

ORDINANCE NO. 782

THE BOROUGH OF DARBY, DELAWARE COUNTY

AN ORDINANCE OF THE BOROUGH OF DARBY AMENDING THE DARBY BOROUGH CODE CHAPTER 153-143 TITLED "NON-RESIDENTIAL OCCUPANCY PERMITS" ALL UNDER CERTAIN TERMS AND CONDITIONS.

An ordinance amending the Code of the Borough of Darby by adding to said code by authorizing the issuance of Non-Residential Occupancy Permits and establishing standards for holders of said Non-Residential Occupancy Permits, holding business owners responsible for nuisance behavior occurring on the business premises and within the immediate vicinity of the business, all under certain terms and conditions.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE BOROUGH OF DARBY AND IT IS HEREBY ORDAINED BY AND WITH THE AUTHORITY OF THE SAME AS FOLLOWS:

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CHAPTER §153-143: NON-RESIDENTIAL OCCUPANCY

(a) Definitions. The following definitions shall apply to this Chapter.

(1) Chronic Nuisance. A business with respect to which an owner has been issued a violation notice for 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 taken that are substantially likely to reduce, eliminate or prevent recurrence of the nuisance behavior at issue.

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

(a) Illegal consumption of alcoholic beverages (Section 42(A) of The Darby Borough Code);

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

- (c) Unlawful street or sidewalk obstruction (Section 125-25 of the Darby Borough Code);
- (d) Gambling;
- (e) Loitering;
- (f) Public urination or defecation;
- (g) Litter on sidewalk;
- (h) Prostitution;
- (i) 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 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.);
- (j) Vehicles parked on sidewalk; and
- (k) Any other activity that constitutes a public nuisance under The Darby Borough 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.

(5) Non-Residential Occupancy: The occupancy of a premises in Darby Borough for a commercial purpose.

(B): Non-Residential Occupancy Permit

(a) Any business owner who operates or seeks to operate a business within the Borough of Darby shall obtain from the Borough a Non-Residential Occupancy Permit. The Council of the Borough of Darby may issue said permit after proper notice and hearing on said application. The Borough shall promulgate an Application and charge a fee for the processing of said application before the Council shall consider it.

(b) Each Business Owner who holds a Non-Residential Occupancy Permit shall pay an annual fee as determined and set annually by the Borough Council.

(c) No business shall operate in the Borough without a valid Non-Residential Occupancy Permit.

(C): Business Owner Liability.

(1) Any person authorized to enforce the relevant ordinance or statute shall issue the owner of a business a violation notice for nuisance behavior that takes place during the business's operating hours 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.

(2) The owner of a business that is a chronic nuisance, as defined in this Chapter, shall be subject to the remedies set forth in this Chapter.

(D): Enforcement and Administrative Review.

(1) Upon a determination that a business is a chronic nuisance, the Borough shall issue a Notice of Intent to Cease Operations to the owner of the business, stating that the business has been identified as a chronic nuisance and that the Borough will issue a Cease Operations order unless the owner of the business either:

(a) Demonstrates that adequate remedial measures have been taken to reduce, eliminate or prevent future recurrence of the nuisance behaviors that led to the designation of the business as a chronic nuisance, as defined in this Chapter; 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 Section E of this Chapter.

(2) The Notice of Intent to Cease Operations shall provide the owner with the opportunity to contact the Borough to schedule an 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 shall advise the owner of the potential consequences of failing to request an administrative review proceeding within the timeframe set forth in subsection (3) below.

(3) The Department may impose a Cease Operations order:

(a) at any time, if no proceeding has 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

(b) at any time after a proceeding has taken place, if the Borough determines that the owner has failed to satisfy the requirements of subsections (1)(a) or (1)(b).

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

(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.

(6) No enforcement action under this Section shall preclude any other enforcement action against any individual who has engaged in nuisance behavior.

(7) 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.

(E): Nuisance Abatement Activities.

(1) Measures that may be taken to reduce, eliminate or prevent future recurrence of nuisance behavior, or that may be required as part of an agreement on a nuisance abatement plan, may include the following:

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

(b) Hiring sufficient licensed and insured security personnel to patrol the business premises and the sidewalks abutting the business;

(c) Documenting ongoing communication efforts with the Police Department regarding nuisance behavior activities;

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

(e) Installing and maintaining improved lighting at each point of entry to and exit from the business and in designated common areas;

(f) Installing and maintaining surveillance cameras at each point of entry to and exit from the business, in designated common areas and in interior spaces, illuminated in such a manner so as to identify persons entering and exiting the business and maintaining recordings from such cameras for not less than 30 days after the recording occurs;

(g) Installing metal detectors to screen persons visiting the business;

(h) Maintaining an internal log or incident reporting system documenting the owner's response to specific incidents of illegal activity inside the business or on the sidewalks abutting the business;

(i) Displaying signage identifying prohibited behavior at the property;

(j) Making specific efforts to address litter and other cleanliness issues;

(k) Installing soundproofing insulation or taking other steps to control noise;

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

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

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

(F): Appeals.

(1) The owner of a business who is aggrieved by a determination of the Borough under this Chapter may appeal such determination to the Ordinance Committee of the Council of the Borough of Darby.

G: Severability

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

H: Effective Date

~~This Ordinance shall go into effect sixty (60) days after enactment.~~

Effective Immediately

ADOPTED by the Borough Council, this 19th day of October, 2016.

Terrence P. Park
Council President
Vice

APPROVED by the Mayor, this 19th day of October, 2016.

Alan R. Thomas
Mayor

ENACTED this 19th day of October, 2016.

[Signature]
Secretary