

## Legislation Text

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**File #:** 200574-A, **Version:** 2

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Amending Title 9 of The Philadelphia Code to address matters related to commercial leases and provide eviction and financial relief to restaurant businesses that operate on leased premises, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. The Council of the City of Philadelphia hereby finds that:

- (1) On March 6, 2020, in response to the 2019 novel coronavirus disease, COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency.
- (2) On March 11, 2020, the World Health Organization (“WHO”) declared the COVID-19 outbreak a global pandemic, defined as the worldwide spread of a new virus for which most people do not have immunity.
- (3) On March 19, 2020, the Governor of Pennsylvania and Pennsylvania Secretary of Health ordered all non-life-sustaining businesses in Philadelphia and the surrounding counties to close their physical locations to slow the spread of COVID-19, which remained in place for Philadelphia through June 5, 2020.
- (4) On March 22, 2020, the Mayor and the Commissioner of Public Health jointly issued their second Emergency Order Temporarily Prohibiting Operation of Non-Essential Businesses and Congregation of Persons to Prevent the Spread COVID-19, which has been superseded, in part, by a series of orders that gradually allowed for the reopening of businesses in Philadelphia with significant restrictions to protect the public health.
- (5) On March 23, 2020, the Governor of Pennsylvania issued a Stay at Home Order that applies to Philadelphia and numerous surrounding counties, and which remained in place for Philadelphia through June 5, 2020.
- (6) The local and state orders shut down or reduced the operations of many businesses in Philadelphia. 99.7% of Greater Philadelphia’s economy consists of small businesses.
- (7) These business closures and stay at home orders were necessary measures to prevent the spread of COVID-19 and had the effect of reducing the spread of COVID-19 in Philadelphia, thereby saving lives.
- (8) Between March and September of 2020, Philadelphia’s restaurants, recognized as a gem of the City’s economy and attractiveness to visitors and businesses, were closed as non-essential, then limited to take-out, then limited to outdoor-only dining.

- (9) Only on October 2, 2020, under an order by the City and pursuant to overarching state rules, were Philadelphia restaurants permitted to recommence indoor service. Again, however, severe limitations apply, including half their normal occupancy, limited group sizes, limited hours for alcohol sales, and no bar seating.

(10) The Secretary of Health of the Commonwealth and the Philadelphia Department of Public Health continue to impose these necessary restrictions on restaurant operations to reduce transmission of the virus, including, but not limited to, limiting the occupancy of restaurants and mandating cleaning protocols.

(11) Restaurants are doing their part to combat the spread of COVID-19, but have seen their revenues drop by an average of 49%, and at least 100,000 restaurants have closed permanently nationwide. In many cases, restaurants may be saved with appropriate extensions and accommodations to their commercial lease terms.

(12) The COVID-19 pandemic's negative impact on the lives and incomes of Philadelphians and the businesses they operate-including restaurants-has exacerbated negative impact on Philadelphia's economy and City revenues. The measures set forth in this Ordinance are necessary to ensure that restaurants-largely small businesses-are able to stay in business to support an equitable recovery.

(13) The City of Philadelphia has recently seen an increase in cases of COVID-19, which has necessitated further restrictions on restaurants including the cessation of indoor dining to begin Monday November 23, 2020.

SECTION 2. Chapter 9-1800 of The Philadelphia Code is hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

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CHAPTER 9-1800. [RESERVED] *PROTECTING PHILADELPHIA'S RESTAURANTS DURING THE COVID-19 PANDEMIC*

§ 9-1801. *Moratorium on Restaurant Evictions.*

(1) *Scope. This section shall apply to businesses operating as restaurants that meet all of the following conditions:*

(a) *Licensure as a food establishment under Section 6-301(4)(a), relating to food establishments with a permanent location where the primary business is the regular and customary preparation and sale of food for consumption on or off the premises, including but not limited to, eating and drinking establishments and caterers.*

(b) *The premises on which the restaurant is operated is occupied pursuant to a commercial lease, without a written lease, or with a lease terminable under State law.*

(c) *There are no more than three total restaurant locations under the same name within the City of Philadelphia.*

(d) *The restaurant owner or operator employs no more than 100 employees at the restaurant location for which the owner or operator is seeking protection under this Section 9-1801.*

(e) *The owner or operator can demonstrate one of the following:*

(i) *A loss of revenue of 50% or more at the restaurant for any two month period between March 17, 2020, and January 1, 2021, as compared to the period beginning April 1, 2019, and ending May 31, 2019; or*

(ii) *If the restaurant was not in operation for the full period between April 1 and May 31, 2019, a loss of revenue of 50% or more for any two month period between March 17, 2020, and January 1, 2021, as compared to the period beginning January 1, 2020, and ending February 29, 2020, or any portion of such period that the restaurant was in operation.*

(2) *Food Establishment Certificate of Hardship. A certification pursuant to Section 9-809(1)(a)(.2) (pertaining to commercial tenant certifications of hardship) by business operating as a restaurant that meets the conditions under subsection (1).*

(3) *Temporary Moratorium on Restaurant Evictions. During the 180-day period beginning on the date the ordinance adding this Section takes effect, where the lessee has provided the lessor with a food establishment certificate of hardship, the following shall apply:*

(a) *the only legal basis for eviction shall be to cease or prevent an imminent threat of harm by the lessee, including physical harm or harassment, and it shall be unlawful for a lessor to take any step in furtherance of recovering possession on any other basis.*

(b) *a lessor shall not charge fees, penalties, or other charges to the lessee related to the late payment or nonpayment of rent unless all of the following conditions are met:*

(i) *The lessor provides the lessee evidence that the lessor has incurred costs or fees as a direct result of the lessee's late payment or nonpayment of rent; and*

(ii) *The lessor's property rental business, including all rentals in Philadelphia, have suffered a loss of revenue that would meet the requirements for lost revenue required of restaurants under Section 9-1801(1)(e); and*

(iii) *The lessor allows the lessee to repay any past due rent over twelve months.*

(4) *Notice. For one year following the expiration of the moratorium provided for under subsection (2), where the lessee has provided the lessor with a food establishment certification of hardship, the lessor shall not take any steps to evict such unless the lessor provides a notice of intent to evict such lessee not less than 30 days prior to the date the lessor takes any such steps to evict the lessee.*

(5) *Any lessor whose lessee has provided a food establishment certification of hardship under this section shall offer such lessee a repayment agreement for past due rent. The lessor shall at minimum permit the lessee to repay the past due rent within nine (9) months after the last day of the COVID-19 emergency period.*

SECTION 2. This Ordinance shall be effective immediately.

