

Summary of Substitute 1 to Ordinance No. 09-007, Public Nuisances

Properties and Individuals Subject to the Ordinance

The ordinance applies to the following types of properties: residential properties (rental or owner occupied); licensed commercial business establishments; and other establishments, whether public or private, not subject to local licensing provisions.

The following individuals may be held liable for maintaining or conducting a public nuisance: property owners; occupants; lessors; lessees; licensees; agents in charge of or in possession of the property; and any person having any interest in the property.

Point System

Points are assessed against a property for violations of the Delaware State Code, the Wilmington City Code, and the rules and regulations promulgated by the Division of Alcohol Beverage Control and Tobacco Enforcement. Violations of specific laws are assessed a specific number of points as noted in the ordinance.

Points will be assessed only when law enforcement action is exercised in response to a violation of law. Examples of law enforcement action include: an arrest; the issuance of a criminal summons; the issuance of a civil citation; the execution of a search warrant; incidents documented in police reports; and incidents documented in computer aided dispatch reports. An arrest or conviction of a violation of law is not necessarily required prior to the assessment of points against a property. Points will only be assessed for violations of the Wilmington City Code when a summons or civil citation is issued.

When multiple violations of law occur during one incident, only the highest point value of a single violation will be assessed.

When a property accumulates twelve (12) or more points within a period of six (6) consecutive months, or eighteen (18) or more points within a period of twelve (12) consecutive months, the property is deemed a “public nuisance” subject to the abatement provisions of the ordinance.

Abatement Powers

In an effort to abate a public nuisance property, the Commissioner of the Department of Licenses and Inspections may take the following actions: (1) order the temporary closing of a property to the extent necessary to abate the nuisance, but in any event no more than one (1) year; (2) suspend or revoke a business license or permit for up to six (6) months; (3) issue a criminal summons; or (4) any combination of the preceding. The type of abatement action used will depend upon the facts and circumstances of each case and the type of property at issue.

A summons issued for conducting or maintaining a public nuisance property carries the following fines: first offense, \$250.00 - \$1,000.00; second offense, \$500.00 - \$2,500.00; third and subsequent offenses, \$1,000.00 - \$5,000.00.

Self-Help Provision

If the Commissioner of the Department of Licenses and Inspections orders the closing of a property and/or suspends the business license, the owner, business operator or lessee may at that time submit proof that the nuisance has been abated and will not again occur. If the Commissioner is satisfied with the proposed actions, he may vacate the order directing the closing of the property. If the owner or operator submits proof that he has filed for an eviction and is actively pursuing such action, the order may be stayed to permit the owner or operator to complete the eviction process.

Right to Appeal

A person may appeal an order from the Commissioner closing a property or suspending or revoking a business license. The appeal will be heard by the Licenses and Inspections Review Board. The Board is currently composed of five (5) City of Wilmington residents who volunteer to serve as board members. The board members are not employees of the City of Wilmington. Upon the filing of an appeal, the order of the Commissioner closing a property or suspending or revoking a business license or permit is placed on hold until the Licenses and Inspections Review Board renders its decision.

If a person is issued a summons, he or she has the right to a trial before a judge rather than an administrative appeal hearing before the Board.

Notice

The Commissioner is required under the ordinance to send a notice letter to property and business owners prior to taking any enforcement action. The notice will request a meeting with the owner to provide the owner an opportunity to voluntarily abate the nuisance activity.

Revised 7/7/09