



PHILADELPHIA POLICE DEPARTMENT

MEMORANDUM (18-02)

(06-08-18)

SUBJECT: DEFIANT TRESPASS ON PRIVATE BUSINESS PROPERTY OPEN TO THE PUBLIC

1. PURPOSE

- A. The crime of Defiant Trespass is driven by the owner or other authorized persons with control of the property. In matters involving private property not open to the general public, the Crimes Code provides sufficient guidance for officers. However, in those cases involving private business properties open to the public, the motives or reasons for requesting police actions may not be so obvious.
 - B. While business owners may exclude persons from their establishments, they cannot misuse the authority of police officers in the process. Such misuse may lead to a technically lawful arrest, but can create the appearance of improprieties on behalf of the officers and the Department.
 - C. Therefore, the purpose of this policy is to: (1) reiterate the specifics of the state law regarding Defiant Trespassers; (2) clearly identify the requirements of the Department to make a misdemeanor level Defiant Trespass arrest on private business property open to the public; and (3) provide officers additional guidance on how to avoid misuse of police authority by business owners or other authorized persons when dealing with complaints occurring in private businesses open to the public.
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2. POLICY

- A. Philadelphia's Fair Practices Ordinance protects individuals against unlawful discrimination: "It shall be an unlawful public accommodations practice to deny or interfere with the public accommodations opportunities of an individual or otherwise discriminate based on his or her race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, disability, marital status, familial status, or domestic or sexual violence victim status."
- B. The core values of the Philadelphia Police Department are Honor, Integrity and Service. As such, a cornerstone of the Department's mission is to "*Enforce the laws while safeguarding the constitutional rights of all people.*" Accordingly, the Philadelphia Police Department remains committed to enforcing all laws in a fair, equitable and unbiased manner. Equally important, the Department will take the necessary precautions to avoid creating the appearance of any improprieties that would undermine this mission when taking any enforcement actions.

3. STATE LAW

A. A “Defiant Trespasser” is defined in the Pennsylvania Crimes Code section 3503(b) as follows:

(b) Defiant trespasser -

(1) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

- (i) actual communication to the actor;
- (ii) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders;
- (iii) fencing or other enclosure manifestly designed to exclude intruders;
- (iv) notices posted in a manner prescribed by law or reasonably likely to come to the person's attention at each entrance of school grounds that visitors are prohibited without authorization from a designated school, center or program official
- (v) an actual communication to the actor to leave school grounds as communicated by a school, center or program official, employee or agent or a law enforcement officer.

(2) Except as provided in paragraph (1)(v), **an offense under this subsection constitutes a misdemeanor of the third degree if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person.** An offense under paragraph (1)(v) constitutes a misdemeanor of the first degree. **Otherwise it is a summary offense.**

4. INITIAL RESPONSES TO AVOID MISUSE OF POLICE AND THE APPEARANCE OF IMPROPRIETY

A. Officers must remember that any arrests for Defiant Trespass on private business property open to the public is complaint driven by the business owners or other authorized persons. Therefore, to avoid misuse of police authority by business owners and the appearance of any impropriety by the officers, prior to arresting and processing any misdemeanor arrest for defiant trespass on business property open to the public, officers shall:

1. Attempt to deescalate and mediate the disturbance between the owner and the offender;

2. If not Crisis Intervention Team (CIT) trained, request a CIT trained officer; and
 3. Request a supervisor to respond to the location.
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5. REQUIREMENTS FOR A WARRANTLESS, MISDEMEANOR ARREST ON BUSINESS PROPERTY OPEN TO THE PUBLIC AND ADDITIONAL PROCEDURES

- A. If these efforts are unsuccessful, to arrest an individual for a misdemeanor of the third degree (M3) Defiant Trespass, five (5) conditions must be present:
1. The offender must know and understand that he/she is not allowed to enter the property or remain on the property,
 2. Notice must have been provided to the individual [*See section, (1)(i) through (v)*],
 3. The individual must intentionally defy an order to leave personally communicated to him/her **by the owner of the property or other authorized person,**
 4. The refusal to leave, must be committed in the presence of the officer, and
 5. The owner or other authorized person must be a complainant to establish that an actual order to leave the property was communicated and denied. In this context, Police Officers are NOT “other authorized persons.” This term is used to define other persons with authority or control over the property. **The owner/authorized person must sign the 75-48 confirming that they wish to prosecute the individual.**

NOTE: All arrests shall be processed at the Divisional Detective Division.

B. Instruction for Officers:

If the facts do not support that the owner or other authorized person personally communicated an order to leave the property and the order was denied OR the owner or other authorized person refuses to be a complainant on the trespass violation, **the offender will not be arrested for a misdemeanor Defiant Trespass or cited for a summary level Trespass violation.**

NOTE: In these situations, officers shall retain full discretion to arrest or cite for any other crimes or offenses committed in their presence as needed to maintain public safety.

6. PATROL SUPERVISOR RESPONSIBILITIES

- A. Regardless of whether a misdemeanor arrest is appropriate under the Defiant Trespass law and the business owner or other authorized person is willing to prosecute, the responding supervisor shall evaluate all available facts and circumstances and have the authority and discretion to decline the arrest if such facts and circumstances provide a reasonable likelihood that the owner or other authorized person is attempting to misuse the enforcement powers of the police.
1. If the supervisor declines the arrest, the supervisor will promptly notify the owner or other authorized person of this decision and properly advise how to and where to file a private criminal complaint.
 2. Despite the decision not to arrest for the Defiant trespass violation, the supervisor and officers on scene shall retain full discretion to arrest or cite for any other crimes or offenses committed in their presence, as needed, to maintain public safety.

Richard J. Ross
Police Commissioner