

AN ORDINANCE TO AMEND CHAPTER 5 RELATING TO PUBLIC NUISANCES

#0271

Sponsor:

**Council
Member
McCoy**

WHEREAS, Wilmington City Council finds that public nuisances exist in the City of Wilmington in the operation of certain establishments and the occupation of properties in flagrant and persistent violation of law, which nuisances substantially and seriously interfere with the public's interest in enhancing the quality of life and community environment in the City, in fostering and facilitating commerce, in maintaining and improving property values, and in preserving and protecting public health, safety and welfare; and

WHEREAS, City Council adopted section 5-58 ("Public Nuisance") of the Wilmington City Code to protect and preserve the safety, health, peace, cleanliness, good order and welfare of the City; and

WHEREAS, since its adoption, the Public Nuisance ordinance has been used numerous times to remediate properties and businesses which threaten citizens' health, safety and welfare; and

WHEREAS, the Department of Licenses and Inspections is empowered to take enforcement action against property owners and business licensees who permit flagrant and persistent violations of law to occur on their premises; and

WHEREAS, effective enforcement of the Public Nuisance ordinance requires enforcement by the Commissioner of Licenses and Inspections and the Director of Land Use and Planning; and

WHEREAS, commercial properties that constitute public nuisances often destabilize community safety, attract chronic offenders to neighborhoods, become a hub for criminal activity and violence, and strain police resources; and

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

WHEREAS, City Council finds that amending Chapter 5 to permit the Commissioner of Licenses and Inspections and the Director of Land Use and Planning to abate nuisance activity on commercial properties through the immediate closure of the premises and/or suspension of the business license is necessary to protect the health, safety, and welfare of its citizens and a proper exercise of the City's police powers.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 5 ("Businesses"), Article II ("Business Licenses"), section 5-37 of the City Code is hereby amended by removing the stricken language and adding the underlined language as follows:

Sec. 5-37. - Compliance with code requirements; provisional business license.

- (a) In accordance with and in addition to the provisions of section 5-36, all licensees, their agents and employees, engaged in the conduct of any business, profession, pursuit or calling licensed under this article, or performing any act pursuant to this article, shall strictly comply with all applicable provisions of this Code, particularly including, but not limited to, such Code provisions regarding the payment of taxes, water and sewer charges, fees and other charges of any kind which are related to the operation of such licensed business and which are payable to the city, and such Code requirements regarding compliance with the building, fire, health and sanitation, housing, zoning, and noise control and abatement codes, and any other rules and regulations affecting the public health, safety and welfare, as a condition to any license issued pursuant to this article.
- (b) In lieu of renewing a business license, a special provisional business license may be issued to a business that 1) has been sent a notice of public nuisance, a closure order, a business license suspension order or summons pursuant to ~~under~~ section 5-58, and 2) has been identified by the commissioner of licenses and inspections or

director of land use and planning as a business that should be subject to a provisional business license. The provisional business license shall be issued with reasonable conditions designed to abate public nuisance activity. The conditions placed on the provisional business license shall solely be determined by the commissioner of licenses and inspections and/or director of land use and planning. However, to the extent possible, the commissioner or director may obtain the licensee's input in determining said conditions. The conditions may include a requirement that the owner, operator and/or lessor of any rental dwelling unit shall attend and successfully complete a city approved landlord training program. A provisional business license, as issued, shall authorize continuation, without penalty, of the business, pending the issuance or denial of a business license. If the conditions of the provisional business license have been adhered to and the public nuisance is abated, a business license shall be issued to the licensee. If the conditions of the provisional business license have not been adhered to, the application for business license renewal may be denied.

- (c) If the commissioner of licenses and inspections or director of land use and planning determines a provisional business license shall be issued in lieu of a business license, or determines that an application for business license renewal shall be denied after a provisional business license had been issued because the conditions were not adhered to, the licensee shall be provided written notice setting forth the grounds for the commissioner's or director's decision. Such notice shall provide that the licensee may appeal the decision to the board of license and inspection review. The appeal shall be in writing and filed within ten business days after the receipt of the decision. Any appeal to the board of license and inspection review shall be accompanied by a non-refundable fee of \$50.00 at the time of filing. The board of license and inspection review shall hear and decide appeals in accordance with its duly prescribed and promulgated rules, regulations and procedures. If the licensee elects to appeal the commissioner's or director's decision, the decision shall not take effect until final determination of the appeal by the board. However, an appeal filed by a licensee who was subject to an order directing the immediate closure of a business or immediate suspension of a business license pursuant to section 5-58 (f) (2) and (h) (2) shall not act as a stay of the commissioner's or director's decision. In these circumstances, an appellant may request a stay of the decision in writing to the commissioner or director at the time the appeal is filed. The commissioner or director may, upon good cause shown by the appellant, grant the appellant's request and stay the decision until the board renders a final determination on the appeal. If the commissioner or director does not grant a stay, a hearing before the board shall take place within ten calendar days of the proper

filing of the appeal unless a longer time period is agreed to by the appellant and the commissioner or director.

