



ORDINANCE 26-01

AN ORDINANCE AMENDING CHAPTER 120 – BUSINESS LICENSES, TO ADD §120-20 PUBLIC NUISANCES

WHEREAS, the City of Harrington desires to ensure the safety and well-being of its residents; and

WHEREAS, the City of Harrington finds that public nuisances exist within the City of Harrington 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 interests of the public in enhancing the quality of life and community environment in the City, and in fostering and facilitating commerce, maintain and improving property values, and preserving and protecting the public health, safety, and welfare; and

WHEREAS, it is the purpose of the Council to authorize and empower the City of Harrington Code Enforcement Officer 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; and

WHEREAS, points will be assessed against a property for violations of the Delaware State Code, the City of Harrington Code, and the rules and regulations promulgated by the Division of Alcohol Beverage Control and Tobacco Enforcement. Points may accumulate to better capture nuisance activity impacting the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HARRINGTON MET,

SECTION 1. AMENDMENT TO THE CITY CODE.

Section 120 of the Code of the City of Harrington is hereby amended to add §120-20, Public Nuisances, which shall read as follows:

§ 120-20 PUBLIC NUISANCES.

- A.** Public nuisances exist within the City of Harrington 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 interests of the public. It is the intent of the Council to authorize and empower the City of Harrington Code Enforcement Officer to impose sanctions and penalties for 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 sanctions and penalties that may be imposed by the Code Enforcement Officer 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 general welfare. It is also the intent 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.** 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, 12 or more points are accumulated within a period of six (6) consecutive months, or 18 or more points are accumulated within a period of 18 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: 1) on or outside the premises, but within the perimeter of the lot on which the building, erection, residence, or place is located; or 2) on any adjacent or accessory parking lot used in connection with said building, erection, residence or place; or 3) occurs outside the premises, but was initiated inside the premises, except that points for a violation of this Code shall only be assessed upon the issuance of a criminal summons or civil citation. 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, 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 VII, Subpart A of the Delaware Code entitled "Riot, Disorderly Conduct and Related Offenses."
 - e. A violation of the provisions of Title 11, Chapter 5, Subchapter VII, Subpart B of the Delaware Code entitled "Offenses Involving Public Indecency."
 - f. A violation of the provisions of Title 11, Chapter 5, Subchapter VII, Subpart D of the Delaware Code entitled "Offenses Involving Gambling."
 - g. 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 102 of the Harrington City Code.
 - b. A violation of any section of Chapter 120, Business Licenses, of the Harrington City Code.
 - c. A violation of Chapter 259, Noise, of the Harrington City Code.
 - d. A violation of any section of Chapter 440, Zoning, of the City of Harrington.
 - e. A violation of the provisions of Title 16, Part II entitled "Regulatory Provisions Concerning Public Health."
 - f. A violation of Title 4 of the Delaware Code entitled "Alcoholic Liquors."
 - g. 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."
 4. The following violations shall be assigned a point value of three (3) points:
 - a. All sections of Chapter 82, Animals, of the Harrington City Code.
 5. The following violations shall be assigned a point value of two (2) points:

- a. A violation of any rules or regulations promulgated by the Division of Alcohol Beverage Control and Tobacco Enforcement and/or the Delaware Alcohol Beverage Control Commissioner.
- 6. The following shall be assigned a point value of one (1) point:
 - a. 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).
- 7. Points will not be assessed, or may be removed by the City of Harrington, if previously assessed, if the City 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 City 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 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.

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 Code Enforcement of the City of Harrington with respect to public nuisances.* In addition to any other enforcement procedures established elsewhere, City of Harrington Code Enforcement 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 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.* Prior to exercising the powers enumerated in subsection (e) above, Code Enforcement 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 Code Enforcement Officer may, at their 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.

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, 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, and such other persons.

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

1. Orders of the City of Harrington Code Enforcement 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 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 Code Enforcement and/or the Harrington Police Department, City Officials are authorized to act upon and enforce such orders.
3. Where City of Harrington Code Enforcement closes a building, erection, residence or place pursuant to this Section, such closing shall be for such period as the officer 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 Code Enforcement Officer 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 City of Harrington, within ten (10) business days of receiving the order. The application for appeal shall state with specificity the grounds for appeal. The Board of Adjustment, following a hearing, may affirm, modify or reverse the City'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 City, 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 Code Enforcement that the nuisance has been abated and will not again be created, maintained or permitted, the Code Enforcement Officer 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 officer that he has filed an eviction action against the lessee(s) of the premises, and that he is actively pursuing such action, the officer 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 Code Enforcement Officer determines that the owner or lessor is not actively pursuing the eviction action, he/she 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 City of Harrington Code Enforcement pursuant to this section.
2. Mutilation or removal of a posted order of the Code Enforcement Officer shall be punishable by a fine of \$250.00, provided that such order contains notice of such penalty.
3. Intentional disobedience or disregard of any provision of orders issued by the City of Harrington Code Enforcement pursuant to this Section, in addition to any other punishment prescribed by law, shall be punishable by a fine of \$250.00 for the first offense; \$500.00 for the second offense; and \$1,000.00 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 \$250.00 for the first offense; \$500.00 for the second offense; and \$1,000.00 for the third and subsequent offenses, of which the minimum fine, if imposed, shall be mandatory and not subject to suspension.

SECTION 2. SEVERABILITY.

If any section, provision, or part of this Ordinance is held invalid by a court of competent jurisdiction, such ruling shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3. REPEALER.

All ordinances and parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION 4. EFFECTIVE DATE.

The Clerk of Council shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this Ordinance shall take effect and be in force from and after its approval by Council.

First Reading: _____

Public Hearing: _____

Second Reading: _____

PASSED AND ADOPTED by the City Council of the City of Harrington, Delaware, on this _____ day of _____, 2026.

APPROVED:

Franklin Tolson, Mayor

ATTEST:

Emma Ogden, Clerk of Council

SYNOPSIS

This Ordinance amends Chapter 120, Business Licenses, to add §120-20 Public Nuisances.