

Chapter 125

COMMERCIAL OCCUPANCY REGISTRATION AND PERMITS

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[HISTORY: Adopted by the BOROUGH COUNCIL 9-19-18 as Ordinance No. 1112.]

- § 125.1. Title.

This Chapter shall be known as the Borough of Whitehall, Allegheny County, Pennsylvania “Commercial Occupancy Registration and Permits Ordinance.”

- § 125.2. Definitions.

Borough – the Borough of Whitehall, Allegheny County, Pennsylvania.

Codes – any code or ordinance adopted, enacted and/or in effect in and for the Borough concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any Commercial Premises. Included within, but not limited by, this definition are the following which are in effect as of the date of the enactment of this Chapter: the Uniform Construction Code (hereinafter “UCC”), the BOCA National Property Maintenance Code, the International Property Maintenance Code, the International Plumbing Code, the International Fire Prevention Code, the International Electrical Code, the Floodplain Management Ordinance, the International Building Code and any duly enacted amendment or supplement to any of the above and any new enactment falling within this definition.

Code Enforcement Officer – the duly appointed Code Enforcement Officer(s) having charge of the Office of Code Enforcement of the Borough and any assistants or agents.

Commercial Occupancy Permit – the permit issued to the Owner of a Commercial Premises under this Chapter, which is required for the lawful rental and/or occupancy of a Commercial Premises.

Commercial Premises – any building or portion of any building that is designed or used for business, storage or any purpose other than a place of residence for a Person or family. Each Tenant within a building shall be an Occupant of a separate Commercial Premises and thus required to obtain a Commercial Occupancy Permit and submit to inspections required by this Chapter.

Exterior Area – the outside façade of a building, including, but not limited to, any porch, yard, lawn, landscaping, sidewalks, setbacks, curbs, and all open area contiguous to a building owned by the same Person or Persons or part of the same real estate parcel.

Landlord – one or more Persons, jointly or severally, in whom is vested all or part of the legal title to the premises or part of the beneficial Ownership and a right to the present use and enjoyment of the premises, including a mortgage holder in possession of a Commercial Premises. (same as “Owner”).

Local Agent – an adult individual designated by the Owner of a Commercial Premises who shall be the agent of the Owner for service of process and receiving of notices and demands for the Owner under this Chapter.

Occupant – any Person, agent, operator, firm, corporation, partnership, association, property management group, or fiduciary who occupies a Commercial Premises, whether or not he or she is the Owner thereof, with whom a legal relationship with the Owner/Landlord is established by a lease or by the laws of the Commonwealth of Pennsylvania. (same as “Tenant”).

Owner – any Person, agent, operator, firm, corporation, partnership, association, property management group, or fiduciary having legal, equitable or other interest in any real property; or recorded in the official records of the State, County or Borough as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such Person and the executor or administrator of such Person’s estate. When used in this Chapter in a clause proscribing any activity or imposing a penalty, the term, as applied to partnerships and associations, shall mean each partner, and as applied to corporations, the officers thereof.

Person – a natural Person, partnership, corporation, unincorporated association, limited partnership, trust or any other entity.

Registrations Application Form – A form to register a Commercial Premises that includes the following information:

- 1) The names, addresses, and telephone numbers of all Owner(s) of the Commercial Premises;

- 2) The name, address and telephone number of the Local Agent if a Local Agent is required. If the Local Agent is a business, both the name of the business and the name of the designated individual responsible for the Commercial Premises shall be provided;
- 3) Number of rooms and bathroom facilities at the Commercial Premises;
- 4) Names and business type of an Occupant.

Tenant – a Person who occupies a Commercial Premises, whether or not that Person is the Owner thereof, with whom a legal relationship with the Owner is established by a lease or by the laws of the Commonwealth of Pennsylvania.

§ 125.3. Registration.

1. The Owner of a Commercial Premises shall register a Commercial Premises on a Registration Application Form issued by the Borough, in accordance with the following schedule:

A. Within 30 days after the effective date of this Chapter.

B. The designation of a Local Agent shall occur on or before February 1 of each year or within 30 days after the effective days of this Chapter, whichever occurs last.

