

ORDINANCE NO. 553

BOROUGH OF PARKESBURG
CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE REQUIRING THE INSPECTION OF AND PERMITS FOR COMMERCIAL SPACES, AUTHORIZING THE CODE OFFICER TO INSPECT THE CONDITION AND USE OF SUCH COMMERCIAL SPACES AND TO ENFORCE COMPLIANCE WITH APPLICABLE ORDINANCES AND REGULATIONS; AUTHORIZING THE CREATION OF REGULATIONS TO IMPLEMENT AND ADMINISTER THIS ORDINANCE AND THE FORMS FOR PERMITS AND FEES TO BE ESTABLISHED BY RESOLUTION OF BOROUGH COUNCIL AND PROVIDING PENALTIES FOR VIOLATIONS AND REPEALING ALL CONFLICTING ORDINANCES.

The Council of the Borough of Parkesburg, Chester County, Pennsylvania, hereby ORDAINS that the following Regulations shall be **effective immediately**:

1. TITLE

This Ordinance shall be known as the "Parkesburg Commercial Space Ordinance."

2. DEFINITIONS AND INTERPRETATION

A. In this Ordinance, the following terms (which are identified in this Ordinance by use of first letter capitals) shall have the meanings indicated in this Section:

Application: An application for a Permit, filed with the Borough by the Property Owner, pursuant to this Ordinance.

Board: The Commercial Space Review Board or other board currently established and capable of serving the function of the Commercial Space Review Board as established pursuant to this Ordinance.

Borough: The Borough of Parkesburg, Chester County, Pennsylvania.

Borough Secretary: The person appointed as the Borough Secretary by Council.

Building Code: The Borough's Building Code as the same may be amended from

Building Permit: The building permit required by the Borough's then-current Building Code.

Code Officer: The Borough's Code Enforcement Officer or any authorized representative of that officer, and/or any other person authorized by the Council to inspect pursuant to and enforce this Ordinance.

Council: The Council of the Borough.

Commercial Space: One or more rooms, in a building, designated, used, or intended to be used as a commercial unit for use for commercial purposes.

Notice of Appeal: A Notice of Appeal filed with the Borough pursuant to this Ordinance.

Notice of Hearing: A Notice of Hearing to be held by the Board pursuant to this Ordinance.

Notice of Violation ("NOV"): Any Notice of Violation given by the Code Officer pursuant to this Ordinance.

Ordinance: This Ordinance.

Owner: Any individual, firm, corporation, association, partnership, or other legal entity which alone, or jointly or severally with others, holds legal or equitable title to the Commercial Space (the plural use includes each and every Owner).

Permit: A Commercial Space Occupancy Permit issued by the Code Officer pursuant to this Ordinance.

Person: Any individual.

Regulations: Regulations, adopted pursuant to this Ordinance, to implement this Ordinance (the use of "regulations" in the lower case is not this term).

Violation(s): A violation and/or non-compliance with the requirements of this Ordinance, the Regulations and/or any other applicable Borough regulation.

B. Whenever an "Owner" is required to do something pursuant to this Ordinance, all Owners shall have the duty jointly and severally.

C. Whenever the phrase "pursuant to this Ordinance" is used with respect to a. requirement, it shall mean, unless the context clearly indicates otherwise, pursuant to this Ordinance, the Regulations, and any Determination and/or order

of the Code Officer.

3. COMMERCIAL USE OCCUPANCY PERMITS

A. Permits Required.

Except for those uses in which state or federal regulation pre-empt any local regulation of the use and create an exemption from this Ordinance, a current valid Permit, for the effected Commercial Space(s), is required:

- (1) prior to each and every occurrence of the *following*:
 - (a) the operation of a business of any nature within a Commercial Space;
 - (b) the transfer of title of, possession and/or amendment of a leasehold interest of any building containing one or more Commercial Spaces;
 - (c) a change of business by name or operator with respect to any Commercial Space or if the Commercial Space has been enlarged or reduced in size or if any access way to the outside has been changed;
- (2) for each Commercial Space, prior to the expiration of the current valid Permit; and
- (3) for conditioned occupancy of any Commercial Space after the Permit for that Unit has been revoked and any period for achieving a new Permit for that Unit, as established by the Code Officer, has elapsed.

