

**VIRTUAL REGULAR MEETING OF WILMINGTON CITY COUNCIL
OCTOBER 15, 2020 @ 6:30 P.M. – REVISED***

AGENDA

- I. Call to Order**
 - Prayer**
 - Pledge of Allegiance**
 - Roll Call**
- II. Approval of Minutes**
- III. Committee Reports**
- IV. Acceptance of Treasurer’s Report**
- V. Non-Legislative Business**

All Council	Recognize Reverend Lawrence Livingston
Gray	Sympathy Edmond Nathaniel Russ
Harlee	Sympathy Ruben Jervey
Oliver	Sympathy Barbara McCray
Oliver	Sympathy Michael Lamont Kelson
Oliver	Sympathy Idonya Lee Ford
Oliver	Sympathy Mary Emmalou Teat
Shabazz	Sympathy Charles Van Bullard
Shabazz	Recognize WDAS 70 th Anniversary
Shabazz	Sympathy Darrius Boyd
Shabazz	Recognize World Mental Health Day
Shabazz	Sympathy Fred Sylvester

VI. Legislative Business

OLIVER

#4868 An Ordinance to Approve the Removal of a Portion of Palmers Row, Located Between New Street and the Northern Boundary of Tax Parcel No. 26-029.10-124, from the Official City Map **(1st & 2nd Reading)**

Synopsis: *This Ordinance is being presented by the Administration for Council’s review and approval. This Ordinance authorizes the removal of a portion of Palmers Row, located between New Street and the northern boundary of Tax Parcel No. 26-029.10-124, from the Official City Map.*

JOHNSON

#4872* A Resolution Approving the Termination of a Deed Restriction within a Declaration Recorded with the New Castle County Recorder of Deeds at Volume G, Book 87, Page 757

Synopsis: *This Resolution is being presented by the Administration for Council's review and approval. This Resolution approves the termination of a deed restriction within a declaration recorded with the New Castle County Recorder of Deeds at Volume G, Book 87, Page 757.*

FREEL

#4859 Res. 20-055 Approve the License Agreement Authorizing New Cingular Wireless PCS, LLC to Install and Operate Wireless Telecommunication Facilities in the Public Rights of Way of the City of Wilmington (***held from 9/17/20 meeting***)

Synopsis: *This Resolution is being presented by the Administration for Council's review and approval. This Resolution approves the License Agreement ("the License") between the City and New Cingular Wireless PCS, LLC ("New Cingular") to, among other things, construct, install, maintain, and operate wireless telecommunication facilities in the public rights of way of the City of Wilmington. This equipment is part of New Cingular's network for the operation of wireless communications services. The initial term of the License is ten (10) years commencing on September 17, 2020 and shall continue thereafter until terminated by either party.*

#4862 Ord. 20-046 Authorize and Approve a Contract between the City of Wilmington and Axon Enterprise, Inc. for Body Cameras and Related Services (**3rd & Final Reading**)

Synopsis: *This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance authorizes the execution of a five-year Master Services and Purchasing Agreement with Axon Enterprise, Inc. to purchase body cameras and related services for the implementation of a body camera program for the Wilmington Police Department.*

Rev. 4

#4654 Sub. 3 Ord. 19-026 An Ordinance to Amend Chapters 4 and 34 of the City Code to Provide for Civil Fines for Owners of Rental Properties and Vacant Properties, and to Increase Vacant Registration Fees (**3rd & Final Reading**)

Synopsis: *This Substitute Ordinance is being presented by City Council for Council's review and approval.*

This Substitute No. 3 to Ordinance No. 19-026 ("Ordinance") makes the following amendments to Chapter 34 of the City Code:

- changes the enforcement of Chapter 34 with respect to vacant and rental properties from criminal enforcement to civil enforcement with civil fines for non-compliance;
 - this provision will expire on January 1, 2024 unless it is re-enacted prior to the expiration date;
- makes additional changes to update and modernize Chapter 34.

This Substitute No. 3 to Ordinance No. 19-026 makes the following amendments to Chapter 4 of the City Code:

- deletes Section 4-27, 119.0 (authorization for exterior improvements to vacant structures) and Section 4-27, 120.0 (annual vacant property registration fees), and incorporates these provisions into Chapter 34;
- amends the annual vacant property registration fee provisions (previously found at Chapter 4, Section 4-27, 120.0; now located at Chapter 34, Section 34-210) to:
 - increase the registration fees for properties vacant 3 or more years;
 - require registration of buildings vacant for 6 consecutive months rather than 45 consecutive days;
 - impose a civil fine of \$500.00 for failing to register a vacant building within 30 days of the required time to register;
 - exempt vacant buildings owned by the Wilmington Neighborhood Conservancy Land Bank Corporation (“Land Bank”) from registration requirements;
 - provide that purchasers of a vacant building from the Land Bank be billed a vacant registration fee based on the duration of vacancy from the time he or she received the building from the Land Bank, rather than a vacant registration fee based on the duration of the vacancy prior to receiving the building; and
 - provide for the abatement of past due vacant registration fees if the owner meets certain conditions.

This Substitute Ordinance shall become effective on January 1, 2021.

#4869 An Ordinance to Authorize and Approve an Agreement Between the City of Wilmington and Paymentus Corporation for an Online Payment Processing and Bill Presentment System (Contract 21017 DFPS) **(1st & 2nd Reading)**

Synopsis: *This Ordinance is being presented by the Administration for Council’s review and approval. This Ordinance authorizes the City to enter into an agreement with Paymentus Corporation for an online payment processing and bill presentment system for the period of three (3) years, with the possibility of three (3) extensions of one (1) year thereafter.*

ADAMS

#4870 An Ordinance to Authorize and Approve a One-Year Extension of Contract 20037FD Between the City of Wilmington and City Towing Services LLC for the Provision of Towing and Impounding of Vehicles **(1st & 2nd Reading)**

Synopsis: *This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance authorizes the City to enter into an amendment to Contract 20037FD (Towing & Impounding of Vehicles) (the "Contract") between the City and City Towing Services LLC that provides for a one-year extension of the Contract from December 1, 2020 through November 30, 2021 with the same terms and conditions.*

DIXON

#4871 A Resolution Authorizing the Mayor to File a Substantial Amendment to the Fiscal Year 2020 Annual Action Plan to Outline the Proposed Use of Supplemental ESG-CV Funds to Prevent, Prepare for, and Respond to the Ongoing COVID-19 Crisis

Synopsis: *This Resolution is being presented by the Administration for Council's review and approval. This Resolution (i) approves a Substantial Amendment to the Fiscal Year 2020 Annual Action Plan to outline the proposed use of additional ESG Program funding for ESG-CV Grants that is available pursuant to the CARES Act to prevent, prepare for, and respond to the COVID-19 pandemic and (ii) authorizes the Mayor to file an application for financial assistance with the U.S. Department of Housing and Urban Development for such funding.*

VII. Petitions and Communications**VIII. Adjournment**

**Note: This Agenda is being amended to add item #4872, which is being added to reflect a previously unanticipated need.*

Note: In following Governor Carney's Proclamation #17-3292, due to the outbreak of the COVID-19, public meetings are currently being conducted virtually to maintain social distancing and to keep all constituents safe. Members of the public are invited to join the City Council meeting by accessing the meeting as follows:

<https://zoom.us/j/91761710129> or visit the WITN22 website at www.witn22.org or WITN YouTube channel at <https://www.youtube.com/user/WITN22Wilmington/> or listen in only by calling one of the following phone numbers (929) 205-6099 or (301) 715-8592. You will be asked for the Webinar ID. Please enter **Webinar ID: 917 6171 0129** and then #.

www.wilmingtoncitycouncil.com or www.WITN22.org

**AN ORDINANCE TO APPROVE THE REMOVAL OF A PORTION OF
PALMERS ROW, LOCATED BETWEEN NEW STREET AND THE
NORTHERN BOUNDARY OF TAX PARCEL NO. 26-029.10-124, FROM THE
OFFICIAL CITY MAP**

#4868

Sponsor:

**Council
Member
Oliver**

WHEREAS, the City of Wilmington is authorized to establish and revise plans of streets and alleys by the provisions of Sections 1-101, 2-306, and 5-400 of the City Charter, such actions to be done in accordance with applicable provisions of State law and Section 42-11 of the City Code; and

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, Delmarva Power & Light Co. (the “Applicant”), the owner of the Brandywine substation located at 8 Palmers Row, Wilmington, Delaware (being Tax Parcel No. 26-029.10-124) (the “Site”), would like to improve the Site and the surrounding properties that it owns (the “Other Delmarva Properties”); and

WHEREAS, such improvements include the construction of a new control house on the Site, the installation of a third transformer and replacement of aging switchgear on one of the Other Delmarva Properties, and the demolition of certain structures on one of the Other Delmarva Properties; and

WHEREAS, the Applicant has requested the removal of a portion of Palmers Row that is located between New Street and the northern boundary of the Site, as more particularly described on Exhibit “A” attached hereto and more particularly illustrated on Exhibit “B” attached hereto (the “Street Bed”); and

WHEREAS, the Street Bed is entirely surrounded by the Other Delmarva Properties; and

WHEREAS, the Applicant has requested the removal of the Street Bed in order to fence it off from the general public and to provide an internal access to the new control house; and

WHEREAS, the City has not been able to determine the ownership of the Street Bed;
and

WHEREAS, the Department of Public Works has advised that: (1) the Street Bed does not provide any substantial benefit to the City's transportation network; (2) the Street Bed could require future maintenance and improvements, which the City would not be responsible for if the Street Bed were removed from the Official City Map; (3) the removal of the Street Bed would only affect parcels under the Applicant's control and would result in the parcels fronting it to be limited in purpose; (4) there are no water mains within the Street Bed; (5) there is a sewer line within Street Bed and therefore a sewer easement will be required so that the City may retain access to such sewer line; and (6) the Division of Transportation takes no exception and supports the request to vacate the Street Bed, subject to the retention of the aforementioned easement by the City; and

WHEREAS, the Department of Planning and Development has advised that: (1) it has no objection to the removal of the Street Bed from the Official City Map because (a) the Street Bed does not currently contribute to the general traffic circulation or distribution pattern in the immediate area and (b) there are no findings to suggest that the removal of the Street Bed would create a detriment to the general public or to public safety; (2) several "paper" public alleys located between Palmers Row and Mabel Street may still exist on the Official City Map, as more particularly illustrated on Exhibit "C" attached hereto; (3) the "paper" alleys fall completely within the boundaries of the Brandywine substation, are physically inaccessible, and no longer serve any purpose; and (4) it recommends that the "paper" alleys be removed from the Official City Map; and

WHEREAS, the Department of Licenses and Inspections has no objections to the removal of the Street Bed from the Official City Map; and

WHEREAS, no comments or objections were received from the Fire Marshal's Office; and

WHEREAS, there are no findings to suggest that the removal of the Street Bed would create a detriment to the general public or to public safety; and

WHEREAS, there is a lack of public interest in the Street Bed; and

WHEREAS, the City Planning Commission has adopted Planning Commission Resolution 13-20, which recommended approval of (i) the Applicant's request to remove the Street Bed from the Official City Map and (ii) the Department of Planning and Development's recommendation that the aforementioned "paper" alleys be removed from the Official City Map; and

WHEREAS, the City Council deems it necessary and appropriate to approve the removal of the Street Bed referenced in Exhibits "A" and "B", as well as the aforementioned "paper" alleys referenced in Exhibit "C", from the Official City Map.

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

SECTION 1. The removal from the Official City Map of a portion of Palmers Rows located between New Street and the northern boundary of Tax Parcel No. 26-029.10-124, which is described on Exhibit "A" attached hereto and illustrated on Exhibit "B" attached hereto, is hereby approved (subject to the conditions set forth in Section 3 of this Ordinance), and the Official City Map is hereby amended to reflect such removal.

SECTION 2. The removal from the Official City Map of any and all "paper" public alleys located between Palmers Row and Mabel Street, which is illustrated on Exhibit "C" attached hereto, is hereby approved, and the Official City Map is hereby amended to reflect such removal.

SECTION 3. The City shall retain such sewer easement within the portion of Palmers Row that is being removed from the Official City Map as the Commissioner of Public Works shall determine is necessary.

SECTION 4. The property rights to the Street Bed shall be determined judicially in accordance with applicable state statutes.

SECTION 5. All City departments are hereby authorized to take any and all necessary actions required for: (i) the removal of the portion of Palmers Row from the Official City Map; (ii) the removal of the “paper” public alleys located between Palmers Row and Mabel Street; and (iii) the retention of the aforementioned easement for the City.

SECTION 6. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading.....October 15, 2020
Second Reading.....October 15, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the removal of a portion of Palmers Row, located between New Street and the northern boundary of Tax Parcel No. 26-029.10-124, from the Official City Map.

EXHIBIT A

May 11, 2020

PALMERS ROW RIGHT-OF-WAY – 0.0615 Acres

Description of property situate in City of Wilmington, New Castle County, State of Delaware, being Lands designated PALMERS ROW, RIGHT-OF-WAY TO BE VACATED, as shown on the Right-of-Way Exhibit Plan for Lands Now or Formerly of City of Wilmington "Palmers Row" Right-of-Way To Be Vacated, prepared by Karins and Associates, Professional Engineers and Land Surveyors, Drawing No. 2418-03\EXHIBITS\PALMERSROW.dwg, consisting of 1 Sheet, dated May 08, 2020. Being more particularly bounded and described as follows, to wit:

BEGINNING at a point on the northwesterly side of Palmers Row (25' Wide R/W), a corner in common with lands now or formerly of Delmarva Power & Light Company (T.P.# 26-029.10-131), said point being further located from the intersection of the northwesterly side of Palmers Row and the southwesterly side of Vandever Avenue (60' Wide R/W) by the following described course and distance along the aforesaid northwesterly side of Palmers Row, South 29°-47'-09" West, 108.50 feet to the point and place of Beginning; thence, from said point of Beginning, leaving the aforesaid northwesterly side of Palmers Row, crossing from the said northwesterly side of Palmers Row to the southeasterly side of Palmers Row, South 60°-12'-51" East, 25.00 feet to a line in common with lands now or formerly of Delmarva Power & Light Company (T.P.# 26-029.10-140); thence, thereby, in part, and on a line in common with lands now of formerly of Delmarva Power & Light Company (T.P.# 26-029.10-142), in part, South 29°-47'-09" West, 107.13 feet to a corner in common with lands now or formerly of Delmarva Power & Light Company (T.P.# 26-029.10-124); thence, on a line in common with said lands now or formerly of Delmarva Power & Light Company (T.P.# 26-029.10-124), North 60°-12'-51" West, 25.00 feet to a corner in common with lands now or formerly of Delmarva Power & Light Company (T.P.# 26-029.10-125); thence, on a line in common with said lands now or

formerly of Delmarva Power & Light Company (T.P.# 26-029.10-125), in part, lands now or formerly of

PAGE 2

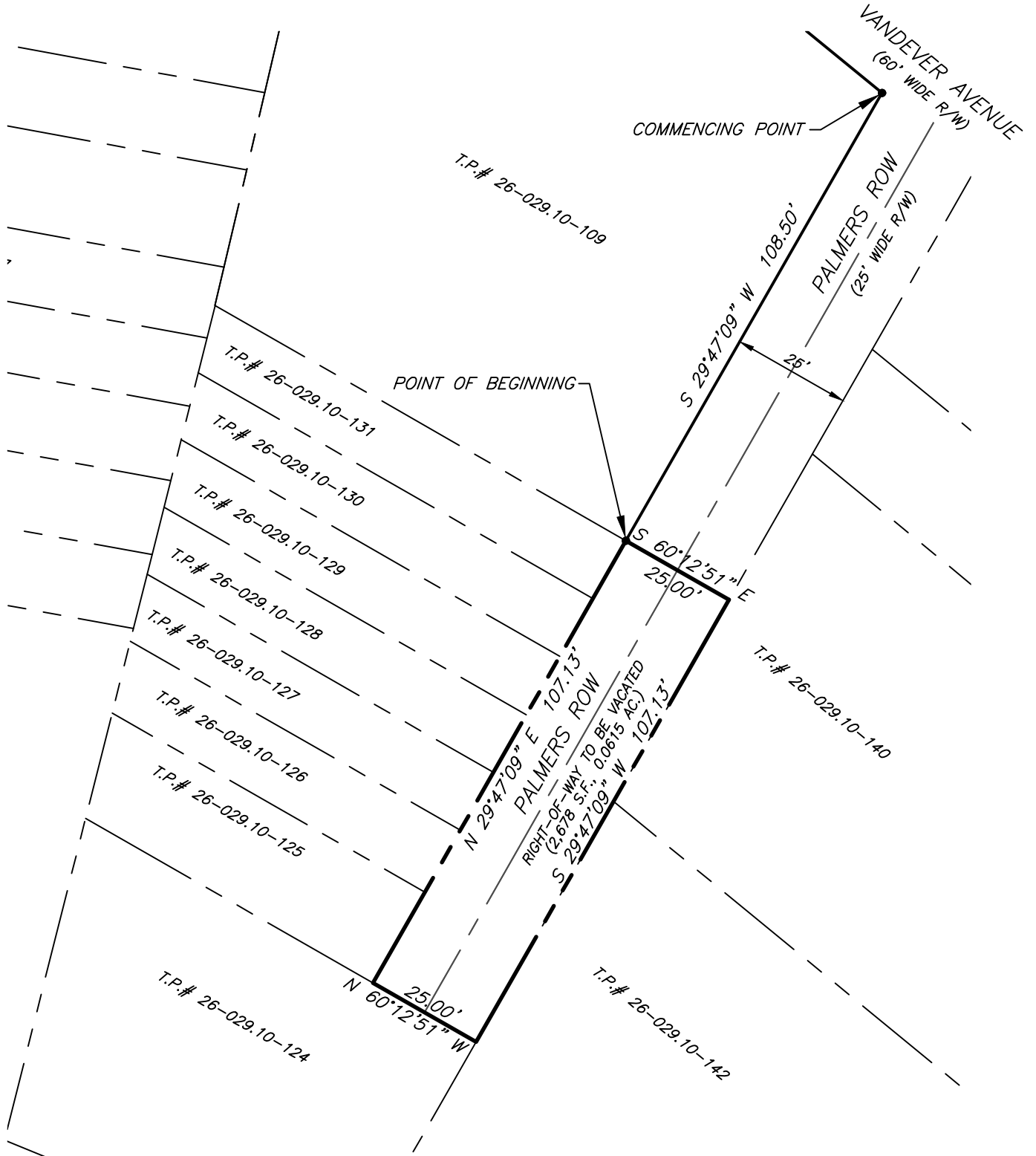
PALMERS ROW RIGHT-OF-WAY – 0.0615 Acres

Delmarva Power & Light Company (T.P.# 26-029.10-126), in part, lands now or formerly of
Delmarva Power & Light Company (T.P.# 26-029.10-127), in part, lands now or formerly of
Delmarva Power & Light Company (T.P.# 26-029.10-128), in part, lands now or formerly of
Delmarva Power & Light Company (T.P.# 26-029.10-129), in part, lands now or formerly of
Delmarva Power & Light Company (T.P.# 26-029.10-130), in part, and lands now or formerly of
Delmarva Power & Light Company (T.P.# 26-029.10-131), in part, North 29°-47'-09" East,
107.13 feet to the point and place of Beginning.

Containing within said described metes and bounds 0.0615 acres of land, be the same more or less.