C. In the event of a transfer of Ownership, legal or equitable, of a Commercial Premises covered by this Chapter, the registration and permit shall become invalid. Both the transferring Owner and the new Owner shall have a duty to notify the Borough of said transfer not more than 5 days from the date of said transfer of Ownership. In the event that notification is not given within the times set forth above, any Commercial Occupancy Permit previously issued shall become void and the new Owner shall be subject to the requirement for inspections, as set forth in this Chapter.

D. The Owner of a Commercial Premises shall update the registration information on record with the Code Enforcement Officer within 10 days of any change in the information disclosed to the Borough in the Registration Application Form required by this Chapter.

§ 125.4. Commercial Occupancy Permit.

1. A Commercial Occupancy Permit shall be required for every Commercial Premises that is occupied by an Owner or Occupant. The Borough shall issue a Commercial Occupancy Permit upon the occurrence of all of the following:

A. Upon receipt of the fully completed Registration Application Form and the payment of the appropriate permit fee to the Borough.

B. After verification of all information submitted in the application process.

- C. Upon inspection of the Commercial Premises during which the inspecting officer does not note any violations of the codes referenced in the definition of “Codes” above.
 - D. Upon re-inspection of the Commercial Premises, violations that were noted in previous inspections have been satisfactorily resolved.
2. Issuance of a Commercial Occupancy Permit shall represent compliance with the registration and inspection requirements of this Chapter but shall not denote compliance with any other applicable code nor any standard of safety.
 3. If after a Commercial Occupancy Permit has been issued, it is determined that false information was supplied on a Registration Application Form, the permit shall immediately become null and void and the Owner shall be considered in violation of this Chapter.

§ 125.5. Designation of Local Agent.

Every Owner of a Commercial Premises shall designate a Local Agent who shall reside in an area that is within 20 miles of the boundaries of the Borough. If the Owner is a corporation, a Local Agent shall be required if an officer of the corporation does not reside within the above referenced area. The officer shall perform the same function as a Local Agent. If the Owner is a partnership, a Local Agent shall be required if a partner does not reside within the above referenced area. Said partner shall perform the same function as a Local Agent. The Local Agent shall be the agent of the Owner for service of process and for receipt of notices and demands, as well as for performance of the obligations of the Owner under this Chapter. The identity, address and telephone number(s) of a Person who is designated as Local Agent hereunder shall be provided by the Owner to the Borough and such information shall be kept current and updated as it changes.

§ 125.6. Maintenance and Inspections.

1. The Owner of a Commercial Premises shall maintain the premises in compliance with the applicable Codes of the Borough and shall ensure the performance of all routine maintenance, including lawn mowing and ice and snow removal, and shall promptly make any and all repairs necessary to fulfill this obligation.

2. Except as otherwise provided in this Section, it shall be unlawful to occupy, or let to others for occupancy, any Commercial Premises which has not been currently inspected and permitted as provided by this Chapter. The foregoing notwithstanding, during the initial phase-in period of the inspection program contemplated hereby, no Commercial Premises shall be considered out of compliance with the inspection requirements of this Chapter until after the initial property inspection hereunder. The requirements for periodic inspections shall be as follows:

- A. Each Commercial Premises shall be inspected by the Code Enforcement Officer or other designee of the Borough at least one time in every 24-month period. This inspection shall include the exterior and interior of the Commercial Premises being inspected and shall be conducted in compliance with this Chapter. The Owner shall permit inspections of a Commercial Premises by the Code Enforcement Officer at

reasonable times upon reasonable notice. For such purpose, and for any re-inspection required hereunder, the Owner shall provide the Code Enforcement Officer or other designee of the Borough access to the property. A Commercial Premises where inspection access is denied will not be issued a Commercial Occupancy Permit until inspection access is provided. In the event that a Commercial Premises fails to pass the initial inspection, the Owner shall schedule a follow-up inspection within 60 calendar days at no additional charge. If the Commercial Premises fails to pass on the first re-inspection, a fee will be charged for subsequent re-inspections.

