

Legislation Text

File #: 180741-A, Version: 2

Amending Section 10-840 of The Philadelphia Code, entitled "Criminal and Defiant Trespassers," to clarify and modify applicable definitions, penalties, and procedures, and to make certain technical changes, 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 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.

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(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. *Owners of residential property in Philadelphia have full rights over and to their residential property as provided under Pennsylvania law.*

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(2) Definitions. *The following definitions apply to this Section 10-840.*

(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] *owner* alleges is criminally and defiantly trespassing on the owner's residential property under this Section 10-840.

* * *

(c) Criminal and Defiant Trespasser. A ["criminal and defiant trespasser" is a] person who *is not an owner of the subject residential property; and is not a victim of domestic violence, sexual harassment, or stalking under Section 9-3201(8) of the Code that has been perpetrated by an owner of such property or by*

another person who is or had recently lived with such victim in such residential property; and who occupies residential property without any of the following:

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

(.2) permission of [the owner] *an owner of said residential property, a prior owner of said residential property with legal authority to grant such permission at the time it was granted, a tenant of such residential property with legal authority to grant such permission at the time it was granted, or an authorized agent of any of the foregoing;* [said residential property;] [or]

(.3) any other interaction with [the] *an 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.] property;*

(.4) *the payment of a deposit, rent, or rent substitute to an individual whom such person believes in reasonable good faith is either an owner of the residential property or has the authority to rent such property; or*

(.5) *any other legal claim to reside in the residential property, including a claim to legal or equitable title of such residential property, including but not limited to such a claim asserted by:*

(i) *a former owner of a residential property sold at tax sale claiming a right to redeem before the end of the redemption period under Pennsylvania law;*

(ii) *an individual who is a buyer of the residential property under an installment sales contract;*

(iii) *an individual to whom the property has been conveyed pursuant to an unrecorded deed;*

(iv) *an individual with a right to reside in the residential property under the federal Protecting Tenants at Foreclosure Act.*

(d) *Owner. The holder or holders of legal, equitable, or record title to a residential property. The term shall include an heir, assignee, trustee, or beneficiary.*

~~[(d)]~~ (e) *Owner or Authorized Agent Affidavit Alleging Criminal and Defiant Trespassing. A signed affidavit by the owner or authorized agent of [residential property] such owner that states the following to the best of the affiant's knowledge, information and belief after such affiant has made a reasonable good faith attempt to determine the truthfulness of the facts being asserted [and shall include] and includes such other information as prescribed by the Police [Department.] Department:*

(.1) *The affiant is the owner [or authorized agent] of the residential property located at a given [address.] address or the authorized agent of such owner. As the term is used throughout this affidavit an owner is a person who holds legal, equitable, or record title to a residential property, and shall include an heir,*

assignee, trustee, or beneficiary.

(.2) A person who [is not licensed or privileged] *does not have a claim to reside in the residential property, such as those referenced in Section 10-840(c)(.1) through (.5) of The Philadelphia Code, including a claim that such person is an owner of such property,* [to do so] has entered and remained on said residential [property.] *property without the permission of an owner of such 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] *No 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.*

[(e)] (f) Residential Property.

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(3) Prohibited Conduct.

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

(b) No person shall make a material statement such person *knows, or should know,* [does not believe to be true] *to be false* in an attempt to *either (.1) force [a] an alleged criminal and defiant trespasser to vacate a [property] property, or (.2) otherwise cause [a] an alleged criminal and defiant trespasser's removal from a property. Nor shall any person fail to correct a material statement such person subsequently learns to be false.* 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.

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(b) Owner or authorized agent initiated investigations. Once the owner [or authorized agent] of a property *or an authorized agent of such owner* complains to the Police that a criminal and defiant trespasser is occupying [his or her] *such owner's* residential property, the Police shall promptly investigate the matter in accordance with its internal [protocol] *directive* for investigating [criminal and defiant trespassers.] *theft of residential real property.* 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. *Such affidavit shall not itself authorize the Police to remove an alleged criminal and defiant trespasser from a residential property.* 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)] *10-840(4)* shall make an incident report, and such other reports as prescribed by Police Department [policy and protocol,] *directive* 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.] *arrangements or ownership of the property.*

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(e) Residential lease fraud victims. Upon receiving information that an alleged criminal and defiant trespasser is a residential lease fraud victim under any applicable Police Department directive, the Police Department shall take such steps as provided for in such directive, including notifying the victim in writing that such victim cannot legally remain in the residence and must make arrangements to move out within fifteen (15) days, or such other time period as is necessitated by the circumstances presented or applicable police directive.

(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.]

In addition to such other fines, penalties, and imprisonment as applicable under Pennsylvania law, the penalty for a violation of § 10-840(3)(a) or (b) shall be a fine of not more than one thousand dollars (\$1,000), or imprisonment of not more than ninety (90) days, or both, provided that, a person who violates § 10-840(3) (a) at two or more separate residential properties, or at a single residential property after having been legally removed from such property, including by arrest, shall be subject to a fine of not more than two thousand dollars (\$2,000), or imprisonment of not more than ninety (90) days, or both. A person will be guilty of a second violation regardless of whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation.

[(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.]

(7) Private Right of Action. An individual who has been wrongfully accused of being an alleged criminal and defiant trespasser shall have a private right of action against any person who knowingly violates §10-840 (3)(b) and may recover, for each such violation, actual damages, reasonable attorneys' fees and court costs to the extent allowed by law, and such other relief, including injunctive relief, as the court may deem appropriate.

This subsection in no way limits the rights of private parties to pursue any legal rights and claims they may possess under a written agreement or any other applicable law.

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

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.