

**BOROUGH OF CHESTER HEIGHTS  
DELAWARE COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 219**

**AN ORDINANCE OF THE BOROUGH OF CHESTER HEIGHTS, DELAWARE COUNTY, PENNSYLVANIA, REPEALING ORDINANCE NO. 217, CODIFIED IN THE BOROUGH OF CHESTER HEIGHTS CODE OF ORDINANCES AS CHAPTER 166: TAXATION, ARTICLE IV: CHESTER HEIGHTS BUSINESS PRIVILEGE TAX, SECTIONS 166-20 THROUGH 166-30; REPEALING PRIOR INCONSISTENT ORDINANCES, RESOLUTIONS AND PARTS THEREOF; AND PROVIDING A SEVERABILITY CLAUSE AND EFFECTIVE DATE.**

**WHEREAS**, on December 19, 2022, the Borough of Chester Heights, Delaware County, Pennsylvania (the “Borough”) pursuant to the Pennsylvania Local Tax Enabling Act of 1965, enacted Borough Ordinance 217: “Business Privilege Tax”; and

**WHEREAS**, the Pennsylvania Legislature repealed portions of the Local Tax Enabling Act of 1965 by the passing of the Local Tax Reform Act of 1988 (the “Reform Act”); and

**WHEREAS**, notably, the Reform Act eliminated the ability of Pennsylvania political subdivision to enact Business Privilege Tax ordinances after November 30, 1988, and stated: “no political subdivision may levy, assess or collect or provide for the levying, assessment or collection of a mercantile or business privilege tax on gross receipts or part thereof.”; and

**WHEREAS**, the Borough did not adopt a Business Privilege Act prior to November 30, 1988; the effective date of the Reform Act; and

**WHEREAS**, the Pennsylvania Supreme Court in the matter of *Shelly Funeral Home, Inc. v. Warrington Twp.*, 618 Pa. 469, 57 A.3d 1136 (2012), declared that establishing a flat rate Business Privilege Tax with eligibility based on gross receipts was a violation of the Reform Act; and

**WHEREAS**, Ordinance 217, codified in Sections 166-20 through 166-30 of the Borough Code of Ordinances states in Section 166-24 that: “[e]very person engaging in a business, trade, occupation, or profession in the Borough who maintains a place of business therein with over \$12,000 of gross receipts shall pay an annual business privilege tax for the tax year beginning January 1, 2023, and each year thereafter, in the sum of Two Hundred Dollars (\$200.00)”;

**WHEREAS**, as enacted, Borough Ordinance 217 is violative on its face of the controlling Pennsylvania legal precedent and therefore constitutes an illegal tax.

**NOW, THEREFORE**, be it, and it is hereby **ORDAINED** by the Borough Council of the Borough of Chester Heights, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

I. Borough of Chester Heights Ordinance No. 217, adopted December 19, 2022, is hereby repealed in its entirety. The Code of Ordinances of the Borough of Chester Heights shall be amended to reflect the repeal of Ordinance 217 which is codified in Chapter 166, Sections 166-20 through 166-30.

II. All ordinances or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency.

III. Borough Resolutions 12-22-D (authorizing entry into a contract with Berkheimer, Inc. for the collection and enforcement of Ordinance 217) and 12-22-E (appointing a Borough liaison between Borough Council and Berkheimer regarding the contract between the parties) are both hereby declared null and void.

IV. The Borough Council hereby authorizes the Borough Staff and Borough Solicitor to take any further necessary action regarding the repeal of this ordinance, including but not limited to, communication with Berkheimer, Inc., regarding the contract and with those local businesses subject to the tax.

V. The provisions of this Ordinance are declared to be severable. If any provision of this Ordinance is declared by a court of competent jurisdiction to be invalid or unconstitutional, such determination shall have no effect on the remaining provisions of this Ordinance or on the Code of Ordinances of the Borough of Chester Heights.

VI. This Ordinance shall take effect and be in force from and after its approval as required by law.

**ORDAINED AND ENACTED** by the Borough of Chester Heights Council on this 17<sup>th</sup> day of June, 2024.


Attest:

**BOROUGH OF CHESTER HEIGHTS**

  
Darlene Kurten, Secretary

  
Marta Driscoll, President

**APPROVED:**

  
Ginamarie Ellis, Mayor