B. If the inspection of a Commercial Premises discloses code deficiencies, the Code Enforcement Officer or other Borough designee shall issue a notice of violation. The notice of code violation shall set forth the following:

- (1) The street address or appropriate description of the subject property.
 - (2) The date of the inspection.
 - (3) The identity of the inspector.
 - (4) A list of the code deficiencies.
 - (5) The number of days in which the Owner is to accomplish repairs and/or otherwise eliminate the code deficiencies.
 - (6) Notice that, if the conditions are not repaired or the premises are not otherwise brought into compliance with the applicable code within the time specified the Owner may be prosecuted and/or Commercial Premises may be placarded as unfit for human occupancy in accordance with this Chapter and Pennsylvania law. Only the Borough shall have authority to institute prosecution proceedings under the terms of this Chapter.
3. Upon receiving notice of any code violation(s) from the Code Enforcement Officer, the Owner shall promptly take action, or cause the necessary action to be taken, to abate the offending condition and eliminate the violation.
 4. Upon the expiration of the time specified to accomplish repairs or otherwise bring the premises into code compliance, or upon notice to the Borough from the Owner that the repairs have been accomplished or code deficiencies otherwise eliminated, whichever occurs first, the Code Enforcement Officer or other Borough designee shall re-inspect the subject Commercial Premises.

A. In the event such re-inspection discloses that the Owner accomplished the repairs or the code deficiencies have otherwise been eliminated, the Code Enforcement Officer or other Borough designee shall issue a Commercial Occupancy Permit to the Owner or Local Agent in accordance with this Chapter.

B. In the event such re-inspection discloses that the Owner failed to accomplish the repairs or otherwise eliminate the code deficiencies, the Code Enforcement Officer may schedule additional re-inspections or may pursue prosecution as otherwise provided in the Borough's Code of Ordinances.

5. The refusal to allow the Code Enforcement Officer access to inspect a Commercial Premises shall not limit the Borough's remedy to determine that the property is not a qualified Commercial Premises. In the event that the Code Enforcement Officer is refused entry to inspect a Commercial Premises by the Owner, an agent of the Owner or a Occupant, the Code Enforcement Officer, or other representative of the Borough shall obtain an administrative warrant from the Magisterial District Judge where the premises to be inspected is located. Continuing refusal to allow the Code Enforcement Officer access to inspect the Commercial Premises after an administrative warrant is obtained shall be a violation of this Chapter.
6. Notwithstanding any other provision to the contrary, a Commercial Occupancy Permit shall not be required for any property that is owned and/or offered for rent as a Commercial Premises by a governmental entity, including all agencies, departments, boards, commissions, and instrumentalities of the Federal Government of the United States of America and the Commonwealth of Pennsylvania.
7. The Owner, Tenant, or any other Person with the approval the Owner or Owner's designated agent, may request an inspection of a Commercial Premises at any time. Application for a requested inspection shall be made on the appropriate form issued by the Borough and the fee for the inspection shall be paid for in full at the time of the request. The Owner shall schedule an inspection to be conducted within 15 days of the receipt of the inspection fee. A written inspection report of the requested inspection will be delivered to the Person making the request and to the Owner within 10 days of completion of the inspection. Any defect or violations discovered during a requested inspection will be subject to the correction process outlined above.

§ 125.7. Fees.

The fees for registration, inspection, re-inspection, follow-up inspection, inspections requested by Owners or tenants, missed inspection appointment fees, appeal fees and any other fee required in the administration of this Chapter shall be established by resolution of Borough Council and such fees may be reviewed and changed from time to time by resolution.

§ 125.8. Non-Liability of Borough.