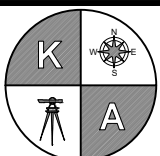
(ADJOINING PARCELS)

T.P.#	OWNER	DEED RECORD	RECORD PLAN	ZONE
26-029.10-124	DELMARVA POWER & LIGHT COMPANY	N/A	N/A	M-1
26-029.10-125	DELMARVA POWER & LIGHT COMPANY	N/A	N/A	M-1
26-029.10-126	DELMARVA POWER & LIGHT COMPANY	N/A	N/A	M-1
26-029.10-127	DELMARVA POWER & LIGHT COMPANY	N/A	N/A	M-1
26-029.10-128	DELMARVA POWER & LIGHT COMPANY	20111215-0075045	N/A	M-1
26-029.10-129	DELMARVA POWER & LIGHT COMPANY	20111215-0075046	N/A	M-1
26-029.10-130	DELMARVA POWER & LIGHT COMPANY	20111215-0075047	N/A	M-1
26-029.10-131	DELMARVA POWER & LIGHT COMPANY	20111221-0076167	N/A	M-1
26-029.10-140	DELMARVA POWER & LIGHT COMPANY	20110923-0058529	N/A	M-1
26-029.10-142	DELMARVA POWER & LIGHT COMPANY	N/A	N/A	M-1
26-029.10-109	KAPPA MAINSTREAM LEADERSHIP INC	2906-7	N/A	M-1



RIGHT-OF-WAY EXHIBIT PLAN
FOR LANDS NOW OR FORMERLY OF
CITY OF WILMINGTON
"PALMERS ROW"
RIGHT-OF-WAY TO BE VACATED
AREA: 2,678 S.F., 0.0615 ACRES

SITUATE IN: CITY OF WILMINGTON, NEW CASTLE COUNTY, DELAWARE



Karins and Associates

ENGINEERS • PLANNERS • SURVEYORS

NEWARK, DE • GEORGETOWN, DE

www.karinsengineering.com

17 POLLY DRUMMOND CENTER * SUITE 201
NEWARK, DELAWARE 19711
PHONE: (302) 369-2900

128 WEST MARKET STREET
GEORGETOWN, DELAWARE 19947
PHONE: (302) 858-4331

DATE: 05-08-20

SCAL F: 1" = 30'

DRAWN: ELG / IKY

CHECKED: JJJ

DRAWING: 2418-03\EXHIBITS\PAI MERSBROW.dwg

EXHIBIT B

Resolution 13-20:
A proposal to remove a portion of Palmers Row,
between New Street and the north boundary of
Parcel # 2602910124 (Delmarva), from the Official City Map.



Portion of Palmers Row to be Removed from City Map

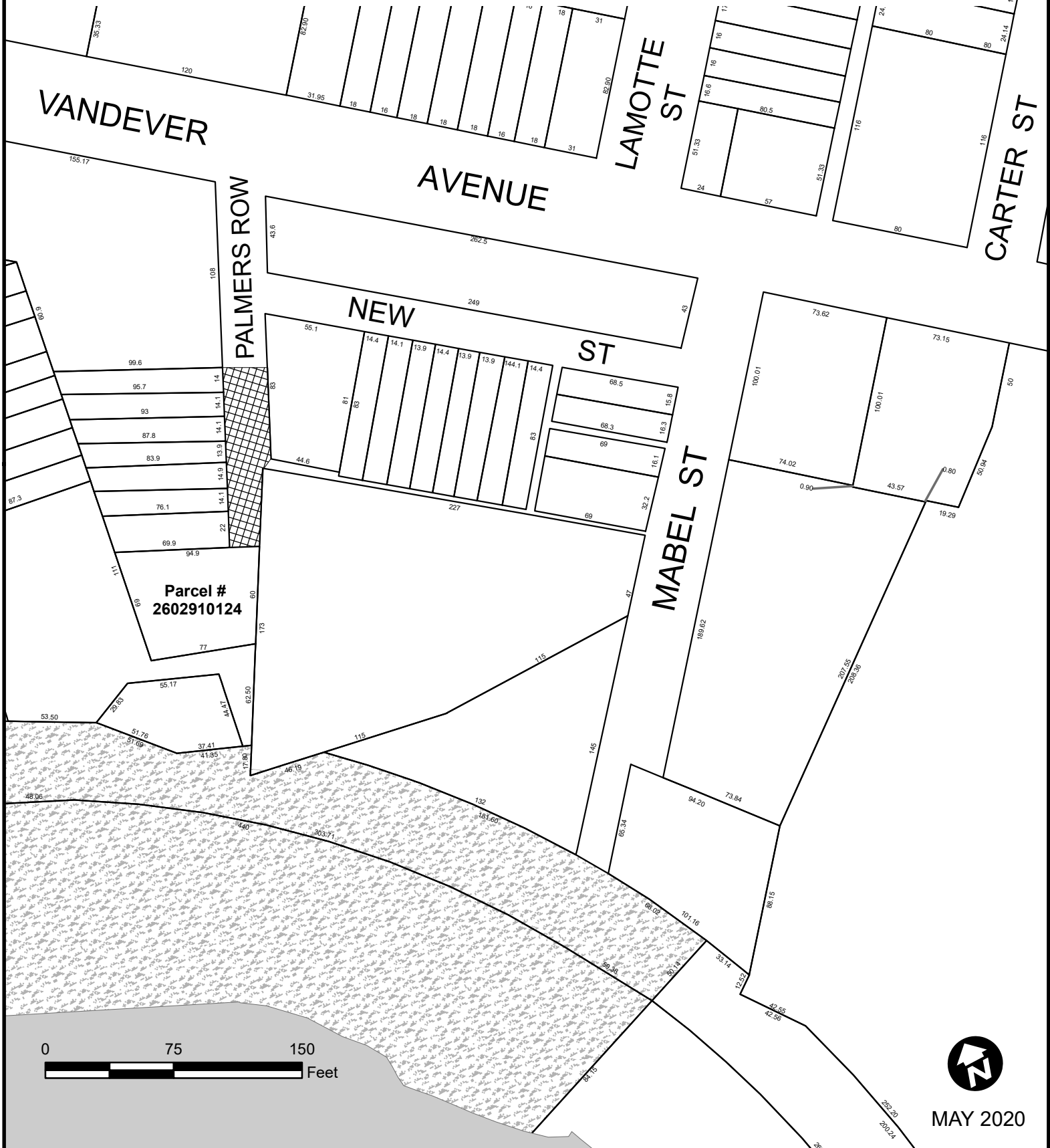
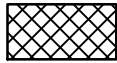


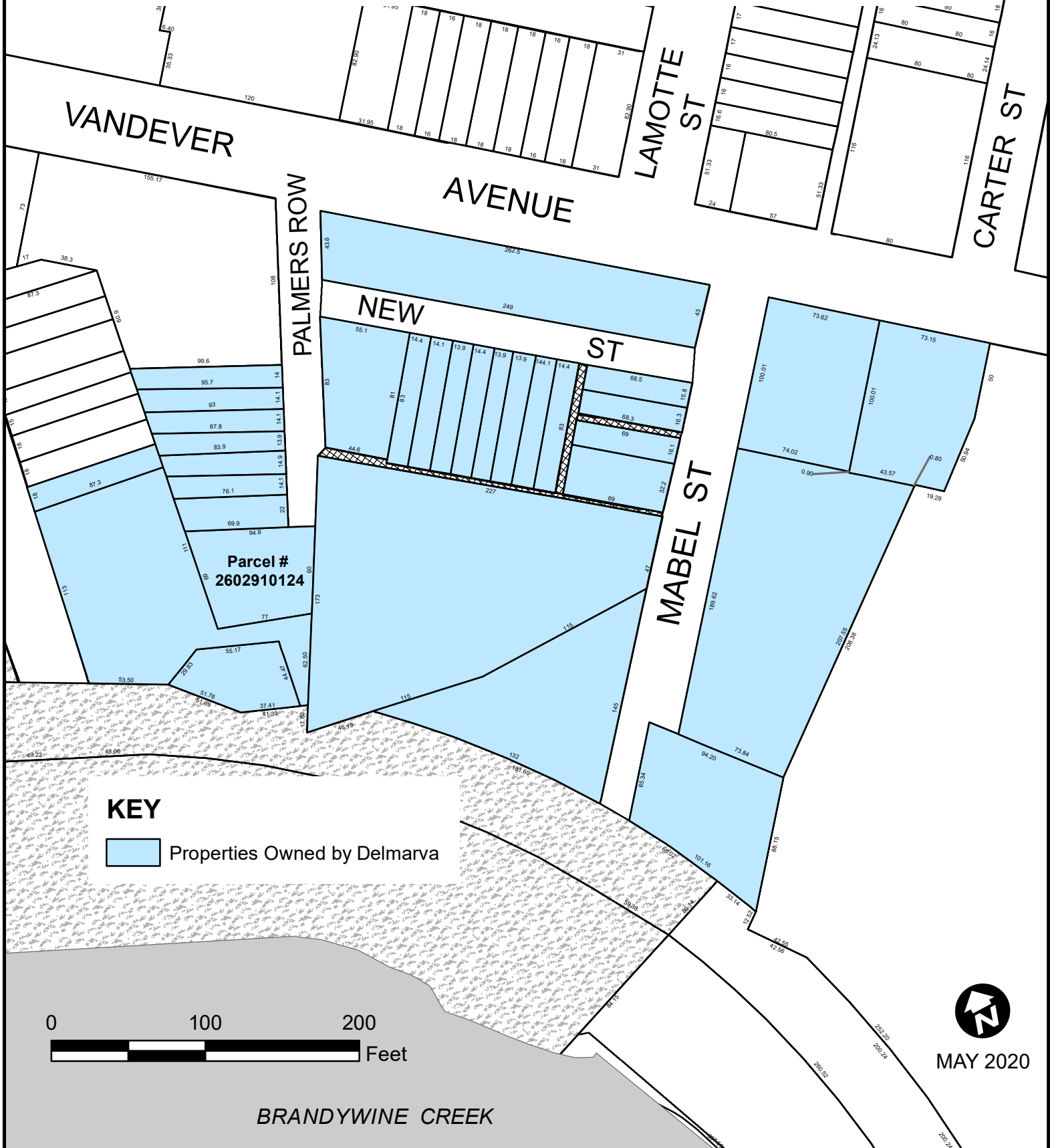
EXHIBIT C

MAP 2: Resolution 13-20

A proposal to remove a portion of Palmers Row,
between New Street and the north boundary of
Parcel # 2602910124 (Delmarva), from the Official City Map.



"Paper" Alleys to be Removed from City Map



Wilmington, Delaware
October 15, 2020

#4872

Sponsor:

**Council
Member
Johnson**

WHEREAS, in 1972, the owners of the property situated in the block bounded by 7th Street, 8th Street, North DuPont Street, and North Clayton Street, Wilmington, Delaware (the “Property”), namely, St. Francis Hospital, Inc., William Schultz, Nancy Schultz, Dominick Valava, and Tessi Valava (collectively, the “Owners”) petitioned the City to change the zoning of the Property from a zoning classification of R-3 to a zoning classification of C-2; and

WHEREAS, the City Planning Commission recommended approval of the request to rezone the Property as follows: “That the application be approved conditional on a Deed Restriction submitted by the applicants prior to the City Council hearing. Said Deed Restriction to clearly state that this land is to be used for hospital purposes only;” and

WHEREAS, on August 18, 1972, the Owners entered into a declaration regarding the Property that was recorded with the New Castle County Recorder of Deeds at Volume G, Book 87, Page 757, a copy of which is attached hereto as Exhibit “A”, that contains the following deed restriction (the “Deed Restriction”): “1. The use of the above mentioned property is restricted to its present use and use as a Hospital and accessory buildings. 2. This restriction shall not become effective until the requested rezoning has been approved by the City Council of the City of Wilmington. 3. This restriction may be amended or removed with the approval of the City Council of the City of Wilmington.”; and

WHEREAS, Ordinance No. 72-074 rezoned the Property from a zoning classification of R-3 to a zoning classification of C-2, thus making the Deed Restriction effective; and

WHEREAS, the Property has since been rezoned to its original R-3 zoning

classification; and

WHEREAS, the current owner of the Property wishes to terminate the Deed Restriction; and

WHEREAS, the Council deems it necessary and appropriate to approve the termination of the Deed Restriction.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that Council hereby approves the termination of the deed restriction within the declaration recorded with the New Castle County Recorder of Deeds at Volume G, Book 87, Page 757, a copy of which is attached hereto as Exhibit "A".

BE IT FURTHER RESOLVED that the President of City Council, or her designee, shall be authorized to execute any documents related to the termination of the aforementioned deed restriction, as well as to take all additional undertaking related thereto, as may be necessary.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution approves the termination of the deed restriction within the declaration recorded with the New Castle County Recorder of Deeds at Volume G, Book 87, Page 757.

W0112244

EXHIBIT A

02503

THIS DECLARATION, made this 18th day of August, A. D. 1972, Between ST. FRANCIS HOSPITAL, INC., a corporation of the State of Delaware, William L. Schultz and Nancy B. Schultz, his wife, and Dominick Vavala and Tessi Vavala, his wife, hereinafter called the "Declarants";

WHEREAS, the parties to this Declaration are the owners of the property situate in the block bounded by 7th Street, 8th Street, North DuPont Street and North Clayton Street; and the block bounded by 6th Street, 7th Street, North DuPont Street and North Clayton Street, in the City of Wilmington, New Castle County and State of Delaware. The property is known as St. Francis Hospital, St. Francis Nurses Home and Nos. 601, 603, 605, 607, 609 and 611 North Clayton Street, Wilmington, Delaware, and

WHEREAS, the Declarants have petitioned The City Planning Commission and City Council of the City of Wilmington for a change in Zoning from R-3 to C-2, and

WHEREAS, The City Planning Commission by report dated July 20, 1972, recommended the requested change as follows:

"That the application be approved conditional on a Deed Restriction submitted by the applicant's prior to the City Council hearing. Said Deed Restriction to clearly state that this land is to be used for hospital purposes only."

and

WHEREAS, the Declarants wish to make known and declare the restriction which shall be applicable to and bind the said lands,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That St. Francis Hospital, Inc., a corporation as aforesaid, William L. Schultz and Nancy B. Schultz, his wife, and Dominick Vavala and Tessi Vavala, his wife, do hereby covenant and declare that they shall hold and stand seized of the said lands, under and subject, nevertheless, to the following restrictions, which it is hereby agreed shall be binding upon said owners, their heirs, successors and assigns.

REC-87 PAGE 757

1. The use of the above mentioned property is restricted to its present use and use as a Hospital and accessory buildings.

2. This restriction shall not become effective until the requested re-zoning has been approved by the City Council of the City of Wilmington.

3. This restriction may be amended or removed with the approval of the City Council of the City of Wilmington.

IN WITNESS WHEREOF the parties hereto have executed this Declaration the day and year first above written.

Sealed and delivered in the presence of:

John J. Hyde
John J. Hyde
John J. Hyde
John J. Hyde
John J. Hyde

ST. FRANCIS HOSPITAL, INC.

BY: William L. Schultz

ATTEST: William L. Schultz

William L. Schultz
 William L. Schultz

Nancy L. Schultz (SEAL)
 Nancy L. Schultz

Dominick Cavala (SEAL)
 Dominick Cavala

Jessie Cavala (SEAL)
 Jessie Cavala

STATE OF DELAWARE) ss.
 NEW CASTLE COUNTY)

BE IT REMEMBERED, That on this 18th day of August, A. D. 1977, personally came before me, the subscriber, a Notary Public for the State of Delaware, Sister William Mary Lananhan, President of St. Francis Hospital, Inc., a corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed and the act and deed of said corporation, that the signature of the President thereto is in her own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that her act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

John J. Hyde
 Notary Public
 PUBLIC DEPT.

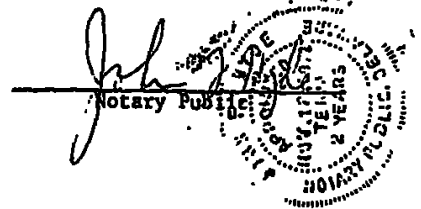
STATE OF DELAWARE)

) ss.

NEW CASTLE COUNTY)

BE IT REMEMBERED, That on this 18th day of August, A. D. 1973, personally came before me, the subscriber, a Notary Public for the State of Delaware, William L. Schultz and Nancy B. Schultz, his wife, Dominick Vavala and Tessi Vavala, his wife, parties to this indenture, known to me personally to be such and severally acknowledged this indenture to be their act and deed.

GIVEN under my Hand and Seal of office, the day and year aforesaid.



REC'D FOR RECORD Jan 24 1973 DEO L. DUGAN, Jr. Recorder

REC-87 PAGE 759

Wilmington, Delaware

~~September 17, 2020~~

October 15, 2020

#4859

Sponsor:

Council
Member
Freel

Co-Sponsor:

Council
President
Shabazz

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON, that the License Agreement between the **CITY OF WILMINGTON**, a municipal corporation of the State of Delaware, and **NEW CINGULAR WIRELESS PCS, LLC**, ("New Cingular") authorizing New Cingular to, among other things, construct, install, maintain, and operate wireless telecommunication facilities in the public rights of way of the City of Wilmington, a copy of which is attached hereto as Exhibit "A" and made a part hereof, is hereby approved, and the Mayor or his designee and City Clerk are hereby authorized to execute as many copies of said Agreement as may be necessary.

Passed by City Council,

Attest: _____
City Clerk

SYNOPSIS: This Resolution approves the License Agreement ("the License") between the City and New Cingular Wireless PCS, LLC ("New Cingular") to, among other things, construct, install, maintain, and operate wireless telecommunication facilities in the public rights of way of the City of Wilmington. This equipment is part of New Cingular's network for the operation of wireless communications services. The initial term of the License is ten (10) years commencing on September 17, 2020 and shall continue thereafter until terminated by either party.

FISCAL IMPACT STATEMENT: New Cingular will pay the City an annual license fee in the amount of \$270 per node (as that term is defined by the License) per node user. Consistent with the License, the fee may be adjusted based upon a study of the City's actual costs for maintaining the rights of way or a change in applicable law.

EXHIBIT A

A LICENSE AGREEMENT AUTHORIZING NEW CINGULAR WIRELESS PCS, LLC
TO CONSTRUCT, INSTALL, MAINTAIN, REPAIR, OPERATE, RELOCATE, REPLACE
AND REMOVE CERTAIN FACILITIES RELATING TO WIRELESS
TELECOMMUNICATIONS FACILITIES INSTALLED IN PUBLIC RIGHTS-OF-WAY IN
THE CITY OF WILMINGTON

This License Agreement, ("Agreement" or "License") dated this ____ day of _____, 2020 ("Effective Date"), is made by and between the CITY OF WILMINGTON ("City") and NEW CINGULAR WIRELESS PCS, LLC, ("Licensee").

RECITALS

WHEREAS, Licensee, has requested consent of the City to use certain Public Rights-of-Way of the municipality to construct, maintain, and operate its facilities for use in providing wireless telecommunications services within the municipality for its own business purposes and profit; and

WHEREAS, it is the policy of the City to permit such entry into the corporate limits and such use of the Public Rights-of-Way for the provision of telecommunication services, subject to the exercise of the City's police powers, and subject to the right of the City to charge for that use; and

WHEREAS, the City has agreed to grant a non-exclusive license to Licensee, for that purpose, as more fully set forth below; and

WHEREAS, Licensee desires to use certain City Public Rights-of-Way and is willing to do so consistent with this Agreement.

NOW, THEREFORE, and in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, the parties hereby agree as follows:

1. Definitions.

Capitalized terms have the meaning specified in this section; terms not defined herein shall have the meaning set forth in the *Wilmington City Code* ("Code") and City's *Regulations for Placement and Maintenance of Wireless Telecommunications Facilities* ("Manual"), and if not defined there, their ordinary meaning. Singular terms include the plural; shall and will are mandatory, and "may" is permissive. References to statutes and regulations refer to the same as amended or renumbered.

1.1. "Agreement" or "License" means this Agreement, together with Appendices and Exhibits attached this Agreement, if any, and any amendments or modifications thereto.

1.2. "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations.

1.3. "Authorizations" means the permissions Licensee must have in addition to this License to deploy Facilities and/or provide Services, which may include licenses, permits, zoning approvals; variances, exemptions; grants of authority to use private rights of way and/or

easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

1.4. “Authorized Facilities” means Facilities that comply with the requirements of this License, and the City Code and Manual, and have all necessary Authorizations in full force and effect.

1.5. “Central Communications Hub” refers to a site that receives signals from Nodes, and includes equipment that propagates and/or converts, processes or controls the communications signals transmitted and received from the Nodes.

1.6. “Construction and Maintenance” and variations of those terms refer to any activity performed in the Public Rights-of-Way with respect to the Facilities, including construction, modification, replacement, repair, operation, maintenance, removal or relocation.

