

**AN ORDINANCE TO AMEND CHAPTER 13, ARTICLE II OF THE CITY CODE
REGARDING NUISANCES CAUSED BY VACANT PROPERTIES**

#4738

Sponsors:

**Council
Members
Dixon
McCoy**

WHEREAS, City Council recognizes that blighted, vacant properties are an eyesore and they decrease surrounding property values and pose a threat to the health, safety, and welfare of the public; and

WHEREAS, criminal penalties have not been sufficiently effective in deterring violations of the City Code provisions related to blighted, vacant property; and

WHEREAS, City Council believes that imposing civil penalties on property owners who fail to comply with Section 13-42 of the City Code will be more effective in deterring this unlawful conduct; and

WHEREAS, City Council deems it necessary and proper to permit the Department of Licenses and Inspections to issue citations and impose civil penalties upon property owners, or responsible parties, who fail to comply with these provisions; and

WHEREAS, City Council intends for unpaid amounts of the civil penalties for failing to comply with these City Code provisions to give rise to a lien on the property in violation, as permitted under Title 25, Section 2901 of the Delaware Code; and

WHEREAS, City Council deems it necessary and proper to amend Chapter 13, Article II of the City Code to effectuate these changes.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 13 of the City Code is hereby amended by adding Section 13-42 entitled “Vacant Properties”, which shall be the document attached hereto as Exhibit A. Exhibit A shall constitute and be codified as Section 13-42 of the City Code.

Section 2. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading.....November 7, 2019
Second Reading.....November 7, 2019
Third Reading.....

SYNOPSIS: This Ordinance amends Chapter 13, Article II of the City Code by requiring all vacant properties located within the City of Wilmington to be maintained in a safe, secure and sanitary condition so as not to endanger the health, safety or welfare of City residents. This Ordinance authorizes the Commissioner of Licenses and Inspections or his authorized representative or designee to enforce City Code Section 13-42, and establishes the procedure for enforcement including the issuance of civil fines for violations of this Section, and the property owner’s right to appeal a notice of violation pursuant to this Section.

Sec. 13-42. - Vacant Properties.

- (a) "Vacant", when used in this Section, shall mean the following, except where the context clearly indicates a different meaning:

A building or structure shall be deemed to be vacant if:

For more than forty-five (45) consecutive days, no person(s) conducts a licensed business or lawfully resides or lives in any part of the building or structure as the legal or equitable owner(s), tenant(s), or otherwise claiming possession through the owner, on a permanent basis. This term does not include unoccupied structures that are:

- (1) Undergoing construction, rehabilitation or renovation that is proceeding with reasonable diligence;
 - (2) Used or held for use by the property owner as a vacation or seasonal home and is in good repair;
 - (3) Purchased at sheriff sales and have not exhausted the statutory redemption period; or
 - (4) Physically secured and the subject of a probate action or other litigation in which ownership is contest.
- (b) *General.* All vacant structures and surrounding premises shall be maintained in a safe, secure and sanitary condition as provided generally in this Chapter and specifically in this Section, so as not to endanger the health, safety, or welfare of the public. This maintenance shall include, but is not limited to, the following:
- (1) Replacing any broken windows;
 - (2) Replacing deteriorated roofing or siding to keep the property weathertight;
 - (3) Trimming shrubbery and grass to prevent neglected vegetation or natural overgrowth;
 - (4) Repairing or removing any accessory building and equipment, the condition of which is less than would be expected if the property were in active use;
 - (5) Securing all building openings to prohibit the unauthorized or illegal use of the premises or any building or equipment;
 - (6) Removing or correcting any condition detrimental to the safety of the general public including, but not limited to, trash, debris, and hazardous or unhealthy materials that have accumulated on the property;
 - (7) Maintaining all exterior surfaces including wood composition, cinderblock, or metal, in a weatherproof condition and surface coated to match the structure's exterior facade; and

- (8) Maintaining the integrity of the building structure in good repair and capable of safely supporting imposed loads.
- (c) Inspection of Structures, Buildings, Dwellings, etc., generally; Right of Entry of Enforcement Officer.

(1) The enforcement officer is hereby authorized and directed to make inspections to determine the condition of vacant structures and premises located within this City in order to perform his duty of safeguarding the health and safety of the occupants of surrounding structures and the general public. The Department of Licenses and Inspections shall serve upon the owner written notice of its intent to inspect the structure or premises forty-eight (48) hours prior to entry. If the owner or person responsible for the property does not provide written consent to the inspection, or otherwise refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to any part of the structure or premises where inspection authorized by this Section is sought, the Department may seek, in a court of competent jurisdiction, an administrative search warrant.

(2) For the purpose of making such inspections, the enforcement officer is hereby authorized to enter and inspect all vacant structures and premises between the hours of 8:00 a.m. and 5:00 p.m. The owner of every vacant structure or premises, or the person in charge of such, shall give the enforcement officer free access to such structure and its premises during such time for the purpose of such inspection, provided that such inspection is not for the purpose of undue harassment of the owner, and that such inspection is performed in such a way that causes the least amount of inconvenience to the owner and is consistent with the efficient performance of the duties of the enforcement officer.

(3) Nothing in this Section shall be construed to prohibit the entry of the enforcement officer:

- a. At any time when an actual emergency which tends to create an immediate danger to public safety exists; or
- b. At any time when such an inspection may be requested by such owner.

(d) *Administration and Enforcement.*

(1) *Enforcement Generally.* This Section shall be enforced by the Commissioner of the Department of Licenses and Inspections or his authorized representative or designee. The Department shall maintain records relating to the inspection of each property and the administration and enforcement of this Section.

(2) Except as otherwise specifically provided by this Chapter, any person violating any order of the Commissioner of the Department of Licenses and Inspections based on the provisions of this Section, or any provision of any rule or regulation adopted by the Department for the enforcement or implementation of this Section, or violating any provision of this Section, or any provision of any such rule or

regulation, shall be subject to and liable for a civil fine of \$100 for such violation, in addition to any applicable remediation costs.

- (3) Each week's failure following any applicable cure period to comply with any order of the Commissioner based upon the provisions of this Section or the provisions of any rule or regulation adopted by the Department of Licenses and Inspections for the enforcement and implementation of this Section, and each week's failure following any applicable cure period to comply with any provision of this Section or any such rule or regulation, shall constitute a separate and distinct offense and be punishable as such with a civil fine of \$100 for each subsequent violation.
 - (4) Pursuant to title 25, chapter 29 of the Delaware Code, any fines imposed for violations of this Section and any unpaid remediation costs shall give rise to a lien(s). The unpaid amounts of such fines and/or remediation costs may be added to local property tax billings for the property which was the subject of said violation.
 - (5) If any violation remains uncorrected ninety (90) days following the date of issuance of the citation for such violation and the Commissioner of the Department of Licenses and Inspections has not otherwise agreed in writing to allow a longer period to cure such violation, then the civil fine for such violation shall double. If any violation remains uncorrected one (1) year following the date of issuance of the citation for such violation and the Commissioner of the Department of Licenses and Inspections has not otherwise agreed in writing to allow a longer period to cure such violation, then the civil fine for such violation shall triple.
- (e) *Notice of Violation—Contents, Service.* Whenever the Commissioner of the Department of Licenses and Inspections or his designee determines that there has been a violation, or that there are reasonable grounds to believe that there has been a violation, of any provision of this Section or of any rule or regulation adopted pursuant thereto, he shall give notice of such violation or alleged violation to the person responsible thereof. Such notice shall:
- (1) Be put in writing;
 - (2) Include a description of the real estate sufficient for identification;
 - (3) Include a statement of the reason why it is being issued; and
 - (4) Allow at least thirty-five (35) days from the date of such notice for the performance of any act it requires, unless otherwise provided in this chapter; in the event that the Commissioner of the Department of Licenses and Inspections or his designee determines that a lesser period of time is essential to protect the health, safety or welfare of the occupants of an adjacent property, in which case three (3) days are required for the performance of any act it requires.

- (5) The notice of violation shall be served upon the owner, operator, or property manager, as the case may require. Such notice shall be deemed to be properly served by mailing a copy thereof by certified mail, return receipt requested, to the property address, other address(es) that have been designated for the receipt of property tax bills for such property, and the last known available or reasonably ascertainable address of the property owner if different from the before-mentioned addresses. If the notice is returned “undeliverable” or circumstances otherwise indicate that service has not been effected, service shall be made by posting a copy of the notice of violation in a conspicuous place on or about the dwelling affected by the notice. The Commissioner of the Department of Licenses and Inspections may, in his discretion, require such notice to be served by delivering a copy thereof personally to such owner or such operator or by leaving a copy thereof at his usual residence in the presence of someone in the residence of suitable age and discretion who shall be informed of the contents thereof, as the circumstances may require. Any notice herein required shall, if mailed, be deemed to be effective upon the earlier to occur of five business days following the date of its mailing, the date of actual delivery or the date of posting on the property.
- (6) In no case shall the Code Official be required by this Section to provide a violation notice to:
- a. Any owner or person previously provided notice pursuant to this Section where the same violation is alleged by the Code Official to exist due to the owner’s failure to correct the original violation; or
 - b. In the event that a violation exists or is reasonably believed to exist because work is being done in an unsafe or dangerous manner which jeopardizes the health, safety or welfare of the public, or is being done (or was done) in the absence of necessary permit(s), license(s) or registration(s).
- (f) *Administrative Appeal.* The owner, operator or occupant may appeal the notice to the Commissioner of the Department of Licenses and Inspections by sending a detailed written explanation of the grounds for the appeal, along with an administrative filing fee of \$15.00, which will be refunded upon a successful appeal, to the Commissioner or his designee within fifteen (15) business days of the date of the citation. The Commissioner or his or her designee shall issue a written decision affirming, modifying, reversing, revoking, or vacating the notice within 30 calendar days of receipt of the written explanation of the grounds for the appeal. All notices may be further appealed to the Board of License and Inspection Review as provided in this Subsection. Any appeal to the Commissioner shall act only as a stay of the notice until a final decision on the appeal has been rendered, and such appeal shall not be deemed to otherwise stay, limit or impair any other orders or actions of the Commissioner made pursuant to this chapter. If during the pendency of the appeal additional notices are issued regarding the same matter under appeal, the additional notices shall not be subject to further appeal but rather shall be resolved in accordance with the decision of the initial appeal on such matter.

- (1) Any owner, operator or occupant, as the case may require, may appeal the notice to the Board of License and Inspection Review following any appeal to the Commissioner of the Department of Licenses and Inspections in accordance with Subpart (f) of this Section. The appeal shall be in writing and filed within fifteen (15) business days after the issuance of the written decision of the Commissioner or his or her designee pursuant to Subpart (f) of this Section. Any appeal to the Board of License and Inspection Review shall be accompanied at the time of filing with a fee of \$50.00, which will be refunded upon a successful appeal. The Board of License and Inspection Review shall hear and decide appeals in accordance with its duly prescribed and promulgated rules, regulations and procedures.
- (2) *Writ of Certiorari.* An aggrieved party may appeal the decision of the Board of License and Inspection Review by filing a petition for a writ of certiorari in the Delaware Superior Court.
- (3) Any owner, operator or property manager, as the case may require, who does not appeal the notice and does not perform the act or acts required under the notice, or who unsuccessfully appeals the notice and does not perform the act or acts required under the notice within the prescribed time period is in violation of this Section and may be issued a civil fine and any applicable remediation costs pursuant to Subsection 13-42(d).