

**BOROUGH OF MT. OLIVER
ORDINANCE 948**

**AN ORDINANCE OF THE BOROUGH OF MT. OLIVER, ALLEGHENY COUNTY, PENNSYLVANIA,
AMENDING CHAPTER 87 OF THE CODE OF THE BOROUGH OF MT. OLIVER
BY ADDING ARTICLE VII – DISRUPTIVE PROPERTIES, AND
BY ADDING ARTICLE VIII – DISRUPTIVE PROPERTY APPEALS BOARD.**

WHEREAS, the Borough of Mt. Oliver has a duty to protect the common health, safety, and welfare of its Citizens; and

WHEREAS, certain properties within the Borough of Mt. Oliver repeatedly violate various state and local laws; and

WHEREAS, in doing so, those properties cause public disorder, disrupt neighboring properties, and impose a tremendous and inequitable burden Borough resources; and

WHEREAS, the Borough is vested with the power and responsibility to declare disruptive those things that threaten the health, safety, and welfare of the citizens of the Borough of Mt. Oliver, and to charge the cost of abatement to the owners of disruptive properties;

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Council of the Borough of Mt. Oliver as follows:

SECTION 1: The Code of the Borough of Mt. Oliver is hereby supplemented by the addition of the following new Article VII to Chapter 87.

Article VII – Disruptive Properties

Section 1: Purpose

Borough Council hereby finds that disruptive properties place a substantial unacceptable threat and burden on the common health, safety, and welfare of the citizens of the Borough of Mt. Oliver. To this end, Borough Council hereby authorizes and directs the Chief of Police, or his designee, as provided in the following sections, to charge the cost of law enforcement resulting from authorities being called to a disruptive property to the property owner in order to deter repeated violation of state and local law, and to pursue charges against the owner and/or occupant of a disruptive property when disruptive activity (as defined herein) remains unabated over an unreasonably long period of time. Nothing in this Ordinance is intended to deter individuals within the Borough from requesting public safety services when they are in legitimate need of such.

Section 2: Disruptive Properties Defined

(a) Disruptive activity shall be any form of conduct, action, omission, incident, or behavior perpetrated, caused, or permitted on a property by the owner(s), tenant(s), occupant(s), or their invitee(s) of the property, which constitute a violation of any of the following ordinances of the Borough of Mt. Oliver or statutes of the Commonwealth of Pennsylvania:

1. Any public order offense under Chapters 55 (Adult Entertainment), or 154 (Noise) of the Mt. Oliver Code; or 18 Pa.C.S.A. §5501 (Riot), 18 Pa.C.S.A. §5502 (Failure to Disperse), 18 Pa.C.S.A. §5503 (Disorderly Conduct), 18 Pa.C.S.A. §5505 (Public Drunkenness), 18 Pa.C.S.A. §5506 (Loitering), 18 Pa.C.S.A. §5512 (Lotteries), 18 Pa.C.S.A. §5513 (Gambling Devices, Gambling), or 18 Pa.C.S.A. §5514 (Pool Selling and Bookmaking);
2. Any violation involving a minor under Chapter 92 (Curfew) of the Mt. Oliver Code; or 18 Pa.C.S.A. §4304 (Endangering the Welfare of Children), 18 Pa.C.S.A. §6110.1 (Possession of Firearm by Minor), 18 Pa.C.S.A. §6301 (Corruption of Minors), 18 Pa.C.S.A. §6308 (Purchase, Consumption, or Possession of Alcoholic Beverages), 18 Pa.C.S.A. §6310 (Inducement to Buy Alcoholic Beverages), 18 Pa.C.S.A. §6310.1 (Selling or Furnishing Alcoholic Beverages to Minors), or 18 Pa.C.S.A. §6319 (Solicitation of Minors to Traffic Drugs) of the Pennsylvania Crimes Code;
3. Any violation of the Pennsylvania Uniform Firearms Act, 18 Pa.C.S.A. §6101 et. seq;
4. Any animal offense under Chapter 67 (Animals) of the Mt. Oliver Code; or 18 Pa.C.S.A. §5511 (Cruelty to Animals); and
5. Any violation of the Pennsylvania Controlled Substance, Drug, Device, and Cosmetic Act 35 P.S. §780-101 et. seq.

(b) When the Chief of Police determines that the owner(s), tenant(s), or occupant(s) of a property, or any person present at a property with the permission and knowledge of the owner(s), tenant(s), or occupant(s), has either been arrested or issued a citation or summons for disruptive activities occurring on the property on three separate occasions within any sixty-day period, the Chief of Police may declare the property to be a disruptive property and proceed with the notice and enforcement procedures set forth in this chapter.

(c) For rental properties containing six or more rental units, each individual rental unit shall be considered a “property” for the purposes of enforcement of this chapter. Thus, requiring that three separate citations, summons, and/or arrests for disruptive activity must be made involving the same rental unit in order to declare the individual rental unit a disruptive property. Any occurrence of the disruptive activity in the common area or curtilage of a rental property shall be charged to the specific rental unit that the actor occupies and not the property in whole.