- (d) The provisions of this section shall not be construed as limiting, repealing or superseding the provisions of any other section of this Code, or of any rule or regulation issued pursuant to this Code, that authorizes the suspension or revocation of a business license for violation of any building or fire code requirement specifically related to fire prevention or other measures affecting the public safety.

SECTION 2. Chapter 5 (“Businesses”), Article II (“Business Licenses”), section 5-58 of the City Code is hereby amended by removing the stricken language and adding the underlined language as follows:

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 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 and the director of land use and planning (hereinafter “the “commissioner” and “director””) 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.

(c) *Assessment of points.*

- (7) Points will not be assessed, or may be removed by the commissioner or director if previously assessed, if the commissioner or director 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 or director 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 or director 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.

(e) *Powers of the commissioner of licenses and inspection and director of land use and planning with respect to public nuisances.* In addition to any other enforcement procedures established elsewhere, the commissioner of licenses and inspections or director of land use and planning 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 months or revoke for a period of one 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 or director 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 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.*

- (1) Residential properties, including multi-family residential rental properties. Prior to exercising the powers enumerated in subsection (e) above, the commissioner or director shall give notice to the owner, lessor, lessee or licensee of the existence or potential existence of a public nuisance at the subject property. Such notice shall be placed in writing; and include a description of the property sufficient for identification, a statement of the nuisance activity occurring in or upon or attributable to the property, and the potential penalties which may be imposed under this section if the activity continues.
- (2) Commercial properties. The commissioner or director may, but is not required, to provide the notice described in subsection (f)(1) to the owner, lessor, lessee or licensee of a commercial property prior to exercising the powers enumerated in subsection (e).
- (3) Service of notice. ~~Such a~~ Notice shall be deemed to be properly served upon the owner, lessor, lessee 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 or director 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. When done in conjunction with certified mail service, a copy of the notice may be posted in a conspicuous place on the premises, and such a procedure shall be deemed the equivalent of personal service.

(h) *Orders of the commissioner of licenses and inspections and director of land use and planning.*

- (1) Orders of the commissioner or director issued pursuant to this section shall be in writing and include a description of the property sufficient for identification and a statement of the nuisance activity occurring in or upon the property. The order 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 business day of the posting.

- (2) Ten 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, department of land use and planning and/or the Wilmington Police Department are authorized to act upon and enforce such orders. If the subject property is a commercial property, the departments may act upon and enforce such orders immediately upon posting and hand delivery or certified mailing of the order.
- (3) Where the commissioner or director closes a building, erection, residence or place pursuant to this section, such closing shall be for such period as the commissioner or director may direct, but in no event shall the closing be for a period of more than one year from the posting of the order pursuant to this section.
- (4) A closing directed by the commissioner or director 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 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 or director'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 director, 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.

a. Residential properties, including multi-family residential rental properties. 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.

b. Commercial properties. An appeal to the board of an order directing the closure of the building, erection or place, or an order suspending or revoking a business license shall not act as a stay of that order. An appellant may request a stay of the order in writing at the time the appeal is filed. The commissioner or director may, upon good cause shown by the appellant, grant the appellant's request and stay the order until a decision has been rendered by the board in that appeal proceeding. If an order is not stayed, a hearing before the board shall take place within ten calendar days of the proper filing of the appeal unless a longer time period is agreed to by the appellant and the commissioner or director.

- (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 or director that the nuisance has been abated and will not again be created, maintained or permitted, the commissioner or director 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 or director that he has filed an eviction action against the lessee(s) of the premises, and that he is actively pursuing such action, the commissioner or director 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 or director determines that the owner or lessor is not actively pursuing the eviction action, the commissioner or director may re-instate the order.

(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 or director pursuant to this section.
- (2) Mutilation or removal of a posted order of the commissioner or director shall be punishable by a fine of not less than \$250.00, provided that such order contains notice of such penalty.

- (3) Intentional disobedience or disregard of any provision of orders issued by the commissioner or director 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 or director 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.

SECTION 3. This Ordinance shall become effective immediately upon its passage by City Council and approval by the Mayor.

First Reading.....September 3, 2026
Second Reading.....September 3, 2026
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____

City Clerk

Approved as to form this 2nd
day of September, 2026.


Acting City Solicitor

Approved this ____ day of _____, 2026.

Mayor

SYNOPSIS: This Ordinance amends Chapter 5, § 5-58 entitled Public Nuisances to establish a separate notice and appeal process for commercial properties by 1) making the requirement for written notice of the existence or potential existence of a public nuisance at the property prior to taking enforcement action discretionary; 2) eliminating the ten-day waiting period to enforce orders issued pursuant to this section; 3) eliminating the automatic stay of an order appealed to the L&I Review Board and instead allowing the commissioner of licenses and inspections or director of land use and planning to stay an order upon good cause shown by the appellant; and 4) if an order is not stayed, requiring that a hearing before the L&I Review Board take place within ten calendar days of a properly filed appeal. This Ordinance also authorizes the director of land use and planning to take enforcement action, and it updates the provision related to service of notices to allow for contemporaneous posting and mailing of notices. This Ordinance also amends § 5-37 entitled Compliance with Code Requirements; Provisional Business License to make it consistent with the amendments to § 5-58.

FISCAL IMPACT STATEMENT: