

City of Philadelphia



(Bill No. 070367-A)

AN ORDINANCE

Amending Chapter 9-2900 of The Philadelphia Code, entitled “Take-Out Sale Of Malt And Brewed Beverages,” by creating the Malt and Brewed Beverage Hearing Board and revising the fee and procedures for the request for City approval of a permit to sell malt or brewed beverages for off-premises consumption, and amending Section 20-304 of The Philadelphia Code, to provide for the compensation of the Hearing Board; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 9-2900 of The Philadelphia Code is amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS.

* * *

CHAPTER 9-2900. TAKE-OUT SALE OF MALT AND BREWED BEVERAGES.

§9-2901. Scope of Chapter.

(1) This Chapter implements Act 39 of 2005 and Act 155 of 2006. Any request for [Council] approval of a permit for the take-out sale of malt or brewed beverages in the City shall be made in the manner provided by this Chapter, and shall be considered and resolved [by Council] under the rules and regulations set forth herein.

§9-2902. Application Form Required.

(1) A request for [Council's] approval of a permit to sell malt or brewed beverages for consumption off the premises [pursuant to Act No. 39 of 2005] must be made *in person* to the [Chief Clerk of Council] *Malt and Brewed Beverage Hearing Board* on an application in the form [attached as an exhibit to Resolution No. 050756 (adopted September 15, 2005)] *provided by the Board*. No application will be accepted without payment of a non-refundable application fee of \$300 [Payment may only be made by cashier's check, certified check or money order.] *No application will be accepted without the applicant's Pennsylvania Liquor License Number indicated clearly on the application.*

(2) All applications must be filed in person in Room 315 City Hall, Philadelphia, PA 19107. Upon receipt of an application, the Clerk (the term "Clerk," for

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purposes of this Chapter, shall include any staff designated by the Clerk) shall review the application, and shall reject any application that is incompletely filled out or that is not accompanied by payment of the application fee.]

[(3)] (2) If an application is complete and accompanied by payment of the application fee, the application shall be stamped as "filed" with the date and time noted on the application and [two copies] *a copy* of the application, stamped as filed, shall be given to the applicant.

[(4)] (3) The [45] 90-day period within which [Council] *the Board* may approve or disapprove a request [under Act 39 of 2005] shall not begin to run until the date an application has been stamped as "filed." [If the certified or cashier's check or money order used to pay the application fee is dishonored or returned unpaid, the applicant shall be so notified that:

(a) The application has been rejected by Council by reason of non-payment of the application fee and the 45 day period for action by Council has ceased to run;

(b) The applicant must remit an additional \$25 fee to Council for the returned or dishonored payment;

(c) The full 45 day period shall commence to run on the date a new certified or cashier's check or money order used to pay the application fee plus the additional \$25 dishonored payment fee have been received by Council.

(d) Upon the remittance of a new certified or cashier's check or money order, a new poster shall be issued to the applicant, as described in §9-2903, except that the date of remittance of the new payment shall be substituted for the date of application on the poster.]

§9-2903. Required Posting of Premises for Which Permit is Sought.

(1) [Immediately after the Clerk stamps an application as "filed," the Clerk] *At the time an application is filed, the Board* shall provide the applicant with [a] *the appropriate number of posters* in the form [attached as an exhibit to Resolution No. 050756 (adopted September 15, 2005)] *established by the Board*.

(2) The posters shall be prominently displayed [in a conspicuous place] *on each side of the premises abutting the street in a manner* which can be readily observed by passersby [at or near the entrance to the premises for which the permit is sought ("Premises")].

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(3) The posters shall be displayed beginning the day after the application is stamped "filed," and shall remain on display for [twelve (12)] *fourteen (14)* consecutive days.

(4) If an inspection demonstrates a violation of the posting requirements of this Section, the [Chief Clerk] *Board* shall reject the application and the [45] 90-day period for [Council] *Board* action shall cease to run. In that event, the applicant must refile its application. A new application fee of \$50 will [not] be required where the original application was rejected for failure to properly post the premises. The [45] 90-day period for [Council] *Board* action shall start anew from the date of the refiled application.

(5) *If an inspection demonstrates that the applicant has failed to obtain all permits and approvals required by law for the operation of a take-out beer or malt liquor establishment at the Premises, or that the applicant is otherwise not in compliance with the provisions of any state laws or local ordinances regulating the conduct of its business at the subject Premises, the Department of Licenses and Inspections shall forthwith file a protest against the application with the Malt and Brewed Beverage Hearing Board.*

* * *

§9-2904. Filing Protests.

(1) Protests may be filed against any application no later than [fourteen (14)] *twenty-one (21)* days after an application is accepted *as filed*, except that if such protest period ends on a weekend day or on a holiday on which *the City [Hall]* is closed *for general business*, the protest period shall be extended until the next business day on which *the City [Hall]* is open.

(2) Protests [may] *shall* be filed in the form [set forth as an exhibit to Resolution No. 050756 (adopted September 15, 2005), or in any other form that contains] *provided by the Board setting forth* the location of the Premises being protested, the name and authorized signature(s) of the person(s) filing the protest, and evidence that the person meets the requirements of subsection [III(C)] (3) *of this section*. Protests may be filed in person with the [Clerk in Room 315 City Hall, Philadelphia, PA 19107] *Board Administrator*, or may be filed by first class mail addressed to the [Clerk at that same address] *Board Administration Unit, Room 1180 Municipal Services Building, Philadelphia, PA 19102, or such other location designated by the Board*. Protests filed by mail must be received [in the office of the Chief Clerk] *by the Board Administration Unit* by 5:00 PM on the [fourteenth (14th)] *twenty-first (21st)* day after the date [of] *the application was accepted as filed*. *Protests should also include information regarding the following, although failure to include any such information shall not automatically result in rejection of the protest:*

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- (a) *Character of the surrounding neighborhood;*
- (b) *Identify and indicate the proximity of the houses of worship, schools, playgrounds, daycare centers, senior citizen centers, charitable institutions or other non-profit organizations in the surrounding neighborhood;*
- (c) *Proximity of other establishments engaged in the take-out beer businesses;*
- (d) *Any other factor that could show that the approval of the application would adversely affect the welfare, health, peace, and morals of the city or its residents.*

(3) [The Clerk shall accept a protest with respect to a particular Premises only if it is filed by] *A protest may be made by one or more of the following:*

- (a) Any combination of [fifteen (15)] *ten (10)* individuals or businesses who reside or which are located within 500 feet of the Premises;
- (b) A house of worship, school, daycare center, senior citizen center, charitable institution or other non-profit organization, located within 500 feet of the Premises;
- (c) An elected official of any level of government (including a member of Council) who represents a district that includes the Premises. An at-large member of Council shall be considered to represent all districts of the City for purposes of this subsection (c);
- (d) The City and County of Philadelphia, acting through any of its agencies, departments, boards or commissions;
- (e) The Commonwealth of Pennsylvania, acting through any of its agencies, departments, boards or commissions; or
- (f) A community or neighborhood group[,], or other organization that includes any combination of [fifteen (15)] *ten (10)* individuals or businesses who reside or which are located within 500 feet of the Premises.
- (g) *A community development corporation or nonprofit civic association whose mission is to promote the general welfare of a defined geographical area, which includes the subject premises of the applicant.*

[(4) The Clerk shall reject any protest that does not meet all requirements of this Section, and shall notify such person in writing why the protest was rejected. Any person whose protest has been rejected by the Clerk may appeal in writing to the Council President within five (5) days of the mailing of the rejection notice, and the Council

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President shall make the final determination as to whether a protest is accepted or rejected. Such appeals shall be decided by the Council President after the person appealing and the applicant are given notice and an opportunity to be heard on the matter. Such hearings shall be limited to the issue of whether the protest meets all requirements of this Section. The Council President may designate staff to conduct hearings and to make reports of such hearings to the Council President. If an appeal of a rejected protest involves Premises located within a district represented by the Council President, the Majority Leader shall carry out the duties of the Council President under this subsection (4.)]

§9-2905. Effect of Protests.

(1) If the [fourteen (14)] *twenty-one (21)* day period for filing a protest passes without any protest having been accepted, [and if all appeals (if any) filed under subsection III(D) have resulted in the protests being rejected,] then the application shall be deemed approved, and the [Clerk] *Board* shall so notify the applicant [and the Liquor Control Board ("LCB")].

(2) If a protest has been accepted *as filed*, [the matter shall be referred for a hearing to a hearing examiner retained by Council, and] the application shall be approved or disapproved under the process set forth in [§]§9-2906 [and 9-2907].

§9-2906. Hearing Process.

