of not more than ninety (90) days, or both. Each day of violation shall constitute a separate offense.

(7) Repeat Offenders. Any person who commits, on more than one occasion, a violation of Section 10-840 (2) 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 three hundred (300) dollars, or imprisonment for not more than ninety (90) days, or both. A person shall be guilty of a 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.

SECTION 2. Effective Date. This Ordinance shall take effect immediately.

Explanation:

Italics indicate new matter added.