B. Duration of Permit.

- (1) **Each Permit for a Commercial Space shall expire automatically 2 years after it is issued.**
- (2) A Permit shall become void automatically when the Commercial Space for which it was issued is changed or used in any way which requires a new Permit.
- (3) A Permit shall become invalid if and when revoked, by the Code Officer, pursuant to the Code Officer's written determination, issued to the Owner, that the Commercial Space for which the

Permit was issued is no longer compliant with the applicable Borough Property Maintenance Code and/or Building Code.

- (4) A Permit will expire upon the change of possession, ownership, or tenancy with respect to a Commercial Space.

C. Application for Permit.

- (1) The Owner(s) of the property where a Commercial Space requiring a Permit is located is/are responsible, jointly and severally, for filing an Application, to the Borough, for the Permit, which Application must comply with all the requirements, established pursuant to this Ordinance, and any applicable Regulation, for such Applications.

- (2) All Applications shall be in writing, shall use the Borough's form, shall provide all the information required pursuant to this Ordinance and shall be accompanied by the required fee. The Borough shall have no duty to process any Application without the required fee.

- (3) The information to be provided, by the Owner, with the Application, shall include:

- (a) the street address of the property where the Commercial Space to be permitted is located, the Chester County uniform parcel identifier number for that property and any street address separately identifying the Unit itself;
- (b) the number of Commercial Spaces located on the property;
- (c) the name and mailing address of the Owner(s) of the property to which notices should be sent pursuant to this Ordinance;
- (d) the number and names of all occupants of each Commercial Space who will occupy a Commercial Space pursuant to the requested Permit; and
- (e) all information required pursuant to the Regulations.

- (4) Requirements for Issuance of Permit

The Code Officer shall issue the Permit for the Commercial Space when:

- (a) the required Application has been filed with the Borough;
- (b) all the required Fees have been paid in full;
- (c) the Code Officer has inspected the Commercial Space and any and all common areas and facilities serving the Commercial Space and determined that, to the extent observed by the Code Officer, they are in compliance with all applicable Borough regulations and the Regulations enacted under Section 6 herein.

(5) Denial of Permit

If, upon inspection, the Code Officer determines that the Permit should not be granted, due to any condition(s) that does/do not comply with applicable regulations, the Code Officer shall issue, to the Owner, a written determination identifying the non-compliant condition(s) and ordering that compliance be achieved in a timely manner. The Owner shall comply with all such orders. Provided, however, that the Owner may appeal any such order to the Board, but only as provided in this Ordinance, no such appeal shall relieve the Owner of the immediate duty to correct dangerous and/or nuisance conditions.

D. Effect of Permit.

The issuance of a Permit, for a Commercial Space which is not new construction, is based upon inspection of conditions readily observable. A Permit does not constitute the Borough's representation that there is no condition, at the inspected premises, which violates applicable Borough regulations. The Borough's ability to enforce compliance with its regulations, with respect to conditions existing at the time any Permit is issued, is not limited by the issuance of the Permit or any reliance thereon.

4. ADMINISTRATION, INSPECTION AND ENFORCEMENT

A. The Code Officer shall administer and enforce this Ordinance and the Regulations.

B. The Code Officer is hereby authorized to inspect to determine the condition, occupancy, number of occupants, use and/or compliance, of any and all Rental Units, with this Ordinance, the Regulations and other applicable Borough regulations.

C. The Code Officer is authorized to issue Permits, revoke Permits and issue determinations of non-compliance with this Ordinance, the Regulations and other applicable Borough regulations; to issue orders compelling such compliance; and to file and prosecute legal and equitable action to compel such compliance.

D. Search Warrants.

If entry to any property, building or Commercial Space, for the purpose of inspection, is denied to the Code Officer, the Code Officer may apply to the appropriate authority for an administrative search warrant. Without limitation, when denied access, the Code Officer may request a warrant for the following reasons:

- (1) the inspection is part of a systematic inspection, permitting and enforcement program;
- (2) the affiant has knowledge of or probable cause to believe that there is an existing or potential violation of applicable Borough regulations, in the Commercial Space; and/or
- (3) the entry is necessary for the purpose of re-inspecting a violation of a Borough regulation previously observed by the Code Officer and which the Code Officer ordered to be corrected.

No search warrant is required if an imminent danger to health and safety exists, or the Code Officer has probable cause to believe that dangerous conditions exist, and an inspection is required to determine if an inherent danger to health or safety exists.