1.7. “Facility” or “Facilities” means any and all equipment and installations of any kind owned by Licensee and under the control of Licensee that are reasonably necessary and appropriate for the provision of Services including, but not limited to any optical repeaters, converters, power amplifiers, radios, multiplexers, remote radioheads, antenna, aboveground and underground fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches, cabinets, enclosures, and control boxes, and supporting structures, whether new, existing or replacement structures, and whether referred to singly or collectively.

1.8. “License” means the non-exclusive right granted, by ordinance and subject to this Agreement, to Licensee to Construct and Maintain the Facilities on, over, under, upon, across, and along the Public Rights-of-Ways within the License Area.

1.9. “License Area” shall mean all the area within the boundaries of the City.

1.10. “Node” means a Facility or set of Facilities at a fixed location that includes one or more radiofrequency transmitters or antennas, which wirelessly connects to mobile stations and which is connected along with other Nodes via a high capacity transport medium to a core network. A Node must be a Small Wireless Facility.

1.11. “Person” shall have the same meaning as the definition contained in City Code Section 42-704(v).

1.12. “Public Rights-of-Way” shall have the same meaning as the definition contained in City Code Section 42-704(x).

1.13. “Services” means any telecommunications service provided by means of the Facilities by Licensee pursuant to a certificate issued by the State of Delaware, or a license issued by the Federal Communications Commission; or the leasing, operation or maintenance of Facilities by Licensee, except that the term does not include cable service as defined in 47 USC 522(6), open video services or other multichannel video programming services other than video programming provided on a common carrier basis.

1.14. “Small Wireless Facility” has the same meaning as the term “small wireless facility” in 47 C.F.R.1.6002(l), as the same may be amended from time to time.

2. Grant of License

2.1. Grant. The City hereby grants to Licensee the nonexclusive right to Construct and Maintain Nodes comprised of Authorized Facilities within the Public Rights-of-Way, which License shall be exercised at Licensee's sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Rights-of-Way. The License is not divisible, and Licensee may not grant any person the right to use or occupy the Public Rights-of-Way. The grant does not extend to any other service or Facility, and Licensee may be required to obtain an additional License or an amendment to this License before using and occupying the Public Rights-of-Way to provide additional services or Facilities. It is the intent of the parties that this License be liberally amended or additional Licenses issued to allow for the provision of additional services, subject to appropriate and lawful conditions.

2.2. Special Conditions on Grant.

2.2.1. Licensee may place Nodes in the Public Rights-of-Way, but may not place Central Communications Hubs in the Public Rights-of-Way.

2.2.2. Unless exempted by virtue of the City Code and Manual, each Node shall be placed subject to a wireless permit, as that term is used in Section 1.3 of the Manual. The permit will approve the location and the design of any particular Node.

2.2.3. Designs attached to this Agreement have been pre-approved pursuant to Section 2.6 of the Manual, for use at the locations indicated in that approval. The City may direct Licensee which pre-approved design to use in particular locations if it is determined that one design is more consistent with the surrounding areas than others. The City will not unreasonably refuse to approve other designs or locations for Facilities if the City determines that the design (a) otherwise complies with Applicable Law; (b) is subject to concealment elements and aesthetic requirements that minimize visual impacts and ensure the Facilities will be consistent in size and shape with existing structures in the same area; and (c) does not contain lighting elements (other than on City approved Light Poles) or produce noise that would violate the noise ordinances of the City. Ground-mounted cabinets associated with the Nodes are not permitted other than with the express review and approval of the City. In approving locations, the City may ensure that the Node Facilities are placed to minimize impacts on adjoining property owners, and other Public Right-of-Way users. A Node will not be approved in an area where the lines of the incumbent local exchange carrier are underground, except where the Facilities can be concealed within or on an existing structure to the reasonable satisfaction of the City, or an existing structure may be replaced with a structure of a design satisfactory to the City; unless Licensee demonstrates that denial of the application would prohibit or have the effect of prohibiting the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7), and otherwise violate Applicable Law, such that the City is required to approve the Facilities.

- 2.2.4. Subject to the City's permitting requirements, Licensee may repair and replace Facilities, so long as the appearance of the Facilities or property affected by the repair or replacement does not change.
- 2.2.5. Subject to obtaining the written permission of the owner(s) of the affected property, and subject to conditions of this License and the City Code, Licensee may enter upon the Public Right-of-Way to perform Construction and Maintenance on Nodes in or on utility poles, street light poles or other structures within the Public Right-of-Way lawfully owned and operated by City or by other entities. *Provided that*, use of any street light pole or traffic signal poles or other structure owned, leased or otherwise subject to the control of the City in the Rights of Way ("City Facility") requires a separate agreement with the City consenting to, and establishing the conditions for such use. If Licensee proposes to use a street light pole for which the City paid or pays a fee for installation or service, the City may require Licensee to provide City title to that street light pole as a condition of use as provided in such separate agreement.
- 2.3. No Real Property Interest. Nothing herein shall be deemed to grant, convey, create or vest in Licensee a real property interest in land, including any fee, leasehold interest, or easement, or the right to place the Facilities at any particular location within the Public Rights-of-Way.
- 2.4. Compliance with Law.
- 2.4.1. The exercise of License rights by Licensee is subject to, and strictly conditioned upon compliance with the terms of this Agreement and Applicable Law now existing or hereinafter enacted.
- 2.4.2. All work upon the streets and public places of the City performed by Licensee shall be in accordance with all applicable standards, codes, and ordinances, and will be done under the general supervision of the Department of Public Works and/or Department of Licenses & Inspections. Nothing in this Agreement shall be construed as a waiver of any laws, regulations or rules of the City or of the City's right to require the Licensee to secure the appropriate permits or Authorizations, or to pay the applicable fees associated with the same. Nothing in this Agreement shall act as a waiver of the City's police powers. Nothing herein prevents Licensee from challenging the applicability of a particular fee or regulation to it on the ground that it is unduly discriminatory or preempted by state or federal law.
- 2.4.3. Continued occupancy of the Public Rights-of-Way is contingent upon strict compliance with the terms and conditions of any permit. Subject to Section 13.8, if material terms and conditions of any permit are no longer enforceable, then the City may terminate the permit and make continued occupancy subject to such conditions as it may impose with respect to the Facilities pursuant to Applicable Law. This Agreement does not authorize occupancy for any purpose where the occupancy is not permitted under the City Code or Manual.
- 2.5. Conditions Precedent. The License shall commence upon the Effective Date, provided that the Licensee shall have met each of the conditions precedent set forth below and otherwise in this Agreement (unless the City agrees to waive any of the conditions precedent), at which time it shall become effective: The Licensee shall have secured its insurance policies as set

forth in Section 10 of this Agreement and delivered the certificate of insurance to the City's Risk Manager, with proof that the policies will be in effect on or before the Effective Date, and that the policies are in accordance with this Agreement.

2.6. Conditions Subsequent: RF Emissions. Without limiting the other provisions of this Agreement, Licensee must cease its operations if it is not in compliance with Federal Communications Commission ("FCC") regulations governing RF emissions (including any standards that may be adopted in the future), as the same may be amended from time to time, except to the extent that the FCC or other Order, Ruling or Regulation permits it to continue to operate. The issuance of this License is not intended to insulate Licensee from any claim or any remedy based on RF emissions. On request, or to the extent that Licensee is aware of any non-conformance, Licensee shall submit a report identifying applicable standards, measured emissions, and any area where it has Facilities that do not comply with applicable standards. The report will not be treated as confidential.

2.7. Other Authorizations. As a condition of this grant, Licensee is required to obtain and is responsible for any Authorization that may be required for the installation, operation or maintenance of the Facilities.

2.8. Licensee's Expense. Except as specifically provided otherwise, all costs incurred by Licensee in connection with its compliance with, or enjoyment of, this License shall be borne by Licensee and not by City, and all work that must be performed in order to permit the placement of Facilities at particular locations (including work required to comply with Applicable Law relating to persons with disabilities) shall be paid for by Licensee.

2.9. Application to Subcontractors. Licensee is responsible for ensuring that all contractors and subcontractors comply with the requirements of this License and Applicable Law when performing work on behalf of Licensee, and Licensee is jointly and severally responsible for their acts and omissions.

2.10. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person (other than the City and Licensee), any right, benefit or remedy under this Agreement of any nature whatsoever.

3. Term.

This Agreement shall be in force and effect for an initial term of ten (10) years, and shall continue in force and effect thereafter until properly terminated by either party. Either party may terminate the Agreement at the end of its initial ten-year term, or at any time thereafter, by giving written notice of its intention to do so no less than two (2) years before the proposed date of termination. Upon termination, all of City's consents to use and occupancy of the Public Rights-of-Way, and Licensee's rights to use and occupy the Public Rights-of-Way are also terminated. Notwithstanding the foregoing, all of Licensee's duties related to use of the Public Rights-of-Way, and its duties to indemnify the City, shall survive termination until the Facilities are removed, or Licensee's obligations terminate by agreement of the parties. It is understood and agreed that the decision of whether to renew or to terminate this Agreement pursuant to this Section shall be made by those elected officials then in office under such circumstances as may then obtain. Provided, however, nothing in this paragraph is intended to expand or contract any rights that Licensee may have as a matter of state or federal law to obtain a license from City.

Public Rights-of-Way License Fee

3.1. Scope. The compensation set forth herein is for use of the Public Rights-of-Way to install wireless Nodes for the provision of Services. Licensee may use the Public Rights-of-Way to provide additional services only with the agreement and consent of the City. Licensee may not permit any other person to place equipment that person owns or controls as part of that Node without agreement of, and payment of an additional fee to the City as described below.

3.2. When Additional Fees May Be Required. If a Node is to be modified so that it no longer is a small wireless facility, an additional fee must be paid, which fee shall be established by negotiation prior to modification. If a facility is proposed which does not meet the definition of a Node, the fee shall be established by negotiation prior to installation. The fees that may be charged are only subject to such limits as may be established by state and federal law.

3.3. Amount. Subject to Sections 3.9-3.10, Licensee will pay a fee of \$270.00 per Node per annum-per Node user. Licensee is a user, and any person who owns or controls any portion of the Node is also a user, provided that, for a Licensee that does not provide Services, Licensee and one entity providing Services count as a single user. This amount shall be adjusted annually based on the percentage increase in the annual average CPI-U for the Philadelphia-Camden-Wilmington Region, with the 2019 annual average serving as the reference period and with the first adjustment being made for the calendar year 2021.

3.4. Holdover. Subsequent to the termination of this Agreement, if Licensee, without the City's express approval, continues to occupy the Public Rights-of-Way and continues to operate; or if it ceases operation but fails to remove the Facilities within 120 days of the termination of this Agreement; the City may, at its option, increase any of the fees charged by 2.5 times.

3.5. Payment. The annual rent due for Node shall be paid in accordance with this paragraph. On the first day of the month following approval of any Node, Licensee shall pay Licensor the amount owed per annum (as adjusted by CPI) for the approved Node multiplied by a percentage equal to the number of remaining months in the fiscal year divided by 12. Thereafter, on July 1 of every year, Licensee shall pay Licensor the annual rent owed for the Node. If Licensee subsequently adds an additional user, from the date of installation of the additional user Licensee shall pay Licensor the \$270 per annum (as adjusted by CPI) rent at a percentage equal to the number of remaining months in the fiscal year divided by 12. Thereafter, on July 1 of every year, it shall pay the Licensor the rent owed for such additional users. If Licensee ceases to use a Node, Licensor will rebate an allocable portion of the rent paid in advance, based upon the date all of Licensee's Equipment are removed, and the affected property restored as required under City Code Section 42-713(g).

3.6. No Accord or Satisfaction. The acceptance of any payments shall not be treated as an accord or satisfaction. Upon reasonable notice by the City to audit Licensee's books and records, Licensee shall produce its books and records for review at the City's offices, or in such other manner acceptable to the City. The City may inspect Facilities as necessary to ensure that the fees owed under this Agreement are being paid. If an audit shows that Licensee

has underpaid the amount due hereunder by 5% or more for any year reviewed, the cost of the audit shall be paid by Licensee.

3.7. Interest on Late Payment. Interest will be charged on any late payment at the statutory interest rate on judgments under State law, or if there is no such rate the prime rate charged by the bank the City uses as its main depository, plus 3%.

3.8. Payment Not In Lieu. The fee specified in this Section 3 is not in lieu of any other license, tax, fee or assessment, which may be imposed under this Agreement, the City Code or Applicable Law, or in lieu of rents for use or in return for a license to use public property other than the Public Rights-of-Way as herein specified.

3.9. Adjustment Based on Cost Study. The City may adjust these fees at any time if based on a study of its actual costs, an adjusted fee is a reasonable approximation of costs, the costs are reasonable, and are non-discriminatory. In the event the City conducts a study prior to any fee adjustment, the City must provide any study and a breakdown of actual costs considered resulting in a fee adjustment and Licensee shall reimburse the City for a proportional share of the costs of conducting such study, based on the number of similarly situated Licensees whose compensation for use of the rights-of-way is based on cost.

3.10. Adjustment To Non-Cost-Based Rates. Should Applicable Law permit City to charge a fee that is not cost-based, City may adopt any lawful fee, and apply it to Licensee at any time two (2) years after the effective date of this Agreement.

4. Work in the Public Rights-of-Way.

4.1. No Limitation on Obligation to Comply With Applicable Laws. Without limiting its obligations under Section 2, Licensee shall comply with the requirements of this Section.

4.2. No Interference.

4.2.1. No Public Right-of-Way or other public place shall be obstructed longer than necessary during Construction and Maintenance, and once completed, any disturbance associated with the Construction and Maintenance to the Public Rights-of-Way or public place, shall be restored as required under City Code Section 42-713(g) and any other Applicable Law. No part of any Public Right-of-Way, or other public place of the City, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be damaged. However, should any such damage occur, the Licensee shall repair the same as promptly as possible, and, in default thereof, the City may make such repairs and charge the reasonable cost thereof to and collect the same from the Licensee. In no event may Facilities be constructed or maintained in a manner that creates a hazardous condition, or a condition that is inconsistent with Applicable Law protecting persons with disabilities.

4.2.2. Without limiting the City's authority under this Agreement or the City Code, the City may manage Construction and Maintenance within the Public Rights-of-Way to prevent undue burdens on those Public Rights-of-Way and users of them; and to maximize efficient use of the Public Rights-of-Way. The City may require Licensee to coordinate construction activities with other entities occupying the Public Rights-

of-Way. And where there are conflicting requests for construction of Facilities similar to those authorized hereunder at a particular location, the City, after providing Licensee and other affected entities an opportunity for comment, may require consolidation of Facilities or develop a non-discriminatory means of allocating sites that may be appropriate for placement of facilities in the Public Rights-of-Way.

4.3. Closing of Public Rights-of-Ways. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Public Rights-of-Ways. In the event that all or part of the Public Rights-of-Ways within the License Area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable to Services; or (2) vacated in accord with the City Code, or if ownership of the land in, under or over the affected Public Rights-of-Ways is otherwise transferred to another Person, all rights and privileges granted pursuant to this Agreement with respect to such Public Rights-of-Ways, or any part of such Public Rights-of-Ways so closed, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and Licensee shall remove its Facilities from such public Rights-of-Ways, unless an agreement is otherwise reached with the new party owning or controlling the subject property. Nothing herein is meant to preclude Licensee from pursuing any rights it may have under state law against a private Person if the Public Right-of-Way is vacated for the benefit of that Person. The City shall provide reasonable prior written notice to Licensee of any such closing, vacation, or transfer to allow Licensee to remove its Facilities where the right to continue to occupy and use such Public Rights-of-Way is not reserved for Licensee.

4.4. Relocation of Facilities.

4.4.1. Licensee may be required to remove and relocate its Facilities, subject to such notice as may ordinarily be provided to users of similar structures but in no event less than 60 days' notice (except in an emergency), if: the structures to which they are attached or located within are removed, ordered to be removed or relocated; or to accommodate the use of the Public Rights-of-Way by other entities; or to ensure that the facilities or structures to which they are attached or located within do not interfere with the use of the Public Rights-of-Way by the public, or present a risk to public health or safety. To the extent that Licensee is required to remove or relocate its Facilities to accommodate the use of the Public Rights-of-Way by a third party, nothing herein prevents Licensee from seeking compensation from that third party (other than parties identified in Section 4.4.3).

4.4.2. If Licensee's Facilities are located aboveground in the Public Right-of-Way and the distribution lines of the incumbent local exchange carrier or electric utility subsequently are placed underground, Licensee's aboveground Facilities (other than those comparable to any Facilities of the incumbent local exchange carrier which are permitted to remain aboveground) shall be placed underground at the same time, except for such Facilities which, because of their concealment elements and location, are specifically approved by permit to remain aboveground. Nothing herein prevents Licensee from submitting an application for placement of Facilities aboveground, subject to showing that as proposed, the City is required to grant the application under Applicable Law.

- 4.4.3. The rights and privileges granted hereby shall not be in preference or hindrance to the right of the City, or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works, public improvements or public projects. In the event that the Facilities interfere in any way with the construction, maintenance or repair of such public works, public improvements, or public projects, the Licensee, at its expense, shall (a) immediately commence work to remove or relocate the object of such interference if emergency circumstances exist or (b) otherwise, within sixty (60) days of notice of such interference, protect or relocate its Facilities, as may be directed by the relevant authority.
- 4.4.4. The City shall cooperate with Licensee in finding a suitable alternative location for any relocated Facilities removed pursuant to this Section in a manner that, to the extent reasonably consistent with other provisions of this License, and which allows Licensee to continue to provide Service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of Facilities.
- 4.4.5. If Licensee defaults in its obligations hereunder, the City may remove or relocate the Facilities and charge the reasonable cost thereof to and collect the same from the Licensee.
- 4.5. All Work Performed Safely. Construction and Maintenance shall be done in a workmanlike manner. All work involved in the Construction and Maintenance of the Facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. The Licensee shall comply with applicable codes and industry standards, as amended from time to time. The Licensee shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. In addition, the Licensee shall, at its sole cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, and to comply with safety requirements of all permits, licenses, and other forms of approval or authorization. Licensee will comply with City requirements for identification of the Facilities and for identification of employees, subcontractors, vehicles and equipment when performing work within the Public Right-of-Way.
- 4.6. Maintenance.
- 4.6.1. Licensee shall maintain the Facilities in good condition and neat and orderly appearance, and in compliance with all Applicable Laws, permits, Authorizations and site licenses.
- 4.6.2. Licensee shall keep the Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the City gives Licensee written notice of a failure by Licensee to maintain the Facilities, Licensee shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice. If Licensee defaults in its obligations hereunder, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Licensee.

4.6.3. Licensee shall at all times keep and maintain the Facilities free of all graffiti located thereon and shall comply with City Code Section 36-40.

4.7. Emergency Notification. The Licensee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Licensee, not voice mail or a recording, can be contacted in the event of an emergency. At the City's request, a contact number will also be placed on Licensee's Facilities in such manner as the City may reasonably direct. The Licensee shall respond immediately to address a reported emergency.

4.8. Excavation Notices. Licensee must be a member of an approved notification center pursuant to the Underground Utility Damage Prevention and Safety Act (Miss Utility) and comply with the requirements of 26 *Del. C.* § 801.

4.9. Inspection by City. The City shall have commercially reasonable access to inspect any work conducted by Licensee during the Construction and Maintenance of Facilities.

5. Removal Due to Termination or Abandonment.

Following the termination of the License for any reason, or in the event Licensee ceases to operate and abandons any Facilities, Licensee shall, within one hundred twenty (120) days, remove such Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to the condition required under City Code Section 42-713(g). Alternatively, the City may allow Licensee, in the City's sole and absolute discretion, to abandon Facilities in place and convey the Facilities to the City free and clear. If Licensee defaults in its obligations hereunder as set forth in Section 7, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Licensee.

6. Required Reports.

6.1. Upon request, the Licensee shall provide City an "as-built" map clearly indicating the location of the Facilities in the Public Rights-of-Way, which maps shall identify the owner of any structure on or within which Licensee's Facilities are located.

6.2. Upon request, and to the extent not expressly required under a permit, Licensee will keep City apprised of the status of any work in the Public Rights-of-Way.

6.3. Upon request, Licensee shall provide any required certificate of public convenience and necessity, and shall provide other proofs that it has authority to construct, maintain and provide Services.

