

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 09-007**

**AN ORDINANCE TO AMEND CHAPTER 5 OF THE WILMINGTON CITY CODE RELATING TO PUBLIC NUISANCE PROPERTIES.**

**WHEREAS**, the City Council finds that public nuisance properties exist in the City of Wilmington; and

**WHEREAS**, these residential and commercial properties have a deleterious effect on the neighborhoods in which they are located and substantially interfere with the other residents' quiet enjoyment of their properties and their quality of life; and

**WHEREAS**, City Council deems it necessary and a proper exercise of the City's police powers to permit the Commissioner of Licenses and Inspections to abate public nuisance properties by either closure of the premises, suspension of the business license, issuance of a criminal summons, or a combination of the preceding.

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

**SECTION 1.** Chapter 36 of the City Code is hereby amended by deleting section 36-69 in its entirety.

**SECTION 2.** Chapter 5 of the City Code is hereby amended by deleting section 5-58 in its entirety and adding in its place the following underlined language:

**Sec. 5 -58. Public Nuisances**

**A. Legislative findings.**

The Council finds that public nuisances exist in the City of Wilmington in the operation of certain establishments and the use and occupation of property in flagrant and persistent violation of state and local laws and ordinances, which nuisances substantially and seriously

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**Sponsors:**

**Council  
Members  
Freel  
Walsh  
Bolden**

**Co-Sponsors:**

**Council  
Members  
Prado  
Ignudo  
Kelley**

interfere with the interest of the public in enhancing the quality of life and community environment in the City, and in fostering and facilitating commerce, maintaining and improving property values, and preserving and protecting the public health, safety and welfare. The Council further finds that the persistence of such activities and violations is detrimental to the health, safety and welfare of the people of the City of Wilmington and of the businesses thereof and the visitors thereto. It is the purpose of the Council to authorize and empower the commissioner of the Department of License and Inspections (hereinafter "the commissioner") to impose sanctions and penalties for such public nuisances, and such powers may be exercised either in conjunction with or apart from the powers contained in other laws without prejudice to the use of procedures and remedies available under such other laws. The Council further finds that the sanctions and penalties that may be imposed by the commissioner pursuant to this article constitute an appropriate exercise of the city's police powers in response to the proliferation of the above-described public nuisances. The sanctions and penalties are reasonable and necessary in order to protect the health and safety of the people of the City and to promote the general welfare. It is also the purpose of the Council to encourage owners and occupants of properties, landlords and business operators to take affirmative steps to prevent nuisance activity on their properties and in their business establishments.

**B. Public nuisance defined.**

For purposes of this section, a public nuisance shall be deemed to exist whenever, through violation of any of the following provisions resulting from separate incidents at a building, erection, residence or place, twelve (12) or more points are accumulated within a period of six (6) consecutive months or eighteen (18) or more points are accumulated within a

period of twelve (12) consecutive months, in accordance with the following point system. Where more than one violation occurs during a single incident, the total points for the incident shall be the highest point value assigned to any single violation. For purposes of this section, an "incident" will be defined as the execution of an enforcement action in response to a violation of the law, with or without an arrest or conviction, and occurs on or outside the premises, but within the perimeter of the lot on which the building, erection, residence or place is located, or on any adjacent or accessory parking lot used in connection with said building, erection, residence or place, or occurs outside the premises, but was initiated inside the premises. Except that points for a violation of the Wilmington City Code shall only be assessed upon the issuance of a criminal summons or civil citation. The owners, occupants, lessors, lessees, licensees, mortgagees and all those persons in possession or having charge of the property as agent or otherwise, or having any interest in the property, real or personal may be held liable under these provisions for conducting or maintaining a public nuisance.

**C. Assessment of points.**

- (1) The following violations shall be assigned a point value of eight (8) points:
  - (a) A violation of the provisions of Title 11, Chapter 5, Subchapter II, Subpart B of the Delaware Code entitled "Acts Causing Death."
  - (b) A violation of the provisions of Title 11, Chapter 5, Subchapter VII, Subpart E of the Delaware Code entitled "Offenses Involving Deadly Weapons and Dangerous Instruments."
- (2) The following violations shall be assigned a point value of six (6) points:
  - (a) A violation of the provisions of Title 11, Chapter 5, Subchapter II,

Subpart A of the Delaware Code entitled “Assaults and Related Offenses.”