(1) When [an application is referred to a hearing examiner] *a protest has been filed*, the applicant and all persons filing a protest, all elected officials representing the district which includes the location, the Police Department, the Department of Licenses and Inspections, the Law Department, the District Attorney for Philadelphia County, and the State Police Bureau of Liquor Control Enforcement shall be notified of the date, time and place of a hearing, *and of the availability of information assembled regarding the applicant as set forth below. Any party to a proceeding may request, based on hardship, that the Board schedule the hearing during evening hours, which the Board may grant in its discretion.* In the case of a protest filed by a community or neighborhood group, or other organization, notice shall be provided to the designated office or headquarters of the organization. In the case of a protest filed by any combination of [fifteen] *ten* individuals or businesses, notice shall be provided to the person designated by the protesters to receive such notices, or if no designation has been made, to the person who [submitted] *filed* the protest [to Council]. *Upon assembly by the Department of Licenses and Inspections of the following information, such information shall be made available upon request to any party:*

(a) *The history of State and Local law enforcement actions brought against the premises;*

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(b) *The number and nature of calls to the Police Departments 911 emergency response system or to the State Police Bureau of Liquor Control Enforcement relating to incidents occurring within and immediately outside of the premises;*

(c) *Information regarding applicant's delinquency in the payment of City or School Taxes, charges, fees, rents or claims; and*

(d) *The current L&I status of Applicant at the applicant premises.*

Such information, to the extent it is reflected in documents prepared by any government officer or employee, may be admitted into evidence upon authentication, either by testimony or written verification by an appropriate witness.

(2) The purpose of the hearing shall be to receive evidence (either testimonial or documentary) from the parties and from any other person relevant to the issue of whether approving the application would adversely affect the welfare, health, peace and morals of the City or its residents. Any person who attends the hearing may choose to enter an appearance, or may choose only to provide evidence without entering an appearance. The applicant, all persons who filed a protest, and any person who enters an appearance at the hearing shall be considered to be "parties" for purposes of this Chapter.

(3) *The issue of the protestant's satisfaction of the requirements of subsection (3) of Section 9-2904 may be raised by the Board or by the applicant at the hearing on the application, and the Board may make a determination as to whether such requirements have been satisfied before taking evidence with respect to the merits of the application. If the Board determines that such requirements have not been satisfied, it may dismiss the protest, and approve the application.*

[(3)] (4) At the hearing, any person shall have the right to be represented by counsel or to appear without counsel, except that any for-profit corporation must be represented by an attorney-at-law authorized to practice within the Commonwealth of Pennsylvania.

[(4)] (5) *The hearing shall be conducted in [In] accordance with the Local Agency Law, 2 Pa. C. S. §551 et seq. [, the conduct of the hearing shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be heard. Reasonable examination and cross-examination shall be permitted.] The hearing may be conducted by the Board or by a hearing examiner, who may be any individual member of the Board or Board staff or other persons hired by the Board.*

[(5)] (6) At the close of the hearing, *the Board or the hearing examiner shall announce that the record is closed, unless any person has additional evidence to submit and shows good cause why that evidence could not be submitted at the hearing, in*

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which case the *Board* or hearing examiner may announce that the record shall remain open for no more than forty-eight (48) hours during which any person who attended the hearing may submit any reasonably relevant documentary evidence, provided all parties shall receive a copy of any such submission. The *Board* or hearing examiner may also provide all parties a forty-eight (48) hour period of time to submit written argument based upon the record developed at the hearing.

[(6)] (7) Hearings shall be stenographically reported by a reporter provided by the [Council] *Board*, and a transcript of the report shall be a part of the record and the sole official transcript of the proceeding.

[(7)] (8) Following the close of the record, *and consideration of the record by the Board, the Board shall approve or disapprove the application and provide notice of its decision to all parties. With the agreement of the applicant, the Board may provide in connection with an approval of an application conditions that the Board believes are reasonably related to protecting the welfare, health, peace or morals of the City or its residents. Failure to abide by such conditions may be taken into consideration by the Board in consideration of subsequent applications made by such applicant.* [the hearing examiner shall file with the Clerk, and mail to all parties, a written report setting forth the following:

- (a) The name of the applicant and the location of the Premises;
- (b) The name(s) of the person(s) filing a protest;
- (c) A summary of the evidence received at the hearing, including the names of all parties and the names of any other persons who testified or submitted documentary evidence;
- (d) A recommendation as to whether the application should be approved or disapproved, or approved with conditions, and reasons for that recommendation.