7. Default and Remedies

7.1. Defaults. The following are defaults under this Agreement:

7.1.1. If either party fails to perform or comply with any of the conditions or covenants of this License and such failure continues for a period of thirty (30) calendar days after written notice thereof, unless the performance cannot be reasonably completed within the thirty (30) day period, and the party has commenced good faith efforts to perform and is diligently proceeding to complete performance to the satisfaction of the other party; or

7.1.2. If Licensee fails to pay any sums herein specified when due and does not pay within thirty (30) calendar days after receipt of written notice of said default; or

7.1.3. Licensee's acts or omissions create an imminent hazard to persons or properties which Licensee cannot or does not immediately correct.

7.2. Default by Licensee. In the event of default by Licensee as specified in the preceding section, which default has not been cured in any applicable cure period, the City shall have the right to terminate this License, by giving thirty (30) calendar days written notice to Licensee, and in addition may pursue any other remedies available to it at law or equity. The thirty-day notice period shall not constitute an additional cure period.

7.3. Default by City. In the event of default by the City, Licensee shall have the right to terminate this License while any default continues, beyond any applicable cure period, by giving thirty (30) calendar days written notice to the City, which thirty (30) day period shall not constitute an additional cure period, and in addition may pursue any other remedies available to it for injunctive relief. Licensee shall have no recourse for damages against the City except as required by state law, whether resulting from enforcement or non-enforcement of this License or any provision of Applicable Law.

8. City Termination Right.

City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the Public Rights-of-Way; or (ii) if Licensee's Authorizations with respect to the Facilities and/or provide Service are terminated, revoked, expired, or otherwise abandoned; or (iii) if any term related to the design or placement of the Facilities is unenforceable.

9. Indemnification

Before commencing any work, and as a condition of occupancy, Licensee ("Indemnitor") shall execute an indemnity in a form acceptable to the City Solicitor which shall provide that Indemnitor shall be liable for, and the Indemnitor shall indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the "Indemnitees") harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of any work associated with the Facilities (including but not limited to installation, operation, relocation, replacement or removal) or permits issued to Indemnitor for work in the Public Rights-of-Way performed by it, or on its behalf, or to cure an act or omission of the Indemnitor or persons acting on its behalf. This indemnity may be included as part of an authorization, and if included, shall be deemed a condition of any work performed in the Public Rights-of-Way. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made as set forth herein; then upon demand by the City, the Indemnitor shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Indemnitor's insurance carrier (if such claim, action or proceeding is covered by insurance) or by the Indemnitor's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation (because, for example, a conflict of interest exists which makes joint representation of the Indemnitee by Indemnitor's counsel inadvisable), such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee

in such Indemnatee's defense of such claim, action or proceeding, as the case may be, and the Indemnitor shall pay the reasonable fees and disbursements of such attorneys of such Indemnatee.

10. Insurance and Performance Bond.

10.1. Insurance. Licensee shall procure and maintain insurance for the duration of this License against any and all claims for bodily injury, including death, and for property damage which may be caused, in whole or in part, by the Construction and Maintenance of Facilities or activities Licensee, its agents, representatives or employees may perform pursuant to this License (the "Work"). Such insurance shall be in the following amounts, which assume that no hazardous materials will be associated with any of the Facilities, and that the Facilities will be of a kind and type regularly installed in the Public Rights-of-Way. Once every three (3) years with 60 days' prior written notice to Licensee, the City may require additional insurance if, in the City's reasonable view, the Facilities present additional risks to it, the public or property.

10.2. Coverages and Limits:

10.2.1. General Liability per ISO form CG 0001 (or its equivalent) \$1,000,000 per occurrence/ annual aggregate

10.2.2. Automobile Liability \$1,000,000 per accident

10.2.3. Workers' Compensation Statutory Limits

10.2.4. Employer's Liability \$500,000/\$500,000/\$500,000

10.3. Certificates. Certificates showing proof of such insurance shall be submitted to City by e-mail to BSantiago@Wilmingtonde.gov prior to commencement of any work under this license. Further, it shall be an affirmative obligation upon Licensee to advise City, by e-mail to BSantiago@Wilmingtonde.gov and mail to the City's Risk Manager, thirty (30) days prior notice of cancellation, substantial modification below this Agreement's requirements or a non-renewal of any required coverage that is not replaced.

10.4. Endorsements. The General Liability policy is to include City, its officers, officials, and employees as additional insureds as their interest may appear under this Agreement excluding Worker's Compensation and Employer's Liability. City's additional insured status shall (i) be limited to bodily injury, including death, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and, (iii) not exceed Licensee's indemnification obligation under this Agreement, if any. Such coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

10.5. Workers' Compensation. Licensee shall maintain Workers' Compensation Insurance for all of Licensee's employees who are in any way connected with the Work. Such insurance shall comply with all applicable state laws and to the extent allowed by law provide a waiver of subrogation against the City, its officers, officials, agents and employees.

- 1.1.1 Licensee and/or its insurers are responsible for payment of any liability arising out of Workers' Compensation, unemployment or employee benefits offered to its employees. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII and eligible to do business in the State of Delaware, unless otherwise approved by City; and Licensee shall not self-insure in satisfaction of any of the insurance requirements set out herein without the express written consent of City.

10.6. Self-Insurance. Notwithstanding the foregoing, Licensee shall have the right, subject to prior written approval by City that Licensee's established self-insurance program is commercially reasonable, to self-insure the coverages required in Section 10. Licensee shall provide the City at least (60) days' written notice of its election to self-insure. In the event Licensee elects to self-insure its obligation to include the City as an additional insured, the following provisions shall apply (in addition to those set forth in Section 10): (i) Licensee or its parent company shall have and continuously maintain a tangible net worth of at least two hundred million dollars (\$200,000,000.00); (ii) Licensee shall continuously maintain appropriate loss reserves for the amount of its self-insurance obligations under this Section 10, which reserves are annually approved by Ernst & Young, or any successor auditing company; (iii) Licensee shall undertake the defense of any self-insured claim for which a defense and/or coverage would have been available from the insurance company, including a defense of Licensor, at Licensee's sole cost and expense, with counsel selected by Licensee and reasonably acceptable to the City; (iv) Licensee shall use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for Licensee's election to self-insure; (v) Licensee shall pay any and all amounts due in lieu of insurance proceeds which would have been payable if Licensee had carried the insurance policies, which amounts shall be treated as insurance proceeds for all purposes under this Agreement; (vi) All amounts which Licensee pays or is required to pay and all loss or damages resulting from risks for which Licensee has elected to self-insure shall not limit Licensee's indemnification obligations set forth in this Agreement; and (vii) Licensee shall establish and maintain a commercially reasonable self-insurance program to administer. City may require Licensee to provide proof of its compliance with the foregoing provisions of this subsection.

10.7. Performance Bond or Letter of Credit. Licensee shall, as a material condition of its License Agreement, and prior to the commencement of any Construction and Maintenance, deliver to the City a performance bond or irrevocable letter of credit in the amount of fifty thousand dollars (\$50,000.00), payable to the City to ensure the appropriate and timely performance of Construction and Maintenance and compliance with the obligations of its License. The required performance bond or irrevocable letter of credit must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Delaware, and satisfactory to the City Solicitor in form and substance, and must be maintained until all obligations to City under this License (including obligations to remove) are satisfied.

11. Transfer

11.1. The License, or control of the License or of Facilities within the Public Right-of-Way may not be assigned or transferred directly or indirectly by any means without the prior written consent of City which consent shall not be unreasonably withheld, conditioned or delayed if:

(i) Licensee is in compliance with this Agreement and (ii) the transfer or assignment does not create any additional burden upon the Public Right-of-Way, or materially and adversely affect the City's interests under this Agreement and License. An assignee or transferee must accept all obligations of the Licensee, and responsibility for all acts and omissions of License known and unknown, if the transaction results in a change in Licensee.

11.2. Notwithstanding the foregoing, to allow for internal restructuring, Licensee shall have the right to assign this License and all rights and obligations accorded Licensee to a wholly-owned subsidiary or a parent entity of Licensee (each, a "Permitted Assignee") without the prior written consent of City, provided that the change is not part of a transaction that results in a change of control of the ultimate parent of Licensee as of the Effective Date, or an assignment of assets to an entity that is not under the control and ownership of the entity that is the ultimate parent of Licensee as of the Effective Date. In the event Licensee assigns his License to a Permitted Assignee, Licensee shall provide the City with written notice of such assignment within thirty (30) days of such assignment, and the assignee must, by that date, agree to be bound by this Agreement, to accept responsibility for all acts and omissions of the Licensee known and unknown.

11.3. Licensee may mortgage, pledge, or hypothecate its interest in Facilities without consent to any financing entity, or agent on behalf of any financing entity to whom Licensee (1) has obligations for borrowed money or in respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or similar instruments, or (3) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof. Any such assignment to a financing entity or its agent shall be subordinate to the terms of this License Agreement, will not permit any person to succeed to the rights of Licensee under the License without the City's consent, and will not result in any lien extending to property owned by the City or the License itself.

12. Notices

12.1. All notices, requests, demands, and other communications hereunder which are required to be in writing shall be deemed given if personally delivered or by sent to the following addresses by certified mail, return receipt requested; or by an overnight delivery service providing proof of delivery:

City:

City of Wilmington
Department of Public Works
Louis L. Redding City/Cty Bldg. 6th Floor
800 French Street
Wilmington, DE 19801
Attention: Commissioner

With a copy to:
City of Wilmington Law Department
Louis L. Redding City/Cty Bldg. 9th Floor
800 French Street
Wilmington, DE 19801
Attention: City Solicitor

Licensee:

New Cingular Wireless PCS, LLC,
Attention: Tower Asset Group - Lease Administration,
Re: Cell Site # _____; Cell Site Name: _____
Fixed Asset No: _____
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a copy to:
New Cingular Wireless PCS, LLC
Attention: AT&T Legal Department – Network Operations
Re: Cell Site # _____; Cell Site Name: _____
Fixed Asset No: _____
208 S. Akard Street
Dallas, TX 75202-4206

All invoicing to Licensee may be made to the following address:

New Cingular Wireless PCS, LLC
Attention: Tower Asset Group – Lease Administration
Re: Cell Site # _____; Cell Site Name: _____
Fixed Asset No: _____
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

12.2. Other Notices. Licensee shall identify an entity to which notice may be provided by email or telephone call, twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the construction or maintenance of Facilities, or conditions affecting the safety or integrity of the Facilities (downed poles or lines, for example), including matters that may require immediate relocation or removal of Facilities. Initially, that notice may be provided to the Network Operations Center at (800)-852-2671.

12.3. Changing Notice. Either party may change the person, address, email or telephone to which notice may be provided by written notice to the other party. Each party must ensure that the other has accurate information as to where notices are to be provided.

13. Miscellaneous

13.1. Materials and Claims. All materials furnished for any work done in the License Area by Licensee shall be at Licensee's sole cost and expense. Licensee agrees to protect the Facilities installed in the Public Rights-of-Way and property of the City, and City, from all claims of contractors, laborers and material men pertaining to such work. Licensee shall promptly pay all contractors and materialmen furnishing labor, materials or services with any respect to any work performed by or on behalf of Licensee in the Public Rights-of-Way and property of the City, so as to minimize the possibility of a lien attaching to the any property of

the City or the Facilities in the Public Rights-of-Way. Should any such lien be made or filed by reason of such work performed by or on behalf of Licensee, Licensee shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

13.2. No Advertisement. Licensee shall not place any advertisement or other notice on or about the Facilities which identifies the Licensee in any way (except for emergency notification postings).

13.3. Entire Agreement. This Agreement contains the entire agreement and understanding between the City and Licensee related to the License, and supersedes all prior or contemporaneous proposals, negotiations, agreements and understandings, if any, related to the subject matter hereof.

13.4. Modification. This Agreement shall not be modified or amended except by written instrument executed by the City and Licensee, or its successors, transfers, heirs or assigns.

13.5. Non-Waiver. Failure of City to insist on strict performance of any of the conditions, covenants, terms or provisions of this License or to exercise any of its rights hereunder shall not waive such rights, but City shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Licensee to City after a breach of this License shall not be deemed a waiver of such breach unless expressly set forth in writing.

13.6. Force Majeure. If either City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

13.7. Choice of Law. This Agreement shall be interpreted and enforced under the laws of the State of Delaware. Any and all suits for any claims or for any breach or dispute arising out of this Agreement shall be brought and maintained in a court of competent jurisdiction in the State of Delaware.

13.8. Change in Law and Severability. If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision. If, as a result of a change in law by statute, rule, ruling or otherwise, the total compensation to the City arising as a result of Licensee's occupation of the Public Rights-of-Way (including attachments on City-owned facilities therein) is materially reduced, the Parties agree to negotiate in good faith to amend this Agreement to ensure that total compensation to the City remains substantially comparable, to the extent permitted under applicable law.

13.9. Construction. This Agreement has been negotiated between the parties and their respective counsel, and the parties agree that no provision shall be construed against the drafter.

13.10. Immunity. This Agreement shall not be deemed to waive the City's statutory or common law immunity.

13.11. Representations.

13.11.1. Each Party to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the its respective obligations hereunder and that such obligations shall be binding upon such Party.

13.11.2. Licensee represents that it is validly existing and in good standing under the laws of the State of Delaware, that it is qualified to do business under the laws of the State of Delaware, and that it has the power and authority to own its properties, to carry on its business as now being conducted, to enter into this License and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this License.

IN WITNESS THEREOF, the parties hereby bind themselves legally to the terms and conditions set forth in this Agreement, as evidenced by the signature of their duly authorized representatives.

[Remainder of this page left blank. Signature pages follow.]

NEW CINGULAR WIRELESS PCS, LLC

By: John Green (SEAL)

Title: Area Manager

STATE OF DELAWARE

)

) ss:

COUNTY OF NEW CASTLE

)

On this, the ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, who acknowledged ____self to be the _____ of _____, and that as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of and in the name of _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Printed Name of Notary:

Commission Expires:

[signatures continue on following page]

**AN ORDINANCE TO AUTHORIZE AND APPROVE A CONTRACT
BETWEEN THE CITY OF WILMINGTON AND AXON ENTERPRISE, INC.
FOR BODY CAMERAS AND RELATED SERVICES**

#4862

Sponsor:

**Council
Member
Freel**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City desires to enter into a Master Services and Purchasing Agreement (the "Agreement") with Axon Enterprise, Inc. ("Axon") to purchase body cameras and related services for the implementation of a body camera program for the Wilmington Police Department, a copy of which, in substantial form, is attached hereto and incorporated by reference herein as Exhibit "A"; and

WHEREAS, the term of the Agreement is for a period of five (5) years commencing upon execution of the Agreement, at an estimated total price of One Million, Nine Hundred Fifty-Four Thousand, Eight Hundred Thirty-Six Dollars (\$1,954,836.00); and

WHEREAS, it is the recommendation of the Police Department that the City enter into the Agreement with Axon for a period of five (5) years.

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

SECTION 1. The Master Services and Purchasing Agreement between the City of Wilmington and Axon Enterprise, Inc., a copy of which Agreement, in substantial form, is attached hereto as Exhibit "A," for the period of five (5) years, at an estimated total price of One Million, Nine Hundred Fifty-Four Thousand, Eight Hundred Thirty-Six Dollars (\$1,954,836.00), is hereby approved, and the Mayor, or his designee, is hereby authorized to

execute as many copies of the Agreement, as well as take all additional undertakings related thereto, as may be necessary.

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

First Reading..... October 1, 2020
Second Reading..... October 1, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the execution of Master Services and Purchasing Agreement (the “Agreement”) with Axon Enterprise, Inc. to purchase body cameras and related services for the implementation of a body camera program for the Wilmington Police Department. The Agreement is for a period of five (5) years commencing on the date of its execution at a total estimated price of One Million, Nine Hundred Fifty-Four Thousand, Eight Hundred Thirty-Six Dollars (\$1,954,836.00).

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is a contract for the period of five (5) years commencing on the date of its execution at a total estimated price of One Million, Nine Hundred Fifty-Four Thousand, Eight Hundred Thirty-Six Dollars (\$1,954,836.00).

EXHIBIT A



Master Services and Purchasing Agreement

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc., a Delaware corporation ("**Axon**"), and the City of Wilmington, Delaware ("**Agency**"). This Agreement is effective as of the last signature date on this Agreement ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). The Parties therefore agree as follows:

- 1 **Term.** This Agreement begins on the Effective Date and continues for 5 years ("**Term**"). New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.
- 2 **Definitions.**

"**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

"**Axon Devices**" means all hardware provided by Axon under this Agreement.

"**Quote**" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

"**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.
- 3 **Payment.** Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for reasonable collection and attorneys' fees. Axon shall provide Agency with 10 days' notice prior to sending a past due account to collections.
- 4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate. Axon shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents, and employees as required by the City of Wilmington wage tax law.
- 5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.
- 6 **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.
- 7 **Warranty.**
 - 7.1 **Hardware Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its

Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("CEW") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

- 7.2 Claims.** If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Device will be new or like new. Axon will warrant the replacement Device for the longer of (a) the remaining warranty of the original Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Device for service, Agency must upload Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Device sent to Axon for service.

- 7.3 Spare Devices.** Axon may provide Agency a predetermined number of spare Devices as detailed in the Quote ("**Spare Devices**"). Spare Devices will replace broken or non-functioning units. If Agency utilizes a Spare Device, Agency must return to Axon, through Axon's warranty return process, any broken or non-functioning units. Axon will repair or replace the unit with a replacement Device. Upon termination, Axon will invoice Agency the Manufacturer's Suggested Retail Price (MSRP) then in effect for all Spare Devices provided. If Agency returns the Spare Devices to Axon within 30 days of the invoice date, Axon will issue a credit and apply it against the invoice.

- 7.4 Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Device use instructions; (b) Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Device; (d) force majeure; (e) Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the total purchase price paid to Axon by the Agency under this Agreement for all Axon Devices and Services. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

- 8 Statement of Work.** Certain Axon Devices and Services, including Axon Records, Axon CAD, Axon Interview Room, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in

the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

- 9 **Device Warnings.** See www.axon.com/legal for the most current Axon device warnings.
- 10 **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Devices and Services previously purchased by Agency.
- 11 **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. The General Liability insurance shall cover personal injury, including death, and property damage in the minimum amount of one million dollars (\$1,000,000.00). The Workers' Compensation insurance shall be in the amount required by law. The General Liability and Automobile Liability insurance shall name Agency as an additional insured. The insurance policies shall be issued by a financially sound carrier and/or carriers and shall be subject to the reasonable approval of Agency. Axon shall supply Agency with certificates of insurance evidencing the aforementioned coverage.
- 12 **Indemnification.** Axon will defend, indemnify, and hold harmless Agency and its officers, directors, agents, and employees ("**Agency Indemnitees**") from and against any and all claims, demands, damages, actions, liabilities, losses, and reasonable expenses (including reasonable attorneys' fees) arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon, its officers, directors, agents, employees, or subcontractors, under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.
- 13 **IP Rights.** Axon owns and reserves all right, title, and interest in Axon Devices and Services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
- 14 **IP Indemnification.** Axon will defend, indemnify, and hold harmless Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
- 15 **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.
- 16 **Termination.**
- 16.1 **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.

- 16.2 By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
- 16.3 Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Devices received and amounts paid towards those Devices. If terminating for non-appropriation, Agency may return Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Device at the time of sale. For bundled Devices, MSRP is the standalone price of all individual components.
- 17 Confidentiality. "Confidential Information"** means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for 5-years thereafter. Axon pricing is Confidential Information and competition sensitive. If Agency is required by law to disclose Axon pricing, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.
- 18 General.**
- 18.1 Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 18.2 Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 18.3 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 18.4 Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on: race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 18.5 Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6 Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent but with prior notice to Agency: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties' respective successors and assigns.