E. Emergency Order.

If the Code Officer determines that, within any residential premises, an emergency condition exists which requires immediate action to protect the public health, safety and/or welfare, the Code Officer may issue a Determination declaring the existence of such emergency condition and an Order requiring the action necessary to be undertaken by any Owner to correct such condition effectively and immediately. The owner may file an Appeal of any such Order with the Board, but any such Appeal shall neither serve as, or have the effect of, a supersedeas.

5. ENFORCEMENT, SERVICE OF NOTICES AND ORDERS

A. Whenever the Code Officer believes, or has cause to believe, that a violation of this Ordinance, any Regulations, or any other Borough regulations

(including but not limited to the Property Maintenance and Building Codes) exists, the Code Officer shall give written notice to the Owner that an inspection is required, and the Owner shall promptly schedule the inspection.

B. If the Code Officer determines that a Violation exists, the Code Officer shall issue a Notice of Violation to the Owner, which Notice shall:

- (1) state the nature of the violation;
- (2) identify the regulation violated;
- (3) identify the date the notice is issued; and
- (4) include an Order requiring correction within a specified time.

The Notice of Violation may contain other requirements for compliance as well as any other pertinent information or statements which the Code Officer deems appropriate under the circumstances.

C. Service of Notice.

- (1) Service of a Notice of Violation, issued by the Code Officer, shall be made by both regular first class mail, postage prepaid, and certified mail, return receipt requested, requiring a receipt signed by any person identified as the Owner or the Owner's authorized agent as identified on the Application or by subsequent written notice from the Owner to the Borough Secretary. Service of the NOV shall be complete upon delivery. If an NOV served by certified mail is returned with the notification by the U.S. Postal authorities that the addressee failed to claim the NOV, refused to accept the NOV, or that the NOV was undeliverable, and the NOV mailed by first class mail has not been returned within fifteen (15) days of mailing, the NOV shall be deemed effectively served at the end of said fifteen (15) day period.
- (2) if both mailed NOV's are returned as either unclaimed, unaccepted, or undeliverable, the Borough shall attempt to serve the NOV personally upon any adult occupant of the Commercial Space which is the subject of the NOV and the NOV shall also be affixed to the exterior of the room or building in which the Commercial Space is located.
- (3) An NOV personally served on the Owner shall be effective immediately for all purposes.

6. REGULATIONS

The Code Officer may prepare and recommend to Council such Regulations as the Code Officer determines necessary or appropriate for the implementation and administration of this Ordinance. Before any such Regulations become effective, they must be approved by Council by written Resolution.

7. DUTIES OF OWNER

A. The Owner Of each Commercial Space shall file the requisite Application by August 15, 2022, and thereafter sixty (60) days prior to the expiration of the then-current Permit.

B. Each and every Owner and occupant of any Commercial Space shall permit the Code Officer access thereto for the purpose of inspection pursuant to this Ordinance. The Owner is responsible for scheduling inspection with the Code Officer, at such times as the Code Officer's schedule permits. The Owner is responsible for scheduling and coordinating, with the occupants of the Commercial Space to be inspected, so that the Code Officer shall have prompt access *as* scheduled. The Owner shall schedule the inspection within the sixty (60) day period preceding the expiration of the current Permit and/or the occupancy of any event requiring a new Permit.

C. The Owner of each Commercial Space shall maintain the Commercial Space and all common areas used by the occupants of the Commercial Space and all facilities servicing the Commercial Space and the building in which and the property on which the Commercial Space is located in compliance with all applicable regulations at all times.

8. FEES AND CHARGES

Fees, the time for their payment, and interest for non-payment for Applications, Permits, inspections, re-inspections, and other matters pursuant to this Ordinance and the Regulations shall be as established, from time to time, by Council, by written Resolution.

9. APPEAL

A. An Owner to whom a Notice of Violation has been issued by the Code Officer may appeal the NOV to the Board, but only as provided in this Ordinance.

B. Any such Appeal shall be commenced only by filing a Notice of Appeal

with the Borough Secretary within fifteen (15) days after service of or deemed service of the NOV on the appellant pursuant to Section 5.C hereof. At the time of filing the Notice of Appeal, the appellant shall pay to the Borough Secretary a filing fee, the amount of which shall be established by Resolution of Council. The Notice of Appeal shall state specifically all the grounds and facts on which the Code Officer's determination and/or Order is challenged and shall identify the mailing address of the appellant for purposes of all communications concerning the appeal.