- (b) A violation of the provisions of Title 11, Chapter 5, Subchapter II, Subpart D of the Delaware Code entitled “Sexual Offenses.”
- (c) A violation of the provisions of Title 11, Chapter 5, Subchapter III, Subpart D of the Delaware Code entitled “Theft and Related Offenses.”
- (d) A violation of the provisions of Title 11, Chapter 5, Subchapter V, Subpart B of the Delaware Code entitled “Sale and Distribution of Tobacco Products,” including a violation of any rules and regulations promulgated by the Division of Alcohol Beverage Control and Tobacco Enforcement.
- (e) A violation of the provisions of Title 11, Chapter 5, Subchapter VII, Subpart A of the Delaware Code entitled “Riot, Disorderly Conduct and Related Offenses.”
- (f) A violation of the provisions of Title 11, Chapter 5, Subchapter VII, Subpart B of the Delaware Code entitled “Offenses Involving Public Indecency.”
- (g) A violation of the provisions of Title 11, Chapter 5, Subchapter VII, Subpart D of the Delaware Code entitled “Offenses Involving Gambling.”
- (h) A violation of Title 4 of the Delaware Code entitled Alcoholic Liquors, including a violation of any rules and regulations promulgated by the

Division of Alcohol Beverage Control and Tobacco Enforcement.

- (i) A violation of the provisions of Title 16, Part IV of the Delaware Code entitled "Uniformed Controlled Substance Act."
- (3) The following violations shall be assigned a point value of four (4) points:
  - (a) A violation of any section of the International Building Code, including any amendments thereto as contained in Chapter 4 of the Wilmington City Code.
  - (b) A violation of any section of Chapter 5, Businesses, of the Wilmington City Code.
  - (c) A violation of Chapter 11, Article III of the Wilmington City Code entitled "Noise Control and Abatement."
  - (d) A violation of any section of Chapter 12, Fire Prevention and Protection, of the Wilmington City Code.
  - (e) A violation of any section of Chapter 34, Housing, of the Wilmington City Code.
  - (f) A violation of any section of Chapter 36, Miscellaneous Offenses and Provisions, of the Wilmington City Code.
  - (g) A violation of any section of Chapter 48, Zoning, of the Wilmington City Code.
  - (h) A violation of any section of the Delaware State Fire Prevention Regulations as adopted by the Wilmington City Code.
  - (i) A violation of the National Fire Protection Association, Life Safety

Code, as adopted by the Wilmington City Code.

- (j) A violation of the provisions of Title 16, Part II entitled "Regulatory Provisions Concerning Public Health."
- (4) The following violations shall be assigned a point value of three (3) points:
  - (a) All sections of Chapter 3, Animals, of the Wilmington City Code.
- (5) The following shall be assigned a point value of one (1) point:
  - (a) All sections of Chapter 13, Health and Sanitation, of the Wilmington City Code.
  - (b) A police call for service to a property as documented by a police computer aided dispatch system or a written police report (with or without an arrest or conviction).
- (6) Points will not be assessed, or may be removed by the commissioner if previously assessed, if the commissioner determines that the following circumstances exist:
  - (a) The owner, occupant, lessor, lessee, licensee or agent reported the violation of law to law enforcement, and it is determined by the commissioner that the owner, occupant, lessor, lessee, licensee or agent did not in any way contribute to the violation of law whether through his actions or inactions; or
  - (b) The owner, occupant, lessor, lessee, licensee or agent is the victim of the criminal act as documented in a crime report, and it is determined by the commissioner that the owner, occupant, lessor,

lessee, licensee or agent did not in any way contribute to the violation of law whether through his actions or inactions.

**D. Conviction not required.**

For purposes of this section, a conviction for an offense in a court of competent jurisdiction shall not be required to establish that a specified violation of law has occurred at a building, erection, residence or place. However, a conviction, including a plea of "guilty" or "no contest," in any court of competent jurisdiction, shall constitute conclusive proof of such a violation of law. Conviction of an attempt to commit a violation of any of the specified provisions shall be equivalent to a conviction for a violation of the specified provision.

**E. Powers of the commissioner of licenses and inspection with respect to public nuisances.**

In addition to any other enforcement procedures established elsewhere, the commissioner of licenses and inspections shall be authorized:

- (1) To order the temporary closing of the building, erection, residence, or place, or unit in the case of a multi-unit building to the extent necessary to abate the nuisance; or
- (2) To suspend for a period not to exceed six (6) months or revoke for a period of one (1) year any license or permit issued by the city related to the conduct of a business or trade at the premises, including a residential rental business license, which suspension or revocation shall also apply to any other locations or dwelling units operated by the holder for which the license or permit is required if it is determined by the commissioner that a pattern of nuisance activity is also

occurring in or upon other locations or dwelling units operated by the holder of the license or permit; or

(3) To issue a criminal summons to the owners, occupants, lessors, lessees, licensees mortgagees and all those persons in possession or having charge of the property as agent or otherwise, or having any interest in the property, real or personal for conducting or maintaining a public nuisance property; or

(4) Any combination of the above.