Master Services and Purchasing Agreement

- 18.7 Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8 Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9 Survival.** The following sections will survive termination: Payment, Warranty, Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 18.10 Governing Law.** The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. All disputes in connection with this Agreement shall be resolved by the courts of New Castle County, Delaware. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 18.11 Notices.** All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective upon delivery. Contact information for notices:
- | | |
|-----------------------------|--------------------------------------|
| Axon: Axon Enterprise, Inc. | Agency: City of Wilmington, Delaware |
| Attn: Legal | Attn: Inspector Cecilia Ashe |
| 17800 N. 85th Street | 300 North Walnut Street |
| Scottsdale, Arizona 85255 | Wilmington, Delaware 19801 |
| legal@axon.com | cecilia.ashe@cj.state.de.us |
- 18.12 Business License.** If required by applicable law, Axon shall obtain and/or maintain an appropriate business license from the Agency's Department of Finance.
- 18.13 Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares that the representative is authorized to execute this Agreement as of the date of signature.

Axon Enterprise, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____

City of Wilmington, Delaware

Signature: _____

Name: _____

Title: _____

Date: _____

Title: Agreement between the City of Wilmington and Axon Enterprise, Inc.

Department: Legal

Version: 7.0

Release Date: 8/6/2019



Master Services and Purchasing Agreement

Axon Cloud Services Terms of Use Appendix

1 Definitions.

"Agency Content" is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

"Evidence" is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

"Non-Content Data" is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

- 2 Subscription Term.** For Axon Evidence subscriptions, including Fleet 2 Unlimited, the subscription begins after shipment of the applicable Axon Device. If Axon ships the Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Device in the second half of the month, the start date is the 15th of the following month. For phased deployments, the start date begins on shipment of phase one. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. The Axon Evidence subscription term ends upon completion of the Axon Evidence subscription stated in the Quote ("**Axon Evidence Subscription Term**"). Start dates for Axon Records and Axon Dispatch will be addressed through an SOW.

- 3 Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.

- 4 Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content are not business records of Axon. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will have limited access to Agency Content solely for providing and supporting Axon Cloud Services to Agency and Agency end users.

- 5 Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

- 6 Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services



Master Services and Purchasing Agreement

violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

- 7 **Privacy.** Axon will not disclose Agency Content or information about Agency except as compelled by a court or administrative body or required by law or regulation. If Axon receives a disclosure request for Agency Content, Axon will give Agency as much notice as reasonably possible, unless legally prohibited from doing so, to allow Agency to file an objection with the court or administrative body. Agency agrees to allow Axon access to certain information from Agency to (a) perform troubleshooting services upon request or as part of regular diagnostic screening; (b) enforce this Agreement or policies governing the use of Axon Evidence; or (c) perform analytic and diagnostic evaluations of the systems.

- 8 **Storage.** For Axon Evidence Unlimited, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or an Axon body-worn camera. For Axon Air Evidence subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from an Axon Air device. For Axon Interview Room Unlimited, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Interview Room hardware. For Axon Fleet Unlimited, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Fleet hardware.

Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.

- 9 **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.

- 10 **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.



Master Services and Purchasing Agreement

- 11 **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
- 12 **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 12.1. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 12.2. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - 12.3. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 12.4. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - 12.5. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - 12.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
 - 12.7. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
- 13 **After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
- 14 **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
- 15 **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.
- 16 **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud



Master Services and Purchasing Agreement

Services Restrictions.

Professional Services Appendix

- 1 Utilization of Services.** Agency must use pre-paid professional services as outlined in the Quote and this Appendix within 6 months of the Effective Date.
- 2 Body-Worn Camera Full Service (BWC Full Service).** BWC Full Service includes 4 consecutive days of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which on-site services are appropriate. If Agency requires more than 4 consecutive on-site days, additional days are \$2,500 per day. BWC Full Service options include:

System set up and configuration <ul style="list-style-type: none">• Setup Axon View on smartphones (if applicable)• Configure categories and custom roles based on Agency need• Register cameras to Agency domain• Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access• One on-site session included
Dock configuration <ul style="list-style-type: none">• Work with Agency to decide the ideal location of Docks and set configurations on Dock• Authenticate Dock with Axon Evidence using admin credentials from Agency• On-site assistance, not to include physical mounting of docks
Best practice implementation planning session <ul style="list-style-type: none">• Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies• Discuss the importance of entering metadata in the field for organization purposes and other best practice for digital data management• Provide referrals of other agencies using the Axon camera devices and Axon Evidence• Recommend rollout plan based on review of shift schedules
System Admin and troubleshooting training sessions <p>Step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence</p>
Axon instructor training (Train the Trainer) <p>Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations</p>
Evidence sharing training <p>Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies</p>
End user go-live training and support sessions <ul style="list-style-type: none">• Assistance with device set up and configuration• Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet <p>Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide</p>
Post go-live review

- 3 Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an

Title: Agreement between the City of Wilmington and Axon Enterprise, Inc.

Department: Legal

Version: 7.0

Release Date: 8/6/2019

Page 9 of 12



Master Services and Purchasing Agreement

equitable adjustment in the charges or schedule.

- 4 **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.
- 5 **Access Computer Systems to Perform Services.** Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.
- 6 **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional Services and Devices to operate per the Device User Documentation. Before installation of Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Devices are to be installed ("**Installation Site**") per the environmental specifications in the Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Device User Documentation for any Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it.
- 7 **Acceptance.** When Axon completes professional Services, Axon will present an acceptance form ("**Acceptance Form**") to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional Services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within 10 business days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within 10 business days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional Services.
- 8 **Agency Network.** For work performed by Axon transiting or making use of Agency's network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency's network from any cause, except for any loss, damage, or corruption caused by Axon's gross negligence or willful misconduct or the gross negligence or willful misconduct of Axon's officers, directors, agents, employees, or subcontractors.



Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

- 1 **Term.** TAP begins after shipment of Devices covered under TAP. If Axon ships Devices in the first half of the month, TAP starts the 1st of the following month. If Axon ships Devices in the second half of the month, TAP starts the 15th of the following month. ("**TAP Term**").
- 2 **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.
- 3 **Officer Safety Plan Standard.** The Officer Safety Plan Standard ("**OSP Standard**") includes Axon Evidence Unlimited, TAP for Axon body-worn camera ("**BWC**") and Axon Dock, one TASER X2 or X26P CEW with a 4-year extended warranty, one CEW battery, and one CEW holster. Agency must purchase OSP for 5 years ("**OSP Term**"). At any time during the OSP Term, Agency may choose to receive the X2 or X26P CEW, battery and holster by providing a \$0 purchase order.
- 4 **Officer Safety Plan 7.** Both the Officer Safety Plan 7 ("**OSP 7**") and Officer Safety Plan 7 Plus ("**OSP 7 Plus**") include Axon Evidence Unlimited, TAP for Axon BWC and Axon Dock, TASER 7 Certification Plan, Axon Records, and Axon Aware. OSP 7 Plus also includes Axon Aware Plus, Signal Sidearm, Auto-Tagging, Axon Performance, Axon Redaction Assistant, and Axon Citizen for Communities. Both bundles are subject to additional terms for services in their bundle. Agency must purchase an OSP 7 subscription for every TASER 7 CEW user. Agency must accept delivery of the TASER 7 CEW and accessories as soon as available from Axon. Some offerings in the OSP 7 bundles may not be generally available at the time of Agency's OSP 7 purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an OSP 7 bundle.
- 5 **OSP 7 Term.** OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month. For phased deployments, each phase has its own start and end date based on the phase's first shipment per the above. OSP 7 runs for 5 years from the OSP 7 start date ("**OSP 7 Term**").
- 6 **TAP BWC Upgrade.** If Agency purchased 3 years of Axon Evidence Unlimited or TAP as a standalone and makes all payments, Axon will provide Agency a new Axon BWC 3 years after TAP starts ("**BWC Upgrade**"). If Agency purchases 5 years of Axon Evidence Unlimited, an OSP, or TAP as a standalone and makes all payments, Axon will provide Agency a BWC Upgrade 2.5 and 5 years after TAP starts. If Agency purchased TAP as a standalone, Axon will provide a BWC Upgrade that is the same or like Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock. If Agency purchased Axon Evidence Unlimited or an OSP, Agency may choose a new BWC of Agency's choice.
- 7 **TAP Dock Upgrade.** If Agency purchased 3 years of Dock TAP and makes all payments, Axon will provide Agency a new Axon Dock 3 years after TAP starts ("**Dock Upgrade**"). If Agency purchases 5 years of Axon Evidence Unlimited, an OSP, or Dock TAP and makes all payments, Axon will provide Agency a Dock Upgrade 2.5 and 5 years after TAP starts. The Dock Upgrade at year 2.5 will only



Master Services and Purchasing Agreement

include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Device, at Axon's option.

- 8 **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades at year 2.5 without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the second BWC and Dock Upgrade 60 days before the end of the Term without prior confirmation from Agency.
- 9 **Upgrade Change.** If Agency wants to change Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
- 10 **Return of Original Device.** If Axon provides a warranty replacement 6 months before the date of a BWC Upgrade or Dock Upgrade, the replacement is the upgrade. Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Devices to Axon or destroy the Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Devices. If Agency does not return or destroy the Devices, Axon will deactivate the serial numbers for the Devices received by Agency.
- 11 **Termination.** If Agency's payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 11.1. TAP and OSP coverage terminates as of the date of termination and no refunds will be given.
 - 11.2. Axon will not and has no obligation to provide the Upgrade Models.
 - 11.3. Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.

SUBSTITUTE NO. 3 TO ORDINANCE NO. 19-026

**AN ORDINANCE TO AMEND CHAPTERS 4 AND 34 OF THE CITY CODE TO
PROVIDE FOR CIVIL FINES FOR OWNERS OF RENTAL PROPERTIES AND
VACANT PROPERTIES AND INCREASE VACANT REGISTRATION FEES**

**Rev. 4
#4654**

Sponsor:

**Council
Member
Freel**

WHEREAS, a purpose of this legislation is to improve living conditions for residents who rent their residences and improve the housing stock of Wilmington through effective enforcement of the City Code; and

WHEREAS, City Council believes criminal penalties have not been sufficiently effective in deterring violations of the City Code provisions relating to vacant and rental properties; and

WHEREAS, City Council believes subjecting owners of vacant properties and rental properties that fail to comply with applicable City Code provisions to civil fines will have a more deterrent effect on this unlawful conduct; and

WHEREAS, City Council deems it necessary and proper to authorize the Department of Licenses and Inspections to issue citations and impose civil fines upon owners of vacant properties and rental properties that fail to comply with the requirements of Chapter 34; and

WHEREAS, City Council deems it appropriate to exclude owner-occupied properties from the provision imposing civil fines for failing to comply with the requirements of Chapter 34 and continuing with criminal enforcement for said properties; and

WHEREAS, City Council believes increased registration fees for long-standing vacant properties and increasing the fine for failure to register vacant properties will help to deter such property owners from allowing properties to remain vacant; and

WHEREAS, City Council believes that the requirement for registration of vacant properties should be increased from forty-five (45) consecutive days to six (6) months to

provide property owners with a longer period to remedy a vacancy before imposing registration requirements; and

WHEREAS, Council believes that the amendments to Section 34-37 authorizing the imposition of a civil penalty on any person owning a vacant property or a rental dwelling unit who violates any provision of Chapter 34 should expire three years from the effective date of this Substitute Ordinance unless they are re-enacted prior to such date; and

WHEREAS, City Council deems it necessary and proper to amend Chapters 4 and 34 of the City Code to effectuate these changes.

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

SECTION 1. Chapter 4 of the City Code is hereby amended by deleting Section 4-27, 119.0, entitled “Authorizations of improvements to exteriors of vacant buildings or structures; procedures; liens for the costs incurred” in its entirety, and Section 4-27, 120.0, entitled “Annual registration of vacant buildings and registration fees” in its entirety.

SECTION 2. Chapter 34 of the City Code is hereby amended by deleting the entire chapter, and adopting a new Chapter 34 of the City Code, which shall be the document attached hereto as Exhibit A. Exhibit A shall constitute and be codified as Chapter 34 of the City Code. A blackline comparison of the current Chapter 34 of the City Code and the new Chapter 34 of the City Code is attached hereto as Exhibit B.

SECTION 3. This Substitute No. 3 to Ordinance No. 19-026 shall become effective on January 1, 2021.

First Reading..... May 2, 2019
Second Reading..... May 2, 2019
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS:

This Substitute No. 3 to Ordinance No. 19-026 (“Ordinance”) makes the following amendments to Chapter 34 of the City Code:

- changes the enforcement of Chapter 34 with respect to vacant and rental properties from criminal enforcement to civil enforcement with civil fines for non-compliance;
 - this provision will expire on January 1, 2024 unless it is re-enacted prior to the expiration date;
 - this provision does not apply to owner-occupied properties; and
- makes additional changes to update and modernize Chapter 34.

This Substitute No. 3 to Ordinance No. 19-026 makes the following amendments to Chapter 4 of the City Code:

- deletes Section 4-27, 119.0 (authorization for exterior improvements to vacant structures) and Section 4-27, 120.0 (annual vacant property registration fees), and incorporates these provisions into Chapter 34;
- amends the annual vacant property registration fee provisions (previously found at Chapter 4, Section 4-27, 120.0; now located at Chapter 34, Section 34-210) to:
 - increase the registration fees for properties vacant 3 or more years;
 - require registration of buildings vacant for 6 consecutive months rather than 45 consecutive days;
 - impose a civil fine of \$500.00 for failing to register a vacant building within 30 days of the required time to register;
 - exempt vacant buildings owned by the Wilmington Neighborhood Conservancy Land Bank Corporation (“Land Bank”) from registration requirements;
 - provide that purchasers of a vacant building from the Land Bank be billed a vacant registration fee based on the duration of vacancy from the time he or she received the building from the Land Bank, rather than a vacant

- registration fee based on the duration of the vacancy prior to receiving the building; and
- provide for the abatement of past due vacant registration fees if the owner meets certain conditions.

This Ordinance shall become effective on January 1, 2021.

FISCAL IMPACT STATEMENT: The fiscal impact as a result of the changes implemented by Substitute 3 to Ordinance No. 19-026 is unknown.

W0108068

EXHIBIT A

Chapter 34 – HOUSING AND BUILDING MAINTENANCE CODE^{[11](#)}

Footnotes:

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Charter reference— General powers of city, § 1-102.

Cross reference— Buildings and building regulations, ch. 4; businesses, ch. 5; regulation of owners, operators or lessors of mobile homes or mobile home lots, § 5-100; consumer protection, ch. 9.

State Law reference— Landlord-tenant code, 25 Del. C. § 5101 et seq.; Delaware State Housing Code, 31 Del. C. § 4101 et seq.

ARTICLE I. - IN GENERAL

Sec. 34-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Basement means a portion of a building located partly underground, but having 3½ feet or more of its floor-to-ceiling height above the average level of the adjacent finished grade.

Building means a structure enclosed with exterior walls or fire walls, built, erected, or framed of component structural parts, designed for the housing shelter, enclosure or support of individuals, animals or property of any kind. When used herein “building” and “structure” shall be interchangeable except where the context clearly indicates otherwise.

Cellar means a portion of a building located partly or wholly underground, and having less than 3½ feet of its floor-to-ceiling height above the average level of the adjacent finished grade.

Civil fine shall mean a fine of \$250 unless another amount is specified in this Chapter. Where the Code provides alternative penalties or remedies, civil fines shall be cumulative and the imposition of any civil fines shall not prevent the appropriate City agency from invoking any other penalty or remedy provided for in the Code.

Dwelling means any house or building or portion thereof which is used or intended to be used in whole or in part as a home, residence or sleeping place of one or more human beings, either permanently or transiently.

Dwelling unit means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating, including a mobile home for single-family use which meets the requirements of the building and zoning codes.

Enforcement officer means the commissioner of licenses and inspections of the department of licenses and inspections of the city or his authorized representatives.

Extermination means the control and elimination of insects; rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve

as their food; by poisoning, spraying, fumigating, trapping; or by any other recognized and legal pest elimination methods approved by the enforcement officer.

Family means one adult occupant plus one or more persons who are legally related to such occupant as husband or wife, son or daughter, mother or father, mother-in-law or father-in-law, brother or sister, or any foster child or ward.

Garbage means animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Habitable room means a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers or communicating corridors, closets and storage spaces.

Hotel means any dwelling, or that part of any dwelling, in which sleeping accommodations are offered for pay by the owner or operator to four or more persons who are transients.

Hotel unit means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping in a hotel, but not for cooking.

Infestation means the presence, within or around a dwelling, of any insects, rodents or other pests.

Multiple dwelling means any dwelling containing more than one dwelling unit.

Occupant means any person, over one year of age, living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

Operator means any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

Owner means any person who, alone or jointly or severally with others, shall have:

- (1) Legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
- (2) Charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

Plumbing means all of the following supplied facilities and equipment: gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catchbasins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

Premises means a lot, piece or parcel of land including the buildings or structures thereon.

Rental dwelling unit means any room or group of rooms located within one or more buildings and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating, and which is let or rented to another for the purpose of living therein. Rental property shall have the same meaning as rental dwelling unit.

Remediation costs shall mean any and all costs and expenses incurred by the City of Wilmington to eliminate or remedy a violation of this chapter, including but not limited to, any demolition costs or repair costs.

Rooming house means any dwelling, or part thereof, containing four or more rooming units designed to be used for sleeping accommodations and to be let, for compensation, by the owner or operator thereof to four or more persons who are not husband or wife, son or daughter, mother or father, sister or brother, father-in-law or mother-in-law of the operator or owner.

Rooming unit means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Rubbish means combustible and noncombustible waste materials, except garbage; and such term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust, and the residue from the burning of wood, coal, coke and other combustible material.

Structure means an object or other construction created by the combination of materials for the purpose of occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land, provided the word "structure" shall be construed when used herein as though followed by the phrase "or part or parts thereof and all equipment therein," unless the context clearly requires a different meaning.

Supplied means paid for, furnished or provided by, or under the control of, the owner or operator.

Unfit dwelling or dwelling unit means any dwelling or dwelling unit which:

- (1) Is so damaged, decayed, dilapidated, unsanitary, difficult to heat, unsafe or vermin-infested that it creates a hazard to the health or welfare of the occupants or the community;
- (2) Lacks illumination, ventilation or sanitary facilities adequate to protect the health or welfare of the public; or
- (3) Because of its general condition or location is unsanitary or otherwise dangerous to the health or welfare of the occupants or the public.

Whenever the words "dwelling," "dwelling unit," "rooming house," "rooming unit," "hotel," "hotel unit" and "premises," are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

Vacant means a building or structure for which no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, nontransient basis.

Week means a seven day period.

(Code 1968, § 34-1)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 34-2. - Compliance required.

- (a) All repairs, additions, alterations or replacements to structures, dwellings, dwelling units or premises to bring such structures, dwellings, dwelling units or premises into compliance with this chapter shall conform to all provisions of this Code and other city ordinances and regulations governing the construction, replacement, repair or alteration of such structures, dwellings, dwelling units and premises and the facilities and equipment contained therein.
- (b) Any owner-occupant who violates this chapter shall not be subject to a civil fine as provided for in section 34-37(d), but rather shall only be subject to criminal enforcement as provided for in section 34-37(a)-(c).

(Code 1968, § 34-2)

Sec. 34-3. - Construction of chapter—Authority of city relative to nuisances.

Nothing in this chapter shall be construed or interpreted to in any way impair or limit the authority of the city or any department or agency thereof to define and declare nuisances and to cause the removal or abatement of nuisances by appropriate proceedings as provided by law.

(Code 1968, § 34-12)

Sec. 34-4. - Same—Other city regulations.

- (a) The provisions of this chapter shall not be construed to abrogate the responsibility of any person to comply with the other provisions of this Code and any other zoning, building, fire, safety, electrical, plumbing or public health ordinance or regulation of the city.
- (b) In any case where a provision of this chapter is found to be in conflict with any other provision of this Code or with a provision of any zoning, building, fire, safety, electrical, plumbing or public health ordinance of this city, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.

(Code 1968, § 34-13)

Sec. 34-5. - Right of access of owner, etc., for purposes of making required repairs, etc.

Every occupant of a structure, dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such structure, dwelling or dwelling unit, or its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or with any lawful rule or regulation adopted or any lawful order issued pursuant to the provisions of this chapter.

(Code 1968, § 34-3)

Sec. 34-6. - Reprisals against tenant for reporting violations prohibited.