The issuance of a Commercial Occupancy Permit is not a representation by the Borough that the Commercial Premises inspected and/or the building in which it is located does not contain any violation of any of the codes referenced in the definition of "Codes" above. Rather, the issuance of a Commercial Occupancy Permit represents that on the date of inspection, no material violation of any said codes was noted by the inspector. Neither the enactment of this Chapter nor the issuance of a Commercial Occupancy Permit is a guarantee to any Person that no code violations exist in the premises inspected, nor shall there be imposed any liability upon the Borough for any errors or omissions which resulted in the issuance of such certificate, nor shall the Borough bear any liability not otherwise imposed by law.

§ 125.9. Violations, Enforcement and Penalties.

1. **Violations.** It shall be a violation of this Chapter to commit any of the following acts:
 - A. To fail or refuse to register a Commercial Premises as required by this Chapter.
 - B. To lease, let or allow the occupancy of a Commercial Premises without first obtaining a Commercial Occupancy Permit where required by this Chapter.
 - C. To refuse to permit inspection of a Commercial Premises as required by this Chapter where an appropriate warrant compelling access to the Commercial Premises for an inspection has been obtained.
 - D. To place false information on, or to omit material information from, the Registration Application Form.
 - E. To fail and/or refuse to make the necessary repairs or provisions required to bring the Commercial Premises into compliance with the applicable Code(s).
 - F. To fail to designate a Local Agent pursuant to Section 125.5 hereof.
2. **Enforcement.** Enforcement of violations of this Chapter shall be by action brought before a Magisterial District Judge in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Civil Procedures as authorized by law. In addition, the Borough may enforce this Ordinance through an action in equity brought in the Allegheny County Court of Common Pleas. Failure to make necessary repairs or to otherwise bring a Commercial Premises into compliance with the applicable code(s) shall be considered a violation of this Chapter and the enforcement procedures and penalties prescribed herein shall be applicable. The enforcement of this Chapter shall in no way preclude or limit the Borough's enforcement of any other Borough Ordinance or codes, including but not limited to, the Uniform Construction Code, the International Building Code or the International Property Maintenance Code.
3. **Penalties.**
 - A. Any Person who commits a violation of this Chapter as enumerated in Section 125.9 hereof shall be sentenced to a fine of not less than \$300, but not to exceed \$1,000, per violation and/or imprisonment to the extent allowed by law for the punishment of summary offenses.
 - B. Each day or portion of a day in which a violation is found to exist, or for each Section of this Chapter which has been found to be violated, shall constitute a separate offense.
 - C. Any Person found guilty of violating this Chapter may be assessed court costs and reasonable attorney fees incurred by the Borough in the enforcement proceedings.

D. The provisions of this Chapter governing revocation, suspension and/or non-renewal of Commercial Occupancy Permit shall be independent, non-mutually exclusive, separate remedies, all of which shall be available to the Borough as may be deemed appropriate.

§ 125.10. Appeals.

Any Person who considers himself/herself aggrieved by a decision of the Code Enforcement Officer, such as a refusal to issue a Commercial Occupancy Permit and/or a decision to suspend or revoke a Commercial Occupancy Permit, may file an appeal of such decision in writing with the Borough Secretary within ten (10) days after such decision was communicated to the party allegedly aggrieved by such decision. The appeal shall be verified by an affidavit and shall state the grounds for such appeal. The appeal shall be accompanied by the appeal fee which shall be established from time to time by resolution of Borough Council. A hearing on the appeals shall be conducted before a three Person panel which panel shall be comprised of Persons who have been appointed to the planning commission and/or zoning hearing board. The hearing on the appeal shall be scheduled as soon as reasonably practicable. The hearing on the appeal shall be conducted in accordance in with the provisions of the Local Agency Law. The decision of the panel shall constitute an adjudication for purposes of the Local Agency Law and party who is dissatisfied with the decision of the panel may appeal the decision to the Allegheny County Court of Common Pleas as provided by the Local Agency Law.

§ 125.11. Savings Clause.

If any of the provisions or terms of this Chapter shall be held invalid for any reason whatsoever, then, unless such provision or term is material to this Chapter as to render this Chapter impracticable to perform, such provision or term shall be deemed severable from the remaining provisions or terms of this Chapter and shall in no way affect the validity or enforceability of any other provisions hereof.