(d) After a property has been declared a disruptive property, if law enforcement authorities are not called upon to respond to any disruptive activities for a period of 12 consecutive months, then the property will no longer be classified as a disruptive property.

Section 3: Notice

(a) The Chief of Police shall provide notice to the owner of any property at which a citation, summons, or arrest has been made for a disruptive activity. A separate notice shall be provided to the property owner for each citation, summons, or arrest made for a disruptive activity occurring on a property.

(b) The notice identified in subsection (a) shall be deemed to be property delivered if sent either by first-class mail to the property owner’s registered address or, if unavailable, to the property owner’s last

known address or as may be found in public records, or if delivered in person to the property owner, or left at the property owner's usual place of abode in the presence of a competent member of the family at least 18 years of age or a competent adult residing there. If a current address cannot be located, notice shall be deemed sufficient if posted on the potential disruptive property, and a copy of the notice is sent via first-class mail to the last known address of the property owner.

(c) The notice required by subsection (a) shall contain the following information:

1. The street address or legal description sufficient for identification of the property;
2. A description of the disruptive activity and the date on which the citation, summons, or arrest was made; and
3. A statement that the property is declared as a disruptive property, or, if the property has not yet been declared a disruptive property, a statement of the number of subsequent citations, summons, and/or arrests for disruptive activity which will result in such a declaration; and
4. If the property has been declared a disruptive property, a statement that the occurrence of any subsequent disruptive activity at this property within six months following the date of the notice, may result in the property owner being charged with the costs of the administration and law enforcement actions taken by the Borough in response to the disruptive activity; and
5. Notice of the property owner's rights to appeal pursuant to Section 5 of this chapter and to obtain, upon written request for such, copies of all documentation supporting the Chief of Police's determination that disruptive activity has occurred at the property; and
6. A statement that the property owner shall within 10 business days of the date of the notice respond to the Chief of Police in writing stating either:
 - i. The intent of the property owner to appeal the finding of the Chief of Police, or his/her designee; or
 - ii. A proposal detailing a course of action by which disruptive activities will be abated at the property.

Section 4: Abatement of Disruptive Properties

(a) Within 10 business days of service of the notice of a disruptive property, the property owner may submit in writing a plan to the Chief of Police by which the property owner proposes to prevent further disruptive activities from occurring at the property. The time period for implementation of any proposed plan shall not exceed 60 days from the date of submission. The Chief of Police shall within 10 business days of receipt of said proposal, either approve or disapprove of the proposal and provide the property owner with written notice of his/her decision. The denial of a plan by the Chief of Police may be appealed by the property owner pursuant to Section 5.

(b) If the Chief of Police determines that any subsequent disruptive activity occurred 12 months after a property was declared a disruptive property, and the property owner failed to file either an appeal of the declaration pursuant to Section 5 or an approved plan to abate the disruptive property, the property

owner may be assessed all costs incurred by the Borough in providing public safety services to the property in response to the subsequent disruptive activity. Within 30 days of the Borough incurring any costs set forth in this subsection, the Chief of Police shall present the property owner with a written demand for payment containing a description/summary of all costs incurred by the Borough and a notice that the property owner has the right to appeal the demand pursuant to Section 5. The written demand shall be delivered to the property owner in accordance with Section 3(b). Failure to pay any such costs of providing public safety services to the property shall be cause of the Borough to file either, or both, an in rem judgement against the property or an in personam (personal) action against the property owner(s) for recovery of the costs incurred by the Borough.

(c) Costs of providing public safety services shall be determined based on the time required to respond to the disruptive activity multiplied by an hourly rate based upon the wages and benefits (billable rate) of the public safety employee, in addition to dispatch costs, vehicle and equipment costs, and supervisory and administrative costs.

(d) The Borough shall not assess any costs of providing public safety services to a property unless/until final determination has been made by the Board on any appeal filed by the property owner pursuant to Section 5, or the property owner has failed to successfully implement a plan approved by the Chief of Police pursuant to subsection (a) above.

Section 5: Appeal

(a) Any property owner who receives a notice of the issuance of a citation, summons, or arrest for a disruptive activity at his/her property, a notice declaring his/her property a disruptive property, or a notice demanding payment for costs of providing public safety services to a disruptive property, may within 10 business days of the service date of the notice, appeal the notice to the Disruptive Property Appeals Board pursuant to Article VIII. The Board shall conduct a hearing and render a decision in accordance with Borough ordinances and regulations governing its conduct and procedure. The property owner may prevail on appeal of any notice if the owner demonstrates that:

1. He/she was not the owner at the time of any of the disruptive activity that was the basis for the notice;
2. He/she had knowledge of the disruptive activity, but promptly took all actions necessary to prevent the occurrence of future disruptive activity; or
3. He/she had no knowledge of the disruptive activity and could not, with reasonable care and diligence, have known that the activity, and upon receipt of the notice of the declaration of the property as a disruptive property, he/she promptly took all actions necessary to prevent the occurrence of future disruptive activity.