- (a) No owner, landlord, firm or corporation or any agent, officer or employee thereof shall threaten to take reprisals against any tenant for reporting or complaining of the existence or belief of the existence of any building maintenance, housing, health, sanitary or building code violation to any governmental authority.
- (b) Receipt of a notice to quit the leased premises without cause within 90 days after making such report or complaint shall create a rebuttable presumption that such notice is a reprisal against the tenant for making such report or complaint.

(Code 1968, § 34-7.1)

Sec. 34-7. - Unlawful lease-purchase practices.

- (a) It shall be unlawful for any owner to accept or retain any deposit of sums of money pursuant to any purported installment contract of sale, or any purported rental with an option to buy, or any purported lease-purchase of any dwelling, dwelling unit or rooming house in the city from any person in the absence of a duly executed written agreement for the same. It shall further be unlawful for any owner to refuse to make full refund of any deposit of sums of money paid by any person for such purported purposes in the absence of a duly executed written agreement for the same or to refuse to any such person occupancy of the subject premises without making full refund of any such deposit.
- (b) Complaints by any persons alleging violations of the provisions of subsection (a) of this section shall be filed with the office of the commissioner of licenses and inspections for investigation.
- (c) Any owner violating the provisions of this section shall be subject to and liable for a Civil Fine and any applicable remediation costs and shall make full restitution of any and all deposits of money paid to such owner by any person in violation of this section.

(Code 1968, § 34-17.2)

Sec. 34-8. - Proof of state of mind not required for strict liability violations.

It is unnecessary to prove the defendant's state of mind with regard to offenses under this chapter which constitute violations as the legislative purpose is to impose strict liability for such offenses.

(Ord. No. 94-002, § 6, 2-24-94)

Secs. 34-9—34-35. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

DIVISION 1. - GENERALLY

Sec. 34-36. - Enforcement generally; initiation of prosecution for violations.

- (a) This chapter shall be enforced by the commissioner of licenses and inspections or his authorized representatives or designees in the department of licenses and inspections, and the commissioner of licenses and inspections or any such authorized representative shall initiate criminal prosecutions for violations in the manner and form provided by law.
- (b) The department of licenses and inspections shall maintain records relating to the inspection of each property and shall make available to the office of the city solicitor such records for purposes of review and use as evidence in prosecutions for violations and the administration and enforcement of this chapter.

(Code 1968, § 34-9)

Sec. 34-37. - Violations and penalties generally.

- (a) Except as otherwise specifically provided by this chapter and subsection (d) of this section, any person violating any order of the commissioner of licenses and inspections based on the provisions of this chapter or any provision of any rule or regulation adopted by the department of licenses and inspections and approved by resolution of the city council for the enforcement or implementation of this chapter, or violating any provision of this chapter, or any provision of any such rule or regulation, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250.00 for each offense of violating such order, or provision of this chapter, or provision of such rule or regulation up to a maximum fine of \$1,000.00 for each such offense, together with the costs and disbursements of prosecution. For any conviction of a violation that is the second conviction for the same violation as a previous violation which has not been corrected, the minimum fine for any person or corporation shall be not less than \$500.00 nor more than \$2,500.00; for the third conviction not less than \$1,000.00 nor more than \$5,000.00, which shall not be suspended; for the fourth conviction \$1,500.00; for the fifth and subsequent conviction of the same violation that still has not been corrected, the minimum fine for each conviction shall be not less than \$5,000.00, which shall not be suspended. Upon conviction of a violation of this chapter, the court may order the defendant to correct the violation by a date certain. If the defendant fails to correct the violation by the court ordered date, the court may impose a fine of \$50.00 per day to be calculated from the date of conviction to the date by which the court had ordered the violation to be corrected.
- (b) After conviction and punishment for violation of such order of the commissioner of licenses and inspections based upon the provisions of this chapter or any provision of any rule or regulation adopted by the department of licenses and inspections and approved by resolution of the city council for the enforcement or implementation of this chapter, if such person shall continue in violation of such order, such person shall be liable for further prosecution, conviction and punishment upon such same order, without any necessity of the commissioner of licenses and inspections issuing a new order until such order has been complied with.
- (c) Each week's failure to comply with any order of the commissioner of licenses and inspections based upon the provisions of this chapter or the provisions of any rule or regulation adopted by the department of licenses and inspections and approved by resolution of the city council for the enforcement and implementation of this chapter, and each week's

failure to comply with any provision of this chapter or any such rule or regulation shall constitute a distinct and separate offense and be punishable as such.

- (d) With respect to vacant properties and rental dwelling units only, any person owning a vacant property or a rental dwelling unit who violates any order of the commissioner of licenses and inspections based on the provisions of this chapter or any provision of any rule or regulation adopted by the department of licenses and inspections for the enforcement or implementation of this chapter, or violating any provision of this chapter, or any provision of any such rule or regulation shall be immediately subject to and liable for a civil fine of \$250 for such violation and any applicable remediation costs. Each week's failure following any applicable cure period to comply with any order of the commissioner of licenses and inspections based upon the provisions of this chapter or the provisions of any rule or regulation adopted by the department of licenses and inspections for the enforcement and implementation of this chapter, and each week's failure following any applicable cure period to comply with any provision of this chapter or any such rule or regulation shall constitute a distinct and separate offense and be punishable by a fine in the same amount. Pursuant to title 25, chapter 29 of the Delaware Code, any civil fine imposed pursuant to the provisions of this subsection shall give rise to a lien. Any unpaid amounts of such fines may be added to local property tax billings for the property which was the subject of said violations. A civil fine authorized pursuant to this subsection shall not apply to owner occupied properties. The civil fines authorized in this subsection shall expire on January 1, 2024 unless they are re-enacted prior to such expiration date. This expiration date shall not affect any liens created pursuant to this subsection prior the expiration date.

(Code 1968, § 34-8; Ord. No. 96-020, § 2, 4-12-96; Ord. No. 98-124, § 2, 10-19-98; Ord. No. 99-082(sub 1), § 3, 11-4-99; Ord. No. 99-008, § 3, 5-17-01; Ord. No. 03-075(sub 1), § 14, 12-4-03)

Sec. 34-38. - Notice of violation—Warning -- Contents, service, appeals.

- (a) Whenever the commissioner 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 chapter or of any rule or regulation adopted pursuant thereto, he shall give notice of such violation or alleged violation to the person responsible therefor. 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 30 days from the date of such notice for the performance of any act it requires, unless otherwise provided in this chapter or in the event that the commissioner 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 or of occupants of an adjacent property; or the dwelling is deemed unfit for habitation, in which case 3 days are required for the performance of any act it requires.

- (b) The notice of violation shall be served upon the owner or the operator or the occupant, as the case may require. Such notice shall be deemed to be properly served upon such owner or upon such operator or upon such occupant by mailing a copy thereof by either mail service or other form of delivery to both the property address and such other address(es) that have been designated for the receipt of property tax bills for such property, or if the letter with the copy is returned with a note showing it has not been delivered to him, by posting a copy thereof in a conspicuous place on or about the dwelling affected by the notice of violation. The commissioner 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 such occupant 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. When done in conjunction with certified or registered mail service, a copy of the notice may be posted in a conspicuous place on the premises and such a procedure shall be deemed the equivalent of personal service.
- (c) The owner, operator or occupant may appeal the notice to the board of license and inspection review. The appeal shall be in writing and filed within twenty calendar days after the receipt of the notice of violation. 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 shall be refunded if the appeal is successful. The board of license and inspection review shall hear and decide appeals in accordance with its duly prescribed and promulgated rules, regulations and procedures.
- (d) Any owner, operator or occupant, 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 chapter and may be penalized pursuant to section 34-37.

(Code 1968, § 34-18(a)—(f); Ord. No. 91-082, § 1, 11-21-91; Ord. No. 95-074, § 1, 12-14-95; Ord. No. 96-077, § 1, 12-5-96; Ord. No. 98-124, § 2, 10-19-98)

Sec. 34-39. - Same—When not required.

Notwithstanding any other provision of this chapter to the contrary, whenever any person fails to obtain the rental inspection of any dwelling, habitation or living unit as required by the provisions of section 34-45(a) or the limitation of occupancy notification required by section 34-86, no notice of such violation of section 34-45(a) and section 34-86 shall be required, before civil fines are imposed or legal proceedings, actions or prosecutions are brought.

(Code 1968, § 34-18(g); Ord. No. 96-077, § 1, 12-5-96)

Sec. 34-40. – Deleted.

Sec. 34-41. - Inspection of structures, buildings, dwellings, etc., generally; right of entry of enforcement officer.

- (a) The enforcement officer is hereby authorized and directed to make inspections to determine the condition of structures, buildings, dwellings, dwelling units, hotel units, rooming units and premises located within this city, in order that he may perform his duty of safeguarding the health and safety of the occupants of structures and the general public. For the purpose of making such inspections the enforcement officer is hereby authorized to enter, examine and survey between the hours of 8:00 a.m. and 5:00 p.m. all structures, buildings, dwellings, dwelling units, hotel units, rooming units and premises. The owner or occupant of every structure, building, dwelling, dwelling unit, hotel unit, and rooming unit, or the person in charge thereof, shall give the enforcement officer free access to such structure, building, dwelling, dwelling unit, hotel unit or rooming unit and its premises during such time for the purpose of such inspection, examination and survey; provided, that such inspection, examination or survey shall not have for its purpose the undue harassment of such owner or occupant and that such inspection, examination or survey shall be made so as to cause the least amount of inconvenience to such owner or occupant consistent with the efficient performance of the duties of the enforcement officer.
- (b) Nothing in this section shall be construed to prohibit the entry of the enforcement officer:
 - (1) At any time when an actual emergency which tends to create an immediate danger to public safety exists; or
 - (2) At any time when such an inspection, examination or survey may be requested by such owner or occupant.
- (c) Any person who opposes or impedes an officer or authorized agent or employee of the department of licenses and inspections in the execution of his duty under this chapter shall be deemed guilty of a violation of this chapter. In addition, if an officer or authorized agent or employee of the department of licenses and inspections is denied entrance to a building for purposes of inspection, he may, upon showing of probable cause, obtain a warrant for purposes of entering and inspecting the building, dwelling, land or premises.

(Code 1968, § 34-6; Ord. No. 94-002, § 5, 2-24-94)

Charter reference— Inspections generally, §§ 5-704, 8-412.

Sec. 34-42. – Deleted.

Sec. 34-43. - No inspection of property prior to sale or other transfer to be required.

- (a) No inspection of any dwelling, dwelling unit, hotel, or rooming house in the city shall be required nor shall any inspection be performed by the department of licenses and inspection for enforcement or implementation of the provisions of this chapter and the rules and regulations of the department prior to or in connection with any agreement of sale or conveyance or other transfer of any such property. This provision shall not affect inspections other than those heretofore required in connection with the sale or other transfer of property.

- (b) The provisions of this section shall not be construed as in any way a limitation upon or modification of any of the other inspection, notice, compliance and enforcement provisions of this chapter.

(Code 1968, § 34-17)

Sec. 34-44. - Recordation of certain agreements of sale; responsibility of seller for violations.

- (a) Whenever an agreement of sale is entered into containing provisions for the retention of legal title by the seller and providing for deferred installment payments by the buyer for the sale of any dwelling, dwelling unit, rooming house or hotel in the city, the seller shall record such agreement in the county recorder's office.
- (b) The responsibility for complying with this chapter shall not be affected by such sales agreement. The seller shall remain responsible for code violation compliance imposed upon the owner or person in charge and the buyer shall have the burden of assuming the tenant's responsibilities enumerated in this chapter.

(Code 1968, § 34-17.1)

Sec. 34-45. - Inspections of rented or leased dwellings or buildings for residential occupancy, to include installment sales; no warranty of condition.

(a) *Inspection of a rental dwelling or building.* Any person who leases or rents any dwelling or any dwelling unit, regardless of whether that person has a valid rental dwelling business license, shall cause the same to be inspected by the commissioner of licenses and inspections, or his designee every three years. An initial rental inspection shall be required for each such dwelling or building consistent with a rental inspection schedule set by the commissioner of licenses and inspections. The three-year period referenced in this subsection shall be calculated based upon the rental inspection schedule set by the commissioner of licenses and inspections. Inspections of dwellings or buildings required under this subsection may consist of a random sampling of units in the dwelling or building as determined by the commissioner of licenses and inspections or his designee. The purpose of all rental inspections shall be enforcement of the provisions of the City Code concerning life safety items which include, but are not limited to: smoke/carbon monoxide detectors, heating sources, hot water sources, electrical systems, sanitary disposal sources, water damage, roofs and means of egress and ingress. The provisions of this section shall apply to the lease or rental of any dwelling or dwelling unit whether it is to be leased to the current tenant or to a new tenant and whether the same is to be done by the current owner or a new owner.

- (1) If an inspection reveals the building has no violations, the commissioner of licenses and inspections may extend the inspection period required under this subsection for a subsequent inspection from three years to four years.
- (2) If the dwelling unit is unoccupied at the time of the rental inspection, any violations cited during the rental inspection shall be corrected prior to permitting any tenant or lessee or any other persons to occupy such dwelling or dwelling unit. If the dwelling unit is occupied at the time of the rental inspection, any violations cited

during the rental inspection shall be corrected within the time period designated by the commissioner of the department of licenses and inspections or his designee, and the property owner shall cause dwelling unit to be re-inspected upon correction of the violation(s).

- (b) *Installment sales.* Whenever any person sells any dwelling, dwelling unit, building or rooming house in the city wherein there is a retention of title by the seller and a deferred installment payment plan is set forth in the contract or lease agreement, the seller shall comply with the inspection requirements of subsection (a) of this section and the provisions of section 34-43 shall not be applicable to any such seller of property who or which is subject to the provisions of this subsection.
- (c) *Disclaimer of warranty of condition.* Nothing contained in this section shall be construed as any manner of warranty or guarantee by the city or by its agent, the department of licenses and inspections, that any particular property at any particular time fully complies with the provisions of this chapter and all rules and regulations adopted pursuant thereto or that any violations of this chapter and the rules and regulations adopted pursuant thereto cited by the department of licenses and inspections are necessarily the only violations existing in or upon a particular property at any particular time or that corrections of violations of this chapter and any rules and regulations adopted pursuant thereto which have been cited by the department of licenses and inspections are necessarily full and complete corrections such that no other violations exist in or upon any particular property at any particular time.
- (d) *Fee.* If more than one re-inspection is necessary to determine compliance with any violation cited during the initial rental inspection, an additional fee in the amount of \$50.00 will be assessed for each re-inspection, commencing with a second re-inspection. Said re-inspection fee may be waived for good cause shown at the discretion of the code enforcement officer.
- (e) *Condition of business license.* Compliance with the requirements of this section is a condition of a rental dwelling unit business license issued pursuant to chapter 5, sec. 5-92.

(Code 1968, § 34-17.3; Ord. No. 99-083(sub 1), § 1, 11-4-99; Ord. No. 06-016(sub 1), § 1, 4-6-06)

Secs. 34-46—34-60. - Reserved.

DIVISION 2. - DEPARTMENT OF LICENSES AND INSPECTIONS

Sec. 34-61. - Power and duty of department—Specific functions enumerated.

The department of licenses and inspections shall be the department primarily responsible for the administration and enforcement of this chapter. In that regard, it shall:

- (1) Maintain code enforcement performance records and prepare management reports;
 - (a) On a quarterly basis, the commissioner of licenses and inspections shall provide a report to the City Council committee charged with oversight of the department. Such report shall include information related to the results of rental inspections performed and any other information the commissioner believes should be included;

- (2) Maintain files for all housing code enforcement inspections;
- (3) Conduct housing inspections in response to citizen complaints to the extent possible;
- (4) Conduct systematic housing inspections;
- (5) Supervise the conduct of all city-sponsored demolition activities;
- (6) Required to conduct annual inspections of at least 1,500 rental dwelling units located on separate premises.
- (7) Conduct sanitation code enforcement inspections;
- (8) Conduct building inspections for all privately financed construction;
- (9) Conduct all final inspections of properties involved in rehabilitation loan and grant programs; and
- (10) Whenever conducting any code enforcement inspection, distribute information regarding the housing programs of the city and rental programs to owner occupants and tenant occupants.

(Code 1968, § 34-3.1)

Sec. 34-62. - Same—Generally; inspection not to imply warranty.

- (a) The department of licenses and inspections is hereby granted the sole and exclusive power and duty to enforce and administer the provisions of this chapter and all rules and regulations adopted pursuant thereto.
- (b) The commissioner of licenses and inspections shall require that the language of disclaimer be printed beneath a heading in boldface print of "DISCLAIMER OF WARRANTY" on all notices of violations, orders and letters of compliance issued by the department of licenses and inspections.
- (c) Nothing contained in this section shall be construed as in any way a warranty or guarantee by the city or its agent, the department of licenses and inspections, that:
 - (1) Any particular property is at any particular time in full and complete compliance with the provisions of this building maintenance and housing code or with the provisions of any other state or municipal statutes, ordinances, rules or regulations.
 - (2) A particular property which has been cited for a particular violation of the housing code does not at any particular time have other violations of this housing code or of any other state or municipal statute, ordinance, rule or regulation.
 - (3) A property where corrections of violations of this building maintenance and housing code have been satisfactorily made does not have at any particular time other violations of this building maintenance and housing code or of any other state or municipal statute, ordinance, rule or regulation which has not been cited.
- (d) Neither the city nor its agent, the department of licenses and inspections, warrants or guarantees and the city and its agent, the department of licenses and inspections, hereby expressly disclaim any warranty or guarantee of the condition of any particular property at

any particular time. The condition of any property and its compliance with the provisions of this chapter and with any other state or municipal statute, ordinance rule or regulation shall at all times be the responsibility of the owner or his legal agent.

(Code 1968, § 34-4)

Sec. 34-63. - Rules and regulations.

The department of licenses and inspections is hereby authorized and empowered to adopt rules and regulations necessary for the proper enforcement of this chapter; provided, that any such rules and regulations are approved by the City's administrative board. Such rules and regulations adopted by such department and approved by the City's administrative board shall have the same force and effect as the provisions of this chapter, and the penalty for violation thereof shall be the same as the penalty for violation of the provisions of this chapter.

(Code 1968, § 34-5)

Sec. 34-64. - Liability of officers, etc., of department of licenses and inspections.

No member, officer or agent of the department of licenses and inspections shall be sued or held to liability for any act done or omitted in good faith and with ordinary discretion on behalf of or under such department or pursuant to the charter of the city or any statutes, ordinances or rules and regulations under which such department has authority to act.

(Code 1968, § 34-7)

State Law reference— Tort immunity of local officials, 10 Del. C. § 4011.

Sec. 34-65. – Emergencies and emergency orders.

(a) Whenever the commissioner of licenses and inspections finds that an emergency exists with respect to a building, structure or other property condition which requires immediate action to protect the public health or safety, he may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that action be taken as he deems necessary to address the emergency. Notwithstanding the other provisions of this chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately.

(b) When, in the opinion of the building official, there is an actual and immediate danger of collapse or failure of a building or structure or any part thereof that would endanger life or public health or safety, the code official shall cause the necessary work to be done, whether it be by demolition, shoring or other method as determined by the building official, in order to render such building or structure, or part thereof, temporarily or permanently safe, whether or not the legal procedure herein prescribed has been instituted.

(c) Following the performance of any work by the city or its designee to address an emergency that exists with respect to a building, structure or other property condition, the

commissioner of licenses and inspections shall provide a notice to the owner or owners of the applicable building, structure or real property that describes the work that was performed.

(d) Any amounts incurred by the City or its designee to address an emergency that exists with respect to a building, structure or other property condition, along with legal interest accrued thereon from the date of expenditure, shall be reimbursed to the city, on demand, by the person or persons who were the owner or owners of the applicable building, structure or real property at the time such work was commenced. The city may maintain an action of law in debt or assumpsit against the owner or owners to recover the sums of money so expended, plus lawful interest and costs.

(e) Any amounts incurred by the City or its designee to address an emergency that exists with respect to a building, structure or other property condition, along with legal interest accrued thereon from the date of expenditure, shall be a lien on the lands and premises on which such work was performed.

(Code 1968, § 34-24)

Sec. 34-66. - Right of commissioner to bring legal proceedings, etc.

No provision or requirement contained in this chapter for a hearing shall in any way whatsoever affect or impair the right of the commissioner of licenses and inspections or city solicitor, or their respective designees, to bring at any time such legal proceedings, actions or prosecutions as are otherwise permitted by law or ordinance.

(Code 1968, § 34-23)

Secs. 34-67—34-85. - Reserved.

DIVISION 3. - LIMITATION OF OCCUPANCY NOTIFICATION AND RENTAL REGISTRATION

Sec. 34-86. - Limitation of occupancy notification and rental registration—Required.

- (a) Upon approval and issuance of the business license required by section 5-34 for the renting or letting of dwelling units, the department of licenses and inspections shall inspect each dwelling unit for the purpose of determining the maximum permitted occupancy thereof in accordance with the applicable provisions of this chapter. The commissioner of licenses and inspections or his authorized representative shall issue to the owner or operator of the dwelling unit or units a limitation of occupancy notification stating the maximum occupancy permitted in each dwelling unit. The owner or operator shall not rent or let a dwelling unit until a limitation of occupancy notification is issued by the department of licenses and inspections for that unit.
- (b) Such limitation of occupancy notification shall not be construed or interpreted as implying in any way that the particular dwelling or dwelling unit is in compliance or conformity with the provisions of this chapter or any rule or regulation for the enforcement or

implementation of this chapter adopted by the department of licenses and inspections or any ordinance or other law or regulation of the city or the state.

- (c) Any owner or operator who fails to obtain a business license required by section 5-34 or register a dwelling unit or who rents or lets to another a dwelling unit prior to the issuance of a limitation of occupancy notification shall be subject to and liable for a civil fine of \$500.00 per rental unit. This provision supersedes the penalty provided in section 1-5.

(Code 1968, § 34-11; Ord. No. 92-053(sub 1), § 21(a), 7-2-92; Ord. No. 96-014, § 1, 4-16-96; Ord. No. 03-074, § 4, 11-20-03)

Sec. 34-87. - Reserved.

Editor's note— Ord. No. 03-074, § 5, adopted Nov. 20, 2003, repealed section 34-87 in its entirety. Former section 34-87 pertained to application and fee for rental unit registration, and derived from the Code of 1968, § 34-14; Ord. No. 96-014, § 1, adopted April 16, 1996.

Sec. 34-88. - Same—Copy to be given to tenant.

The owner or operator of any dwelling or dwelling unit to whom a limitation of occupancy notification has been issued under the provisions of this division shall give the person to whom the dwelling or dwelling unit is let or rented a copy of the notification at the time of letting or renting.

(Code 1968, § 34-16; Ord. No. 96-014, § 1, 4-16-96; Ord. No. 03-074, § 6, 11-20-03)

Secs. 34-89—34-110. - Reserved.

Editor's note— Ord. No. 03-074, § 7, adopted Nov. 20, 2003, repealed section 34-89 in its entirety. Former section 34-89 pertained to certificates submitted with application for registration, and derived from the Code of 1968, § 34-15.

DIVISION 4. - CONDEMNATION AND PLACARDING OF UNFIT DWELLINGS, ETC.

Sec. 34-111. - Compliance.

The designation of buildings, structures, dwellings or dwelling units as unfit for human habitation and the procedure for the condemnation and placarding of such buildings, structures, unfit dwellings or dwelling units shall be carried out in compliance with the requirements set forth in this division.

(Code 1968, § 34-25)

Sec. 34-112. – Right of condemnation.

- (a) Any building, structure, dwelling or dwelling unit which the commissioner of licenses and inspections shall find to have any of the following defects may be condemned as unfit for human habitation:
 - (1) One which is so damaged, decayed, dilapidated, unsanitary, difficult to heat, unsafe or vermin-infested that it creates a hazard to the health or welfare of the occupants or of the public;
 - (2) One which lacks illumination, ventilation or sanitary facilities adequate to protect the health or welfare of the occupants or of the public;
 - (3) One which, because of its general condition or location, is unsanitary or otherwise dangerous to the health or welfare of the occupants or of the public.
 - (4) One which lacks adequate exit facilities; or
 - (5) One which constitutes a fire hazard.
- (b) Any building, structure, dwelling or dwelling unit may be condemned as unfit for human habitation by the commissioner of licenses and inspections if the owner or occupant fails to comply with any order based on the provisions of this chapter or any rules or regulations adopted pursuant thereto; provided, that such building, structure, dwelling or dwelling unit is, in the opinion of the commissioner of licenses and inspections unfit for human habitation by reason of such failure to comply.

(Code 1968, § 34-26)

Sec. 34-113. - Notice of condemnation.

Whenever the commissioner of licenses and inspections has condemned a building, structure, dwelling or dwelling unit as unfit for human habitation, he shall give notice of such condemnation to the owner. 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;
- (4) Include a description of the repairs and improvements required to bring the condemned building, structure, dwelling or dwelling unit into compliance with the provisions of this chapter and any rules or regulations adopted pursuant thereto;
- (5) Include an explanation of the owner's right to appeal the notice in accordance with the provisions of section 34-38; and
- (6) Be served upon the owner; provided, that such notice shall be deemed to be properly served upon such owner if a copy thereof is delivered to him personally or if not found by leaving a copy thereof at his usual place of abode, in the presence of someone of the family of suitable age and discretion who shall be informed of the contents thereof, or by sending a copy thereof by registered mail with return receipt requested to his last known address, or, if the registered letter with the copy is returned with a receipt

showing it has not been delivered to him by posting a copy thereof in a conspicuous place in or about the dwelling affected by the notice.

(Code 1968, § 34-27)

Sec. 34-114. - Appeal.

The owner of a building, structure, dwelling or dwelling unit that has been condemned as being unfit for human habitation may appeal such determination as provided in section 34-38(c).

(Code 1968, § 34-28; Ord. No. 94-002, § 5, 2-24-94)

Sec. 34-115. - Placarding generally.

After a building, structure, dwelling or dwelling unit has been condemned as being unfit for human habitation, the commissioner of licenses and inspections shall cause a placard to be posted to such building, structure, dwelling or dwelling unit, in one or more conspicuous places, bearing the following words: "Condemned as Unfit for Human Habitation."

(Code 1968, § 34-29; Ord. No. 94-002, § 5, 2-24-94)

Sec. 34-116. - Vacation of structure, dwellings, etc., condemned and placarded.

- (a) Any building, structure, dwelling or dwelling unit which has been condemned and placarded as being unfit for human habitation by the commissioner of licenses and inspections shall be vacated within a reasonable time as required by such commissioner, but in any event not later than ten days after the property has been condemned and placarded. No owner or operator shall permit any person to occupy any building, structure, dwelling or dwelling unit which has been condemned and placarded by the commissioner of licenses and inspections after the date on which such commissioner has required the affected building, structure, dwelling or dwelling unit to be vacated.
- (b) Any owner or operator or tenant or any other person who occupies any building, structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation by the commissioner of licenses and inspections shall do so entirely at that person's own risk. It shall be the duty of the owner or operator or the agent of the owner or operator to ensure that any building, structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation is vacated and not occupied. Nothing contained in this section shall be construed as in any manner imposing upon the city or its agent, the department of licenses and inspections, any liability whatsoever for the health or safety of any person who occupies or continues to occupy any building, structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation.
- (c) Any person who refuses to comply with an order of the commissioner of the department of licenses and inspections to vacate and continues to occupy any building, structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation, or any person who occupies any such building, structure, dwelling or dwelling unit after

placarding, may be forcibly removed from the premises by the police department and the premises shall thereafter be closed. The premises shall not again be occupied until the defect(s) which caused the building, structure, or dwelling to be declared to be unfit is/are remedied and written approval of the commissioner is obtained.

- (d) Any violation of this Section 34-116 is subject to penalty pursuant to section 34-37 and any applicable remediation costs.

(Code 1968, § 34-30; Ord. No. 99-110, § 1, 10-21-99; Ord. No. 00-072, § 1, 10-19-00)

Sec. 34-117. - Use of condemned and placarded dwellings, etc.; removal of placard.

No structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the commissioner of licenses and inspections. The commissioner of licenses and inspections shall remove such placard whenever the defects upon which the condemnation and placarding action were based have been eliminated.

(Code 1968, § 34-31)

Sec. 34-118. - Unauthorized defacing or removal of placard.

No person shall deface or remove the placard from any structure, dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except as provided in section 34-117.

(Code 1968, § 34-32)

Sec. 34-119. - Condemned dwellings declared nuisances, etc.

All structures and dwellings condemned as unfit for human habitation within the provisions of this chapter are hereby declared to be public nuisances and shall be repaired or vacated as provided by this chapter and shall be subject to such other actions as are available at law.

(Code 1968, § 34-33)

Secs. 34-120—34-150. - Reserved.

DIVISION 5. – RENT WITHHOLDING

Sec. 34-151. - When tenant authorized to withhold rent.

A tenant shall be authorized to withhold the payment of rent when a notice has been issued by the commissioner of licenses and inspections to the owner or operator of a dwelling unit notifying such owner or operator:

(1) That the dwelling unit or part thereof is in violation of this chapter, and directing the correction of the violation if, in the opinion of the commissioner, the violation is such as to constructively evict the tenant from a portion of the premises occupied by him; or

(2) That the dwelling unit or part thereof is in violation of this chapter, and that such owner or operator has previously been subject to a notice from the department of licenses and inspections directing that such violation be corrected within a stated reasonable time, but that upon reinspection by such department after such reasonable time has elapsed, some or all of the violations have been found to be not corrected and in the opinion of the commissioner of licenses and inspections, such owner or operator has not made a reasonable effort to comply with such notice.

(Code 1968, § 34-34)

Sec. 34-152. - Tenant's affidavit.

(a) A tenant or occupant of a dwelling unit which he believes to be in violation of this chapter and qualified under section 34-151 shall present to the department of licenses and inspections an affidavit containing the following information:

(1) A description of the alleged violation and a reference to the applicable section of this chapter;

(2) The name and address of the owner or operator of the premises and the name and the address of the person to whom rent is paid if other than the owner or operator; and

(3) The date on which rent is due to be paid by the tenant, the amount of rent, and the rent period, i.e., weekly, monthly, etc.

(b) In every case wherein this procedure is adopted the tenant shall be instructed by the commissioner of licenses and inspections as to his rights, remedies and responsibilities under this chapter.

(Code 1968, § 34-35)

Sec. 34-153. - Inspection of premises; order to correct or notice of existence, etc., of violations.

Within three working days of the receipt of an affidavit as provided for by section 34-152 and pursuant to section 34-151(1), the department of licenses and inspections shall inspect the dwelling unit described therein. Within three additional working days, six working days from the date of the receipt of the affidavit by such department, the commissioner of licenses and inspections shall issue an order directing the correction of violations which are found to exist on the premises and notifying the owner or operator that violations exist which are judged by the commissioner of licenses and inspections to constitute a constructive eviction of the tenant and that due to such constructive eviction such tenant has been authorized to withhold the payment of rent pursuant to section 34-151(1) and that such withheld rent shall be paid into an escrow fund to be disposed of as provided by section 34-158.

(Code 1968, § 34-36)

Sec. 34-154. - Reinspection of premises.

If upon reinspection of a dwelling unit after proper notice to the owner or operator and a reasonable compliance period, some or all of the violations cited in such notice have been found not corrected, and, if in the opinion of the commissioner of licenses and inspections, such owner or operator has not made a reasonable effort to comply with such notice, and, if a tenant or occupant has presented to the department of licenses and inspections an affidavit as provided for by section 34-152 and pursuant to section 34-151(2), the commissioner of licenses and inspections within three working days of the receipt of such affidavit shall issue an order to such owner or operator citing such uncorrected violations and such judgment of a lack of reasonable effort to comply, and further notifying the owner or operator that such tenant or occupant has been authorized to withhold the payment of rent pursuant to section 34-151(2) and that such withheld rent shall be paid into an escrow fund to be disposed of as provided by section 34-159.

(Code 1968, § 34-36.1)

Sec. 34-155. - Date withholding proceedings to begin.

The date of the notice or order issued by the commissioner of licenses and inspections following an inspection of the premises described in section 34-153 shall be the date upon which rent withholding proceedings shall begin as provided in the following sections of this division.

(Code 1968, § 34-37)

Sec. 34-156. - Payment of withheld rent to city.

The tenant or occupant shall withhold the rent due the owner or operator of the dwelling unit as authorized and provided by this division and shall pay the same when due to the city. Such tenant shall continue to make such rental payments to the city when due until such time as he is directed to discontinue such payments by the commissioner of licenses and inspections. Rent paid to the city shall be deposited in an escrow account and shall not be commingled with other funds of the city. There shall be no release of funds maintained in this account except upon order of the commissioner of licenses and inspections or a court of competent jurisdiction.

(Code 1968, § 34-38; Ord. No. 91-050, § 1(34-38), 8-1-91)

Sec. 34-157. - Failure to pay rent to city.

No landlord, owner, operator, firm, corporation or any agent, officer or employee thereof shall bring any proceeding to dispossess the tenant during the pendency of rent withholding proceeding under this division. However, if the tenant or occupant, after initiating a rent withholding proceeding, fails to pay the rent when due to the city, the owner or operator of such dwelling unit shall have such rights or remedies at law or in equity in the same manner as if this division did not exist. The commissioner or the tenant may initiate a prosecution in the municipal court of the city against any landlord, owner, operator, firm, corporation or any agent, officer or employee thereof who violates this section and the violator shall be subject to the penalties in accordance with section 34-37.

(Code 1968, § 34-38.1; Ord. No. 91-050, § 1, 8-1-91)

Sec. 34-158. - Using withheld rent to correct violations.

Whenever a dwelling unit has been subjected to rent withholding proceedings as authorized by section 34-151(1) due to a constructive eviction, the commissioner of licenses and inspections shall require the owner or operator of such dwelling unit to provide, within five working days of the notice of violations having become an order, reasonable assurances in writing and signed by such owner or operator that the violations cited in such notice will be corrected within the time allowed. In addition:

(1) If the commissioner receives such reasonable assurances in writing and signed by the owner or operator, he shall allow such owner or operator to proceed with the necessary work; except, however, if the commissioner at any time during the period of time allowed has reasonable grounds to believe that such work is not proceeding in a timely manner, he may initiate the procedure for contracting out the necessary work as provided in this section. The department of licenses and inspections shall reinspect such dwelling unit within three days after the day by which such violations were ordered to be corrected. If and when such violations have been corrected and the dwelling unit is no longer in violation of this chapter and the rent deposited in escrow has not been forfeited under subsection (3) of this section, the commissioner of licenses and inspections shall order the release and payment of such rents deposited in escrow to the owner or operator without interest, except for such sums as may be due as fines and/or costs under this chapter. The tenant or occupant shall thereupon resume rent payments directly to the owner, operator or his agent. If upon reinspection the owner or operator is found to have failed to comply with the order issued by the commissioner of licenses and inspections, the commissioner may declare the premises unfit for human habitation as provided in this chapter or initiate prosecution in the municipal court, either or both. In any such case, the rent deposited with the city shall not be returned to the owner or operator until such time as the commissioner of licenses and inspections certifies to the city that the dwelling unit complies with the provisions of this chapter or has been demolished and that such withheld rent is not subject to the forfeiture under subsection (3) of this section nor to any fines and/or costs under this chapter.

(2) If the commissioner does not receive such reasonable assurances in writing, signed by the owner or operator or, if having received such assurances, he determines at any time during the time allowed that there exist reasonable grounds to believe that such necessary work is not proceeding in a timely manner, he may, in his sole discretion and without the necessity of seeking the consent of the landlord, direct that the rent so collected by the city be used for the correction of any other violations. The commissioner of licenses and inspections shall make a request of the procurement division to receive bids from qualified city-licensed contractors. The procurement division of the department of finance shall award the contract to the successful bidder. Notwithstanding the provision

of this chapter that the tenant or occupant shall have the withheld rent in the escrow fund forfeited to him if he vacates the dwelling unit due to the constructive eviction, failure to so vacate before the signing of a contract between the city and such successful bidder shall waive the right of such tenant or occupant to such forfeiture. Any cost of the work contracted which exceeds the moneys collected shall be paid by the city which then shall recover such payments by continuing to collect rent from the tenant until all such costs shall have been recovered. If for any reason the costs cannot be thus recovered, the city shall have a right of action in debt or assumpsit against the owner or operator personally.

(3) Any violations not noted by the commissioner or his authorized representative at the time of the original inspection and which in the opinion of the commissioner or his authorized representative have resulted from tenant abuse or misuse shall not be the responsibility of the landlord.

(4) Any work approved by the commissioner of licenses and inspections to be done according to the above procedures shall not be interrupted or interfered with by the owner or operator in any way whatsoever. If, however, the owner or operator completes the specified work prior to commencement of work by the contractor and such work is completed to the satisfaction of the commissioner, he shall be responsible only for a \$25.00 charge to reinstate his occupancy permit; except, that he shall also be liable for any violations of this chapter.

(5) After the completion of the corrections, the landlord shall permit the tenant to remain on the premises at the original rental amount for at least six months; provided, however, that the tenant abides by his obligations and responsibilities as to the rent and reasonable care of the premises.

(Code 1968, § 34-39; Ord. No. 91-050, § 1, 8-1-91)

Sec. 34-159. - Contract for repairs.

(a) Whenever a dwelling unit has been subjected to rent withholding proceedings as authorized by section 34-151(2) due to lack of reasonable effort by the owner or operator to comply with a violation notice, the commissioner of licenses and inspections in his sole discretion and without the necessity of seeking consent of the landlord may immediately direct the rent so collected by the city toward the correction of any of the violations. The commissioner of licenses and inspections shall make a request of the procurement division to receive bids from qualified city-licensed contractors. The procurement division of the department of finance shall award the contract to the successful bidder. Any cost of the work contracted for which exceeds the moneys collected shall be paid by the city which shall recover for such payments by continuing to collect rent from the tenant until all such costs have been recovered. If for any reason the costs cannot thus be recovered, the department of finance shall have a right of action in debt or assumpsit against the owner or operator personally.

(b) Any violations not noted by the commissioner or his authorized representative at the time of the original inspection and which in the opinion of the commissioner or his authorized representative have resulted from tenant abuse or misuse shall not be the responsibility of the landlord.

(c) Any work approved by the commissioner of licenses and inspections to be done according to the above procedures shall not be interrupted or interfered with by the owner or operator in any way whatsoever. If, however, the owner or operator completes the specified work prior to commencement of work by the contractor and such work is completed to the satisfaction of the commissioner, he shall be responsible only for a \$25.00 charge to reinstate his occupancy permit; except, that he shall also be liable for any violations of this chapter. After completion of the corrections, the landlord shall permit the tenant to remain on the premises at the original rental for at least six months; provided, however, the tenants abide by all the tenant's obligations and responsibilities as to rent and reasonable care of the premises.

(Code 1968, § 34-39.1; Ord. No. 91-050, § 1, 8-1-91)

Sec. 34-160. - Forfeiture of withheld rent.

Whenever a dwelling, dwelling unit, rooming house or hotel has been subjected to rental withholding proceedings as authorized by this chapter and the owner or operator has failed to correct violations of this chapter; and the owner or operator responsible for compliance with the provisions of this chapter enters into a contract for the sale of the real estate or permits the lease to expire or voluntarily demolishes the structure; or the commissioner of licenses and inspections orders the structure to be demolished because of its unsafe condition; or the tenant or occupant vacates the structure due to a constructive eviction found by the commissioner of licenses and inspections under section 34-151(2); the withheld rents in the possession of the city shall be paid to the tenant or occupant of the premises upon the order of the commissioner of licenses and inspections or of a court of competent jurisdiction. The person receiving such forfeiture payment shall present a receipt or other written proof demonstrating that such person is entitled to receive the withheld rents.

(Code 1968, § 34-39.2; Ord. No. 91-050, § 1, 8-1-91)

Sec. 34-161. - Termination of agreement; funds in escrow.

Whenever the commissioner of licenses and inspections shall determine that the rent withholding provisions of this division are no longer applicable to effect the work to be done, either by the owner, agent or operator, or that the repairs shall not or will not be made by the city, pursuant to section 34-158, the rent withholding agreement shall be terminated. Funds, if any, held in escrow at the time of termination shall be disbursed to the owner, agent, or operator, or to the tenant, or to both, as directed by the commissioner of licenses and inspections. Any future rental payments shall be the responsibility of the tenant.

