Amending Section 9-105 of The Philadelphia Code, entitled "Penalties," and Chapter 9-4400 of The Philadelphia Code, entitled "Responsible Business Operations," to further define nuisance businesses, provide for additional enforcement and penalties, and make certain technical changes, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS.

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CHAPTER 9-100. GENERAL PROVISIONS

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§ 9-105. Penalties.

(1) Except as otherwise provided in Chapters 9-600, 9-702, 9-800, 9-900, 9-1000, 9-1100, 9-1200, 9-1600, [9-4000 and] *9-4000,* 9-4200, *and 9-4400,* Sections 9-604, 9-622 and 9-623 of this Title, and subsection 11-707(1) of Title 11, any person who violates any provision of this Title or any regulation adopted hereunder shall, in addition to any other penalty indicated in this Title, pay a fine of no less than one hundred fifty dollars ($150) nor more than three hundred dollars ($300).

* * *

(4) Repeat Offenders. Any person who, on more than one (1) occasion, violates any provision of this Title, except any provision of Chapters 9-702, 9-800, 9-900, 9-1100, [9-1200 or] *9-1200,* 9-1600, *or 9-4400* or Section 9-604 of this Title, 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 dollars ($300), or imprisonment for not more than ninety (90) days, or both. A person shall be guilty of a Repeat Violation regardless 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.

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CHAPTER 9-4400. RESPONSIBLE BUSINESS OPERATIONS.

§ 9-4401. Definitions.

The following definitions shall apply to this Chapter.

(1) Chronic [Nuisance.] *Nuisance Business.* A business with respect to which [an] *a business* owner has been issued a [violation] notice [for] *concerning* nuisance behavior under this Chapter on three (3) or more separate days [during any sixty (60) day period or on seven (7) or more separate days] during any twelve (12) month period.

(2) Adequate Remedial Measures. [Measures] *Specific, verifiable actions* taken *by a business owner* that are substantially likely to reduce, eliminate or prevent recurrence of the nuisance behavior *or serious violent behavior* at issue.

(3) Nuisance Behavior. Behavior that [significantly] interferes with the health, safety [and] *or* welfare of the community, including, but not limited to, the [following violations:] *following:*

(a) Illegal consumption *or sale* of alcoholic [beverages (Section 10-604 of The Philadelphia [Code);] *beverages;*

(b) Illegal drug [activity (The Controlled Substance Drug Device and Cosmetic Act, 35 P.S. §§ 780-101 et seq.);] *activity;*

(c) Unlawful street or sidewalk [obstruction (subsection 10-611(2) of The Philadelphia Code);] *obstruction;*

(d) Gambling [(subsection 10-611(2) of The Philadelphia Code);] *and illegal gaming activities;*

[(e) Loitering (Section 10-603 of The Philadelphia Code);]

[(f)] *(e)* Public urination or [defecation (Section 10-609 of The Philadelphia Code);] *defecation;*

[(g)] *(f)* Litter [on sidewalk (Section 10-704 of The Philadelphia Code);] *in the right-of-way, including the sidewalk or street;*

[(h) Prostitution (The Crimes Code, 18 Pa. C.S. § 5902);]

(g) Prostitution;

[(i)] *(h)* Owning, operating or conducting a vehicle chop shop in any building or structure, including a lot or curtilage, for the purpose of dealing in stolen vehicles or *stolen* vehicle parts or illegally obtaining and altering vehicles or vehicle identification numbers of vehicle [parts (The Crimes Code, 18 Pa. C.S. §§ 7701 et seq.);] *parts;*

[(j)] *(i)* Vehicles parked on [sidewalk (subsection 12-913(1)(a)(.2) of The Philadelphia Code);] *the sidewalk;*

[(k)] *(j)* [Off] *Use of* street parking spaces [used] *or sidewalk* for open storage, sale, or rental of goods, or storage *or repair* of inoperable [vehicles (subsection 14-801(4) of The Philadelphia Code); and] *vehicles;*

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(k) Unlicensed or unlawful firearms possession by a patron;

(l) Short dumping;

(m) Unlawful junk dealer operations;

(n) Disorderly conduct and related behavior;

(o) Conduct that violates the provisions of the Pennsylvania Liquor Code (47 P.S. § 1-101 et seq.) pertaining to unlawful acts relative to liquor and licensees (47 P.S. § 4-493);

(p) Obstruction of an investigation of nuisance behavior;

(q) Repeated or continuing violations of any other City ordinance and/or regulations;

(r) Any other activity that constitutes a public nuisance under The Philadelphia Code.

(4) [Owner of a Business. The term includes the owner of a business and any person managing, operating or in control of the business.] *Business Owner. Any person who owns, manages, operates or controls a business.*

(5) Critical Nuisance Business. A business with respect to which a business owner has been issued a notice concerning serious violent behavior or obstruction of an investigation of serious violent behavior.

(6) Serious Violent Behavior. Conduct that would constitute any of the following offenses as defined in the Pennsylvania Crimes Code (18 Pa. C.S. § 101 et seq.): homicide; murder; aggravated assault; rape; or sexual assault.

(7) Nuisance Business. Any business that is determined to be a chronic nuisance business or critical nuisance business.

(8) Obstruction of an Investigation. Any obstruction of, interference with or other impediment of the investigation of nuisance behavior or serious violent behavior by a business owner or an employee or agent of the business.

§ 9-4402. Business Owner *Notice and* Liability.

(1) Any person authorized to enforce [the relevant ordinance or statute shall] *ordinances may* issue [the owner of] a business *owner* a notice [for] *that* nuisance behavior *or serious violent behavior* [that takes place during the business's operating hours] *has taken place* inside the business or on the sidewalk or street abutting the [business, provided that the owner shall not be subject to penalties in connection with an individual incident of nuisance behavior under this Chapter unless the owner was personally responsible for such behavior.] *business during hours when the business was operating.*

(2) Notice issued pursuant to subsection 9-4402(1) shall identify the nuisance behavior or serious violent behavior at issue, the date of its occurrence, and the remedies and penalties for a business that is declared a chronic nuisance business or critical nuisance business. Such notice may include recommendations

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regarding potential remedial measures and provide an opportunity to demonstrate adequate remedial measures to the issuing department. Such notice shall be subject to appeal by the business owner as set forth in Section 9 -4405 below.

[(2)] *(3) A business owner shall not be liable for an individual incident of nuisance behavior under this Chapter, unless the owner was personally responsible for such behavior, but the* [The] owner of a [business that is a chronic nuisance, as defined in this Chapter,] *nuisance business* shall be subject to the remedies set forth in this Chapter.

§ 9-4403. [Enforcement and Administrative Review.] *Enforcement.*

(1) Upon a determination that a business is a chronic [nuisance,] *nuisance business or critical nuisance business*, the Department *or the Police Department* [shall] *may* issue a Notice of Intent to Cease Operations to the *business* owner*,* [of the business,] stating that the business has been identified as a chronic nuisance *business or critical nuisance business* and that the Department [will issue] *may impose* a Cease Operations [order] *Order* pursuant to the procedures set forth in Section A-505 of the Philadelphia Administrative Code unless the *business* owner [of the business] either:

(a) Demonstrates *to the issuing department* that adequate remedial measures have been taken to [reduce, eliminate or prevent future recurrence of] *address* the [nuisance behaviors] *conduct* that led to the designation of the business as a chronic [nuisance, as defined in this Chapter;] *nuisance business or critical nuisance business;* or

(b) Enters into a nuisance abatement plan [through which the owner agrees to take remedial measures that are substantially likely to reduce, eliminate or prevent recurrence of the nuisance behavior at issue.

Efforts or agreement under (a) or (b) above may include some or all of the types of measures identified in] *pursuant to* Section 9-4404.

Such Notice of Intent to Cease Operations may include proposed remedial measures such as some or all of those identified in Section 9-4404.

(2) The Notice of Intent to Cease Operations shall provide the owner with the opportunity to contact the [Department] *issuing department* to [schedule an] *request* administrative review [proceeding] regarding: issuance of the Notice of Intent to Cease Operations; any demonstration of remedial measures as set forth in (1)(a) above; or an agreement as set forth in (1)(b) above. The Notice *of Intent to Cease Operations* shall advise the *business* owner [of the potential consequences of failing] *that failure* to request [an] administrative review [proceeding] within the timeframe set forth in subsection (3) below *may result in imposition of a Cease Operations Order*.