(b) Upon appeal of a notice declaring his/her property a disruptive property, or notice demanding payment for costs of providing public safety services to a disruptive property, if a property owner is able to demonstrate to the Board that one or more of the citations, summons, or arrests for disruptive activity, which was the basis of the declaration of disruptive property, is subject to a "not guilty" plea by the offending party, then the Board shall order a stay of any/all further enforcement of this chapter by the Borough pending a determination by the District Magistrate or Allegheny County Court of Common

Pleas on the citation or summons. If the offending party is found to be “not guilty” on one or more of the citations or summons, then the property will no longer be classified as a disruptive property.

Section 6: Other Legal Actions Not Affected

The declaration of a disruptive property or the charging or assessment of costs by the Borough on a property under this chapter, do not affect or limit the Borough’s rights or authority to bring criminal prosecution or other legal action against any person or violation of the Mt. Oliver Code.

SECTION 2: The Code of the Borough of Mt. Oliver is hereby supplemented by the addition of the following new Article VIII to Chapter 87.

Article VIII – Disruptive Property Appeals Board

Section 1: Established; Membership

(a) There is hereby established a Disruptive Property Appeals Board, which shall consist of three members appointed by Borough Council.

(b) All members of the Board shall be residents of the Borough of Mt. Oliver, except as provided in subsection (c).

(c) A minimum of one member of the Board shall be a current rental property owner and/or manager and meet one of the following conditions:

1. If the member is a resident of the Borough, then the rental property owned/managed is not required to be located in the Borough
2. If the member is not a resident of the Borough, then the rental property owned/managed must to be located in the Borough.

(d) Initial terms shall staggered for one-, two-, and three-year terms and subsequent terms shall be for three years so that no more than one term will expire in a given year.

(e) The Board shall select one person to serve as Chairperson.

(f) Members of the Borough’s governing body, and current employees may not serve as members of the Board.

(g) The Chief of Police, or his designee, shall serve as an ex officio advisory member of the Board, but shall have no vote on any matter before the Board.

Section 2: Powers; Duties

The Disruptive Property Appeals Board shall have the following powers and duties:

(a) The Board is authorized to establish policies and procedures necessary to carry out its duties and to interpret the provisions of this chapter.

(b) To hear appeals of orders and actions of the Police Department pursuant to this chapter and to affirm, amend, or reverse such orders or actions.

(c) To recommend legislation affecting the substance and enforcement of this chapter.

(d) The Board shall conduct a hearing on all appeals within 60 days of the filing date of each appeal, unless for good and sufficient causes the Board extends the time for a reasonable period not to exceed an additional 60 days.

(e) For good cause shown, to grant extensions of time in which to comply with the provisions of this chapter.

Section 3: Hearings

(a) The Board of Appeals shall conduct all appeal hearings and render all decisions in accordance with the requirements of the Pennsylvania Local Agency Law 2 Pa.C.S.A. §§551 et seq., and 751 et seq.

(b) All hearings before the Board shall be open to the public. The Board of Appeals shall schedule meetings and provide public notice of meetings in accordance with 65 Pa. C.S. §§701-716 (relating to Sunshine Act)

(c) Three members shall constitute a quorum for a hearing.

(d) The Board shall affirm, modify, or reverse the decision of the Chief of Police by a concurring vote of the majority of its members

(e) A member shall neither participate in a hearing of, not vote on, an appeal in which that member has a personal, professional, or financial interest.

(f) The Chief of Police shall designate a qualified clerk to serve as secretary to the Board the secretary shall file a detailed record of all proceedings in the Office of the Mt. Oliver Police Department.

SECTION 3: Any Ordinance or Resolution or part thereof conflicting with the provisions of this Ordinance, is hereby repealed so far as the same affects this Ordinance.

SECTION 4: This Ordinance shall take effect immediately upon its enactment.

ORDAINED AND ENACTED INTO LAW THIS ____ DAY OF _____, 2015.

ATTEST:

BOROUGH OF MT. OLIVER

Borough Manager

President of Council

Examined and approved by me, the Mayor of the Borough of Mt. Oliver, this ____ day of _____, 2015.

Mayor

Approved as to form:

Solicitor

CERTIFICATION

I, Kathy L. Connolly, Secretary of Mt. Oliver Borough, hereby certify that the foregoing Ordinance No. 948 is a true and correct copy of Ordinance No. 948 as adopted by the affirmative vote of the Council of Mt. Oliver Borough at a regular stated public meeting of the Mt. Oliver Borough Council held on the 19th day of October, 2015, after due notice to Council and to the public; that the same Ordinance No. 948 was examined and approved by Mt. Oliver Borough Council Members and the Mayor, and was duly recorded by the Borough Secretary in the Mt. Oliver Borough Ordinance Book, and was published as required by law in a newspaper of general circulation in and around Mt. Oliver Borough, Allegheny County, Pennsylvania, which Ordinance No. 948 is currently subsisting in full force and effect.

Dated: _____

Kathy L. Connolly, Secretary