**F. Notice**

Prior to exercising the powers enumerated in subsection E above, the commissioner shall give notice to the owner, lessor, or licensee of the existence or potential existence of a public nuisance at the subject property. Such notice shall be placed in writing, include a description of the property sufficient for identification, a statement of the nuisance activity occurring in or upon the property, and the potential penalties which may be imposed under this section if the activity continues. Such notice shall be deemed to be properly served upon the owner, lessor, or licensee by mailing the notice to his last known address, via certified mail, return receipt requested, or if the notice is returned by the postal service, by posting a copy of the notice in a conspicuous place on or about the dwelling affected by the notice. The commissioner may, at his discretion, serve the notice by hand delivering the notice to the owner, lessor, or licensee at his usual residence or place of business in the presence of someone in the residence or business 18 years of age or older.

**F.G. Lack of knowledge not a defense.**

The lack of knowledge of or acquiescence to or participation in or responsibility for a



public nuisance on the part of the owners, occupants, lessors, lessees, mortgagees and all those persons in possession or having charge of the property as agent or otherwise, or having any interest in the property, real or personal, used in conducting or maintaining the public nuisance, shall not be a defense by such owners, lessors, lessees, mortgagees, and such other persons.

**G.H. Orders of the commissioner of licenses and inspections.**

- (1) Orders of the commissioner issued pursuant to this section shall be posted at the building, erection, or place where a public nuisance exists or is occurring in violation of law and shall be hand delivered, or mailed via certified mail, return receipt requested within one (1) business day of the posting.
- (2) Ten (10) business days after the posting of an order issued pursuant to this section and upon the written directive of the commissioner, the Department of Licenses and Inspections and/or the Wilmington Police Department are authorized to act upon and enforce such orders.
- (3) Where the commissioner closes a building, erection, residence or place pursuant to this section, such closing shall be for such period as the commissioner may direct, but in no event shall the closing be for a period of more than one (1) year from the posting of the order pursuant to this section. ~~If the owner, licensee, lessor, or lessee files a bond in an amount determined by the commissioner, but not exceeding the value of the property ordered to be closed, and submits proof satisfactory to the commissioner that the nuisance has been abated and will not again be created, maintained or permitted for such period of time as the building, erection, residence or place has been directed to be closed by the order of the~~

commissioner, then the commissioner may vacate the provisions of the order that direct the closing of the building, erection, or place:

- (4) A closing directed by the commissioner pursuant to this section shall not constitute an act of possession, ownership, or control by the city of the closed premises. The owner of the premises shall continue to be responsible for the property.
- (5) Right to appeal. The party to whom the order directing closure of the building, erection, residence or place is addressed, or whose business license has been suspended or revoked, may appeal said closure, suspension, or revocation to the Licenses and Inspections Review Board upon filing an application in writing, together with a mandatory \$50.00 non-refundable filing fee, with the Department of Licenses and Inspections, within ten (10) business days of receiving the order. The application for appeal shall state with specificity the grounds for appeal. The board, following a hearing, may affirm, modify or reverse the commissioner's order in accordance with its rules and regulations; provided, however, that any such appeal regarding the requirements, applicability or enforcement of the provisions of this section shall not be filed or pursued for purposes of delay or avoidance, or in order to obtain the rehearing of any other order of the commissioner, the department, or the board, including any such order related to the enforcement of any other provisions of this Code regarding the same premises or any incidents, events, activities or conditions which gave rise to the issuance of any order pursuant to the provisions of this

section. Any appeal to the board of an order directing closure of the building, erection, residence or place, or an order suspending or revoking a business license shall act as a stay of that order until a decision has been rendered by the board in that appeal proceeding.

- (6) Voluntary abatement action by the owner, occupant, licensee, lessor, or lessee. If the owner, occupant, licensee, lessor, or lessee submits proof satisfactory to the commissioner that the nuisance has been abated and will not again be created, maintained or permitted, the commissioner may, in his discretion, vacate the provisions of the order that direct the closing of the building, erection, or place, or suspension of the license or permit. However, such order may be re-issued if further incidents occur in or upon the property. With regard to residential rental properties, if the owner or lessor submits proof satisfactory to the commissioner that he has filed an eviction action against the lessee(s) of the premises, and that he is actively pursuing such action, the commissioner may stay the order directing the closing of the building, erection, or place, or suspension of the license to permit the owner or lessor to complete the eviction process. If at any time the commissioner determines that the owner or lessor is not actively pursuing the eviction action, the commissioner may re-instate the order.