(8) In considering whether to recommend approval of an application, the hearing examiner shall consider whether approving the application would adversely affect the welfare, health, peace and morals of the City or its residents, and in particular, the hearing examiner shall consider the following factors in addition to any other issues developed at the hearing:

- (a) The history of state and local law enforcement actions brought against the Premises, its owner(s), its staff and its patrons;
- (b) The number and nature of calls to the Police Department's 911 emergency response system or to the State Police Bureau of Liquor Control Enforcement relating to the incidents occurring within and immediately outside the Premises;

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(c) The character of the surrounding neighborhood, including the presence of vulnerable populations and the nature and extent of community opposition to the take-out sale of beer at the Premises;

(d) The proximity of houses of worship, schools, daycare centers, senior citizen centers, charitable institutions or other non-profit organizations to the Premises;

(e) The impact on the surrounding community of other establishments engaged in the take-out sale of beer located in close proximity to the Premises;

(f) The failure of the applicant to remain current in the payment of any City or School District taxes, charges, fees, rents or claims;

(g) The failure of the applicant to obtain all other permits and approvals required by law for the operation of a take-out beer establishment at the Premises;

(h) Whether the applicant has made any material false statements in any written application for Council approval of a take-out beer permit.

(9) The hearing examiner's written report must be filed with the Clerk at least four days before the last scheduled Council session at which Council may approve or disapprove the application within 45 days after the application has been filed. All scheduling of hearings and granting of additional time to make written argument shall be conducted in accordance with this deadline.]

[§9-2907. Council's Final Action After Receiving Hearing Examiner's Report

(1) At any time after the hearing record is complete, Council may, at any public meeting of Council, accept or reject the hearing examiner's recommendations, and approve or disapprove the application by Resolution.

(2) With the approval of the applicant, Council may include in a Resolution approving an application conditions that Council believes are reasonably related to protecting the welfare, health, peace or morals of the City or its residents. A licensee's failure to abide by such conditions may be taken into consideration by Council when it considers whether to approve future applications by such licensee.

(3) Copies of a resolution approving or disapproving an application shall be mailed to all parties, and the LCB shall be promptly notified of all such decisions.

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(4) If Council does not adopt a resolution approving or disapproving an application within 45 days after an application has been stamped as "filed," the application shall be deemed approved.]

§9-2907. *Creation of the Malt and Brewed Beverage Hearing Board.*

(1) *The Malt and Brewed Beverage Hearing Board is hereby created as a departmental board, as that term is used in the Home Rule Charter, in the Department of Licenses and Inspections. The Board shall be composed of three members appointed by the Mayor, with the advice and consent of a majority of the members of City Council.*

§9-2908. Docket Information.

(1) The [Clerk] *Board Administrator* shall maintain information on each application that has been filed, the date the [45] 90-day period for [Council] *Board* action [under Act 39] expires, the deadline for filing a protest, whether a protest has been filed, the date of a scheduled hearing, the date and nature of any [Council] *Board* action, [whether a recommendation has been filed by a hearing examiner,] and similar docket information.

(2) The [Clerk] *Board Administrator* shall maintain such docket information in an easily searchable electronic format and shall update such information regularly. Updated information shall be made available to all members of Council, other elected officials who represent any portion of the City, the LCB, and any other interested person upon request.

§9-2909. Appeals.

(1) If an appeal is filed from any final decision of [Council] *the Board* on an application, [staff designated by the Council President] *the Board* shall [prepare] *adopt* findings of fact and conclusions of law with respect to that application.

[(2) Council shall adopt findings of fact and conclusions of law by Resolution.]

SECTION 2. Section 20-304 of The Philadelphia Code is amended as follows:

TITLE 20. OFFICERS AND EMPLOYEES.

* * *

CHAPTER 20-300. COMPENSATION.

* * *

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§20-304. Compensation for Members of Boards, Commissions, Committees, and Councils.

* * *

(40) Each member of the Malt and Brewed Beverage Hearing Board shall receive one hundred (100) dollars as compensation for each meeting of the Board which he or she attends; provided, that the total compensation paid to each member in any year shall not exceed twenty-two thousand (22,000) dollars.

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 7, 2007. The Bill was Signed by the Mayor on June 15, 2007.

A handwritten signature in black ink that reads "Patricia Rafferty". The signature is written in a cursive, flowing style.

Patricia Rafferty
Chief Clerk of the City Council