[(3)] *(4)* The Department may impose a Cease Operations order pursuant to the requirements and procedures set forth in Section A-505 of the Administrative Code *at any time*:

(a) [at any time,] if [no proceeding] *administrative review* has *not* been requested within five (5) days of issuance of the Notice of Intent to Cease Operations or there is no good faith effort to [schedule the proceeding; and] *request administrative review;*

(b) [at any time] after [a proceeding] *administrative review* has taken place, if the [Department] *reviewing department* determines that the owner has failed to satisfy the requirements of subsections (1)(a) or [(1)(b).] *(1)(b); or*

(c) upon a determination that, in order to protect health, safety or welfare, an immediate Cease Operations Order is necessary before the business owner is offered an opportunity to take adequate remedial measures or enter a nuisance abatement plan. An immediate Cease Operations Order shall have the full effect of the subsequent written notice of violation required pursuant to the procedures set forth in Section A -502 of the Administrative Code.

(5) The Department shall lift a Cease Operations Order upon execution by the business owner of a nuisance abatement plan.

[(4)] *(6)* Any person or organization with knowledge regarding nuisance behavior *or serious criminal behavior* pertaining to the business or purported remedial measures of the owner may submit written information regarding such behavior or efforts to the Department *or Police Department* for [its] consideration at the administrative [review proceeding.] *review.*

[(5) A business owner shall not transfer the business to any other person or entity, except in a bona fide arms-length transaction, while a cease operations order or a notice of intent to cease operations is in effect.]

(7) Transfer of business ownership shall not terminate any Notice of Intent to Cease Operations, Cease Operations Order or nuisance abatement plan in effect with respect to a nuisance business. The acquiring business owner shall be responsible for compliance with any enforcement action pending against the nuisance business and prior business owner.

[(6)] *(8)* [No enforcement] *Enforcement* action under this Section shall *not* preclude any other enforcement action against any individual who has engaged in nuisance *behavior or serious violent* behavior.

[(7)] *(9)* Nothing in this Chapter shall limit the issuance of a Cease Operations Order against a business under any other provision of the Code.

[(8) If a nuisance abatement plan is in effect, it shall not be terminated if the business ownership is transferred.]

§ 9-4404. Nuisance Abatement [Activities.] *Plans.*

(1) [Measures that may be taken] *Any nuisance abatement plan executed by a nuisance business and the City shall certify the business owner's agreement to take all necessary and appropriate measures* to reduce, eliminate or prevent future recurrence of *each* nuisance [behavior, or that may be required as part of an agreement on a nuisance abatement plan,] *behavior and each serious violent behavior giving rise to a determination that the business is a nuisance business. Such measures* may [include] *include, but are not limited to,* the following:

(a) Taking steps to prevent the specific nuisance *behavior or serious violent* behavior, personally or through an agent such as a private security company;

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(c) Documenting [ongoing communication] *proactive* efforts with the Police Department regarding nuisance behavior *or serious violent behavior* activities;

(d) Participating in regular meetings with community-based organizations at which specific efforts to address nuisance behavior *or serious violent behavior* are discussed;

* * *

(l) Changing the hours of operation in a manner designed to reduce the likelihood of nuisance *behavior or serious violent* behavior;

(m) Changing business operations or products sold in a manner designed to reduce the likelihood of nuisance *behavior or serious violent* behavior; and

(n) Any other measures deemed likely to abate or prevent the recurrence of the nuisance *behavior or serious violent* behavior.

§ 9-4405. Appeals.

(1) [The owner of a] *A* business *owner* who is aggrieved by a determination [of the Department] under this Chapter may appeal such determination to the Board of License and Inspection Review, in accordance with subsection 9-103(2).

§ 9-4406. Penalties.

(1) Upon determination that a business is a nuisance business, such business shall be deemed to have committed a Class III offense and be subject to the maximum fine set forth in Section 1-109 of The Philadelphia Code for violations of this Chapter.

(2) Imposition of penalties under this Section shall not prevent the City from seeking any other remedy available at law or in equity.

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