C. Within thirty (30) days after the Borough's receipt of the Notice of Appeal, the Board shall hold a public hearing thereon. Written notice of the hearing shall be given not less than fifteen (15) days prior to the date of the hearing to the following individuals:

- (1) the appellant;
- (2) the Council;
- (3) the Code Officer; and
- (4) the Borough Solicitor.

D. The Board shall issue an Adjudication within thirty (30) days after the conclusion of the Board's hearing. The Adjudication shall be in writing, shall contain findings of fact, reasons for the adjudication, conclusions of law, and an Order. The Adjudication and Order shall be served upon all parties or their attorney of record by first class regular mail, postage pre-paid, or by personal service, within three (3) business days of the issuance of the Adjudication.

E. During the hearing, the Board shall review the Notice of Violation, the Notice of Appeal, applicable rules, and regulations, take such testimony and hear such witnesses as the Board deems appropriate. Strict rules of evidence shall not apply. The scope of the Board's review shall be limited to the specific issues raised by the Notice of Appeal.

F. The Board's hearing and any adjudication rendered by it shall be held in accordance with the provisions of the Pennsylvania "Local Agency Law" (2 Pa.C.S.A. §551, *et seq.*), as amended.

G. Any Appeal of the Board's Adjudication and Order shall be filed with the Court of Common Pleas of Chester County within thirty (30) days after the date any such Adjudication and Order is mailed to or served personally to the party appealing or the attorney for the party appealing, whichever occurs first.

10. CREATION OF COMMERCIAL SPACE REVIEW BOARD

A. There is hereby created a Commercial Space Review Board (or other board capable of handling the review process as identified herein, which board may also have qualifications to address other matters) subject to modification by Resolution of Borough Council.

B. The Board shall consist of three (3) members ("Members"), who shall be appointed by Council. The Members who are first appointed shall serve for terms, as designated by Council, of one (1), two (2) and three (3) years, respectively, from the time of their appointments. Thereafter, the term of office shall be for a period of three (3) years for all Members. The Borough Council may identify the Rental Space Review Board or the Zoning Hearing Board, or any other Board in the Borough to act as the Board should the Borough Council so designate by resolution.

C. If a vacancy occurs on the Board, Council shall fill such vacancy by appointment; any person so appointed shall hold that position until the end of the unexpired term to which that person was appointed.

D. Board Members shall elect a Chairperson from among themselves and may adopt such rules, procedures, and regulations, consistent with this Ordinance and the Local Agency Law, as the Board deems necessary and appropriate to perform its duties

11. PENALTIES FOR VIOLATION

A. Any person or Owner who violates any provision of this Ordinance or fails to comply with any Order and/or Notice of Violation issued by the Code Officer or Order or Adjudication of the Board shall, upon adjudication thereof, pay a civil penalty of not less than One Hundred Dollars (\$100.00) for the first offense, Two hundred Dollars (\$200.00) for the second offense, Three hundred Dollars (\$300.00) for the third offense and not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) for the fourth and subsequent offences. In all cases the violator shall pay all the costs of prosecution, including but not limited to the Borough's reasonable legal fees.

B. Every violation of this Ordinance shall constitute a separate offense, and each day such violation exists shall constitute a separate offense. Each offense shall be subject to a separate civil penalty.

C. The penalties for Violation as set forth in this Ordinance are subject to modification by Resolution of Borough Council.

12. SEVERABILITY

If any section or provision of this Ordinance is held, by the final Order of any Court of competent jurisdiction, to be unconstitutional, illegal, or invalid, such holding shall not affect the constitutionality, legality or validity of other sections and provisions of this Ordinance which shall continue to be effective.

13. REPEAL OF CONFLICTING ORDINANCES

All Borough Ordinances, to the extent inconsistent with this Ordinance, are hereby repealed. Nothing in this Ordinance shall affect any Building Code adopted by the Borough.

Passed by Borough Council, this 18th day of July, 2022.

14. EFFECTIVE DATE

This order shall become effective immediately upon enactment.

ORDAINED AND ENACTED BY THE COUNCIL OF THE BOROUGH OF PARKESBURG in a public meeting held this 18th day of July, 2021.

Parkesburg Borough Council

BY: Sharon L. Wolf
Sharon L. Wolf, President
Parkesburg Borough Council

ATTEST:

Rebecca Durnall
Rebecca Durnall, Secretary

Approved this 18th day of July, 2022
John P. Hagan II, Mayor