**H.I. Penalties for offenses.**

- (1) It shall be a misdemeanor for any person to use or occupy any building, erection, residence or place, or portion thereof, ordered closed by the commissioner

pursuant to this section.

- (2) Mutilation or removal of a posted order of the commissioner shall be punishable by a fine of not less than \$250, provided that such order contains notice of such penalty.
- (3) Intentional disobedience or disregard of any provision of orders issued by the commissioner pursuant to this section, in addition to any other punishment prescribed by law, shall be punishable by a fine of not less than \$250.00 and no more than \$1,000.00 for the first offense; no less than \$500.00 and no more than \$2,500.00 for the second offense; and no less than \$1,000.00 and no more than \$5,000.00 for the third and subsequent offenses, of which the minimum fine, if imposed, shall be mandatory and not subject to suspension.
- (4) A summons issued for conducting or maintaining a public nuisance property issued by the commissioner pursuant to this section, in addition to any other punishment prescribed by law, shall be punishable by a fine of not less than \$250.00 and no more than \$1,000.00 for the first offense; no less than \$500.00 and no more than \$2,500.00 for the second offense; and no less than \$1,000.00 and no more than \$5,000.00 for the third and subsequent offenses, of which the minimum fine, if imposed, shall be mandatory and not subject to suspension.

**F.J. Severability.**

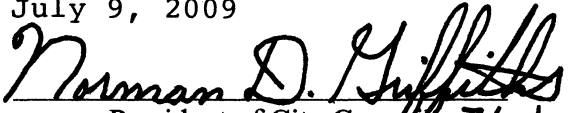
If any provision of this section or the application thereof to any person or circumstances is held invalid, the remainder of this section and the application of such provisions to other persons and circumstances shall not be rendered invalid thereby.

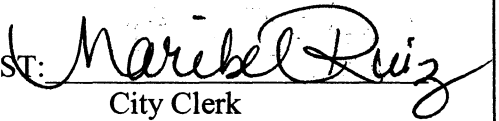
**SECTION 23.** This Ordinance shall become effective as of September 1, 2009

~~its date of passage by City Council and approval by the Mayor.~~

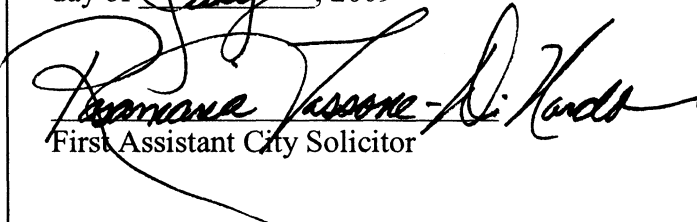
First Reading . . . . . February 5, 2009  
Second Reading . . . . February 5, 2009  
Third Reading . . . . July 9, 2009

Passed by City Council,  
July 9, 2009

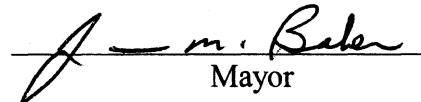
  
\_\_\_\_\_  
President of City Council 7/9/09

ATTEST:   
\_\_\_\_\_  
City Clerk

Approved as to form this 7  
day of July, 2009

  
\_\_\_\_\_  
First Assistant City Solicitor

Approved this 10<sup>th</sup> day of  
July, 2009

  
\_\_\_\_\_  
Mayor

**SYNOPSIS:** This ordinance amends Chapter 5, section 5-58 of the City Code by deleting section 5-58, entitled Disorderly Establishments, in its entirety and replacing section 5-58 with an ordinance addressing both residential and commercial public nuisance properties. Properties are assessed a specific amount of points for certain violations of state and local laws. Properties which are assessed 12 or more points in a 6 month period, or 18 or more points in a 12 month period constitute nuisance properties subject to abatement by the City. The ordinance permits the Commissioner of Licenses and Inspections to abate public nuisance properties by either closure of the premises, suspension of the business license, issuance of a criminal summons, or a combination of the preceding. This ordinance also amends Chapter 36, section 36-69 of the City Code by deleting section 36-69, entitled Disorderly Establishments, in its entirety.