(Code 1968, § 34-39.3; Ord. No. 91-050, § 1(34-39.3), 8-1-91)

Sec. 34-162. - Eviction proceedings prohibited during proceedings.

Except as otherwise provided by section 34-157, during the pendency of any proceedings under this division for rent withholding, no owner or operator shall bring any proceedings to dispossess the tenant for nonpayment of rent or any action for rent or rental value.

(Code 1968, § 34-40)

Secs. 34-163—34-185. - Reserved.

DIVISION 6. - OCCUPANCY OF CERTAIN RENTAL UNITS, VIOLATING CHAPTER, UNDER CERTAIN CONDITIONS

Sec. 34-186. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commissioner of licenses and inspections means the commissioner or his duly authorized delegate.

Landlord means the owner of a dwelling unit or a building containing multiple dwelling units for residential purposes.

(Code 1968, § 34-40.1)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 34-187. - Landlord's permit.

Whenever the owner of property shall by affidavit swear or affirm to the commissioner of licenses and inspections that because of vandalism, malicious mischief or any other valid security reason, he has been unable to meet all of the requirements of the city building maintenance and housing code as they relate to those requirements other than those basic to human safety and health, the commissioner, upon the applicant's payment of a \$25.00 fee, may grant a temporary certificate allowing such premises to be rented under the following conditions:

- (1) That the landlord have a bona fide tenant who is willing to rent the premises in their present condition and resides therein.
- (2) That the landlord shall have already engaged the services of a licensed contractor and obtained the necessary permits if required. Wherein the landlord states that he intends to correct the violation himself, he will be required to sign an affidavit to this effect. All work must be completed within a 90-day period.

(Code 1968, § 34-40.2(a))

Sec. 34-188. - Payment of rent to city.

Until all violations of this chapter existing at the time occupancy is permitted and the new violations which occur not as a result of tenant abuse are corrected, the entire rent will be paid to the department of finance of the city. As soon as compliance is achieved, the tenant shall

make future payments directly to the landlord and a regular certificate of occupancy shall issue.

(Code 1968, § 34-40.2(b))

Sec. 34-189. - Use of rent to correct violations.

The commissioner of licenses and inspections in his sole discretion and without the necessity of seeking further permission from the landlord may direct the rent collected by the department of finance toward the correction of any of the violations according to a progress chart which shall be agreed upon by the commissioner and landlord at the time the temporary occupancy permit is issued.

(Code 1968, § 34-40.2(c))

Sec. 34-190. - Procurement and records division to receive bids.

The commissioner of licenses and inspections shall make a request of the procurement and records division to receive bids from qualified city-licensed contractors. The procurement and records division of the department of finance will award the work to the successful bidder. The cost of the work contracted shall at no time exceed the monies collected for the subject unit.

(Code 1968, § 34-40.2(d); Ord. No. 92-053(sub 1), § 1(c), 7-2-92)

Sec. 34-191. - Violations not noted in original inspection.

Any violations not noted by the commissioner or his delegate at the time of the original inspection and which in the opinion of the commissioner or his delegate have resulted from tenant abuse or misuse shall not be the responsibility of the landlord.

(Code 1968, § 34-40.2(e))

Sec. 34-192. - Landlord not to interrupt work.

Any work not begun by the landlord in the specified time and subsequently approved by the commissioner of licenses and inspections to be done according to the procedures in this chapter shall not be interrupted or interfered with by the landlord in any way whatsoever. The commissioner may in his discretion, however, extend the time allotted in the progress chart for good cause shown. If the landlord, however, completes the specified work prior to the commencement of work by the contractor, and such work is completed to the satisfaction of the commissioner, he shall be responsible only for a \$50.00 late charge in order to reinstate his occupancy permit.

(Code 1968, § 34-40.2(f))

Sec. 34-193. - Disposition of funds.

All funds collected by the department of finance shall be expended to correct deficiencies, it being the express purpose of this division to improve housing units and not otherwise. If the tenant vacates the unit, voluntarily or otherwise, the funds so held shall be held without further application for a period of 90 days or when a new tenant is found, whichever first occurs, and a

new progress chart shall be instituted between the landlord and commissioner. If after 90 days a new tenant is not found, the fund shall be returned to the landlord without interest.

(Code 1968, § 34-40.2(g))

Sec. 34-194. - Tenant's rights, remedies and responsibilities.

In every case wherein this procedure is adopted, the tenant shall be instructed by the commissioner as to his rights, remedies and responsibilities under this division.

(Code 1968, § 34-40.2(h))

Sec. 34-195. - Landlord to sign agreement.

Every landlord applying for a temporary permit under this division shall sign an agreement to the effect that he understands its provisions and agrees to abide by them. Any landlord who in his opinion is aggrieved by the action of the commissioner may appeal such decision to the board of license and inspection review.

(Code 1968, § 34-40.2(i))

Sec. 34-196. - Rights of tenants and landlord not affected.

This division shall in no way affect the right of any tenant or landlord under any existing state law regarding landlords and tenants in effect at the time of its passage.

(Code 1968, § 34-40.3)

Secs. 34-197—34-199. - Reserved.

DIVISION 7. IMPROVEMENTS TO EXTERIORS OF VACANT BUILDINGS

34-200. – Authorizations of improvements to exteriors of vacant buildings or structures; procedures; liens for the costs incurred.

- (a) Authorization. The Department of Licenses and Inspections is authorized to initiate the making of improvements to the exteriors of vacant buildings or structures in accordance with this section and pursuant to the provisions of 25 Del. C. ch. 29 (§ 2901 et seq.) and 25 Del. C. ch. 46 (§ 4601 et seq.).

(1) Eligible buildings or structures. If the owner has failed to rehabilitate or demolish:

- i. A building that is vacant or abandoned and deemed to be unsafe, or
- ii. Any other building or structure that is vacant and amendable to rehabilitation if made secure, the commissioner of licenses and inspections may recommend that exterior improvements be made or caused to be made to such building or structure so as to render the building or structure safe and secure and to prevent further structural damage from rain and other natural causes, and that a lien be duly

recorded in order that the city may recover the costs incurred by public expenditure for the same.

- (2) Types of improvements. Exterior improvements, authorized herein, may include, but are not limited to: Repairs to or replacement of any of the structural components of such buildings or structures, sidewalks in the right-of-way or on the lot on which the building or structure is located, steps, porches, railings, columns, windows, doors, exterior painting, brick pointing and roofing, and any other repairs or replacements deemed appropriate to protect and secure the structural integrity of the building or structure and to prevent further damage that would render the building or structure unsafe. The costs incurred by the city for any such improvements shall be referred to as "exterior improvement costs." Such exterior improvement costs incurred by the city shall be recorded by lien in accordance with the provisions of 25 Del. C. ch. 46 (§ 4601 et seq.).
- (3) Approval and certification of improvements to be made. The commissioner of licenses and inspections, his duly authorized designee, the director of real estate and housing and the director of planning, or the duly authorized designee of each of the same, shall by majority approval of a written authorization certify that specific exterior improvements shall be made to a building or structure, identified by street address and tax parcel number, in accordance with this subsection. Such written authorization shall be forwarded to the procurement and records division and to the finance director with specifications prepared for the particular improvements authorized to be made and for no other improvements. In an emergency affecting the public safety as determined by the commissioner of licenses and inspections or his designee, the rendering of exterior improvements to secure the structure may be expedited in lieu of the requirements of this certification subsection.
- (4) Notice to owner. When exterior improvements have been authorized as aforesaid and specifications for the same have been prepared, the department of licenses and inspections shall provide notice to the record owner or owners of the subject building or structure and to any record lien holders that such exterior improvements will be undertaken and the date of commencement of the same. For purposes of this subsection, the mailing of a certified letter, return receipt requested, at least 30 days prior to the commencement of the exterior improvements, to the last known address of the record owner, owners or lien holders and notifying same of the address of the property to be improved, the tax parcel number, the condition of the property and the legal right of the city to obtain a judgment against the owner and a lien against the property after completion of the exterior improvements, shall be deemed to be sufficient notice.

- (b) Costs incurred as debt owing to city. Whatever expenses are incurred in relation to authorized exterior improvements pursuant to this subsection shall be paid by the city treasurer out of monies in the treasury and the owner or owners shall be jointly and severally liable to the city for the full amount so expended. Whenever exterior improvement costs have been incurred as aforesaid, the expenditure of public funds for exterior improvements to any vacant or abandoned building deemed to be unsafe or any other vacant building or structure, following notice to the owners, being the costs so incurred, with legal interest thereon from the date of expenditure, shall be reimbursed to the city, on demand, by the person or persons who were the owner or owners of such building or structure at the time such work of exterior improvement commenced. The city may maintain an action of law in debt or assumpsit against the owner or owners to recover the sums of money so expended, plus lawful interest and cost. When any person is found guilty, whether by trial or admission, of violating any provision of this chapter or chapter 4, in any instance in which such person, at the time of sentencing for such violation, also has not reimbursed the city for the costs incurred by the city in making or causing to be made any exterior improvements, pursuant to this subsection, to any building or structure regarding which such person or persons have been found guilty, as provided, the court shall order such person or persons to make full restitution to the city for such exterior improvement costs in addition to and not in lieu of any fines which the court may impose.
- (c) Entering of lien. When the city expends public funds for the purpose of exterior improvements to any vacant or abandoned building or structure deemed to be unsafe or any other vacant building or structure within the city, after such notice as aforesaid, the city may enter a lien for the amount so expended, with interest accrued thereon, on the lands and premises on which such work of exterior improvements was performed by means of the department of finance and the city solicitor forwarding directions to the prothonotary for New Castle County for the entering of such exterior improvement liens in a docket for the same.
- (d) Satisfaction. When the department of finance and the city solicitor have determined the exterior improvement costs and interest, the entering of the lien shall be done by forwarding to the prothonotary the information as aforesaid. Whenever any such lien is satisfied by payment, the department of finance and the city solicitor may so advise the prothonotary in order that there shall be entered in the prothonotary's records the date of final payment and the words 'satisfied in full' pursuant to 25 Del. C. § 4603(d).
- (e) Rules and regulations. The department of licenses and inspections may adopt rules and regulations as deemed necessary and proper for the administration of this subsection, subject to approval by the administrative board.

Secs. 34-201 – 34-209. – Reserved.

DIVISION 8 – REGISTRATION OF VACANT BUILDINGS AND REGISTRATION FEES

Sec. 34-210. – Annual registration of vacant buildings and registration fees.

- (a) Purpose. The purpose of this section requiring the registration of all vacant buildings and the payment of registration fees is to assist the city government, particularly the department of licenses and inspections (DLI) in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the city to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this chapter, the health and sanitation code, and any other applicable provisions of the Wilmington City Code.
- (b) *Definitions and applicability; registration statement and fees.*
 - (1) *Definitions. For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:*
 - (A) *Boarded:* A building or structure subject to the provisions of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.
 - (B) *Exterior maintenance and major systems:* The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, drive-way, if any, area of the lot, as applicable and as enforced by the department of licenses and inspections.
 - (C) *Occupied:* Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid city business license, or the most recent, federal, state, or city income tax statements indicating that the subject property is the official business or

- residence address of the person or business claiming occupancy; or proof of pre-rental inspection.
- (D) *Occupancy ready*: Any building that is vacant, but has been recently rehabilitated and a certificate of occupancy or certificate of completion has been issued by the department of licenses and inspections allowing the building to be lawfully occupied, or if the property has not been recently rehabilitated, the property meets all minimum code requirements and may be immediately occupied. Whether a building is "occupancy ready" shall be determined by department of licenses and inspections through an inspection of the building. The classification "occupancy ready" shall only apply to the vacant registration requirements of this section, and does not apply to any other section of the code.
 - (E) *Open*: A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and, or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.
 - (F) *Owner*: An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.
 - (G) *Vacant*: A building or structure shall be deemed to be vacant if no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, nontransient basis.
- (2) *Applicability*. The requirements of this section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 6 consecutive months and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant at least 6 consecutive months. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the department of licenses and inspections. The registration fee(s) as required by subsection (b)(3) of this section shall be billed by the department of licenses and inspections and shall be paid by the first business day of January of each year. For purposes of this section, the following shall also be applicable:
- (A) If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the

corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the secretary of state;

- (B) If an estate, the name and business address of the executor of the estate;
- (C) If a trust, the name and address of all trustees, grantors, and beneficiaries;
- (D) If a partnership, the names and residence addresses of all partners with an interest of ten percent or greater;
- (E) If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten percent or greater;
- (F) If an individual person, the name and residence address of that individual person.

- (3) *Registration statement and fees; local agent.* If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open, vacant and boarded, or occupancy ready and shall be required within 30 days of whenever any building has remained vacant for at least six consecutive months and within 30 days of a change in ownership of a building that has been vacant at least six consecutive months. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering. The owner of the vacant property as of November 1 of each calendar year shall be responsible for the payment of the non-refundable registration fee, except buildings deemed "occupancy ready" by the department of licenses and inspections and actively for sale or lease shall be exempt from imposition of the annual registration fee. However, buildings deemed "occupancy ready" by the department of licenses and inspections shall only be exempt from imposition of the annual registration fee for no more than 2 consecutive billing cycles. Except as provided in subsection (b)(3)(ix)(A) below, said fee shall be billed by the department of licenses and inspections and based on the duration of the vacancy as determined by the following scale:

- (i.) No fee for properties that are vacant for less than one year;
- (ii.) \$500.00 for properties that are vacant for at least one year but less than two years;
- (iii.) \$1,000.00 for properties that are vacant for at least two years but less than three years;

- (iv.) \$5,000.00 for properties that are vacant for at least three years but less than four years;
 - (v.) \$10,000.00 for properties that are vacant for at least four years but less than five years;
 - (vi.) \$12,000.00 for properties that are vacant for at least five years, but less than six years;
 - (vii.) \$14,000.00 for properties that are vacant for at least six years, but less than seven years;
 - (viii.) \$16,000.00 for properties that are vacant for at least seven years, but less than eight years; and
 - (ix.) \$18,000.00 for properties that are vacant for at least eight years, and an additional \$2,000.00 for each year in excess of eight years.
 - (A) The vacant registration fee billed to a housing provider meeting the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code and who receives a vacant building directly from the city or who receives public funds from the city for the acquisition, rehabilitation or redevelopment of a vacant building shall not be based on the duration of the vacancy prior to the non-profit housing provider receiving the vacant building from the city or receiving the funds from the city, but rather from the time it received the vacant building or funds from the city. This provision shall be retroactive to May 1, 2003.
 - (B) The vacant registration fee billed to the purchaser of a property from the Wilmington Neighborhood Conservancy Land Bank Corporation shall not be based on the duration of the vacancy prior to purchase, but rather from the time the purchaser received the vacant building from the Wilmington Neighborhood Conservancy Land Bank Corporation.
- (4) Appeal rights. The owner shall have the right to appeal the imposition of the registration fees to the Licenses and Inspection Review Board, upon filing an application in writing with the applicable \$50.00 non-refundable filing fee to the Department of Licenses and Inspections no later than 30 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy, as defined in Section 34-500(b)(1)(C).
- (5) One time waiver of registration fee. A one-time waiver of the registration fee, or an extension of a waiver for up to 12 months from the date of the billing statement immediately following the waiver, may be granted by the Commissioner of Licenses and Inspections upon application of the owner and upon review and advice of the law department, within 30 calendar days from the date of the bill for the registration fee, if the owner
- (i.) Demonstrate with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and

- (ii.) Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or
 - (iii.) Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period.
- (6) Four-year waiver. Upon application by the owner and satisfaction of subsection (b)(5) above, the commissioner may, upon advice and review of the law department, grant a one-time four year waiver of the registration fee, or an extension of a waiver for up to 12 months from the date of the billing statement immediately following the waiver, if the owner meets the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code. With regard to an extension of a waiver only, the time period of the extension shall commence from the date of the billing statement (November 1 of the applicable calendar year) and, in no event, shall the extension exceed 12 months. An extension of a waiver shall only be granted once.
- (7) Delinquent registration fees as a lien. After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to subsection (b) (4) above, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the city, and the city may commence a civil action to collect such the unpaid debt.
- (c) Duty to amend registration statement. If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same to contact the department of licenses and inspections within 30 days of the occurrence of such change and advise the department in writing of those changes.
- (d) Exceptions. This section shall not apply to any building owned by the United States, the state, the city, nor to any of their respective agencies or political subdivisions and the Wilmington Neighborhood Conservancy Land Bank Corporation.
- (e) Violations; penalties.
 - (1) The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall be subject to and liable for a fine pursuant to sec. 34-37.
 - (2) The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building as required by subsection (b)(3) above, shall be subject to and liable for a civil fine of \$500.00.
- (f) Abatement of delinquent vacant registration fees. Upon application of the owner, the city, in its discretion, may enter into an agreement with the owner of a vacant property

whereby the city agrees to void all delinquent vacant registration fees owed by the owner if the owner obtains a certificate of occupancy or certificate of completion for the property within six (6) months of the date of the agreement such that the building may be lawfully occupied.

- (1) Eligibility. At the time of application, the owner must provide the following documentation to the Commissioner of Licenses and Inspections:
 - (i) Proof that he or she owns the property; and
 - (ii) A detailed scope of the work required to obtain a certificate of occupancy or certificate of completion for the property; and
 - (iii) Objective, satisfactory proof that he or she has adequate funds and/or financing to complete all work necessary to obtain a certificate of occupancy or certificate of completion within six (6) months of the date of the agreement; and
 - (iv) If applicable, satisfactory proof that a licensed contractor has been engaged to perform the required work; and
 - (v) Satisfactory proof that the intended use of the property conforms with all zoning requirements; and
 - (vi) The owner must be current on all other city obligations, including but not limited to charges related to taxes, water, sewer, stormwater, permits, registration fees, business licenses, parking tickets, civil penalties, and red light tickets.
- (2) If the owner satisfies subsection (f)(1), and the city enters into an agreement with the owner as contemplated by subsection (f), the city shall not file a monition action against the subject property for the length of the agreement. However, the delinquent vacant registration fees shall remain a lien against the property.
- (3) Delinquent vacant registration fees subject to the agreement contemplated by subsection (f) shall only be voided under this subsection if the owner obtains a certificate of occupancy or certificate of completion for the property within six (6) months of the date of the agreement such that the building may be lawfully occupied. If the owner fails to obtain a certificate of occupancy or certificate of completion within the six (6) month time period, the delinquent vacant registration fees remain liens on the property, and the property is subject to monition by the city.
- (4) A decision by the city not to enter into an agreement under this subsection shall not be subject to appeal.

Secs. 34-211 – 34-230. – Reserved.

ARTICLE III. - MINIMUM STANDARDS AND REQUIREMENTS^[2]

Footnotes:

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Cross reference— Lead paint, § 13-131 et seq.

DIVISION 1. - GENERALLY

Sec. 34-231. - Basic equipment and facilities.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking or eating therein, which does not comply with the following requirements:

- (1) *Kitchen sink.* Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to the city water and sewer system.
- (2) *Toilet room, toilet and lavatory.* Every dwelling unit shall contain a room which affords privacy to a person with such room and which is equipped with a flush water closet and a lavatory basin in good working condition and properly connected to the city water and sewer system.
- (3) *Bathroom, bathtub or shower.* Every dwelling unit shall contain, within a room which affords privacy to a person within such room, a bathtub or shower in good working condition and properly connected to the city water and sewer system, and these facilities may be situate in the same room as those required by subsection (2) of this section.
- (4) *Hot and cold water.* Every kitchen sink, lavatory basin and bathtub or shower required under the provisions of subsections (1), (2) and (3) of this section shall be properly connected with both hot and cold water lines.
- (5) *Garbage disposal and garbage and rubbish storage facilities.* Every dwelling unit shall have adequate garbage disposal facilities or garbage storage containers and adequate rubbish storage facilities, the type and location of which are approved by the enforcement officer. Garbage shall be kept in storage containers separate from rubbish storage containers. Every dwelling unit shall have a sufficient number of metal or plastic containers covered with a watertight metal or plastic lid and of a capacity of not less than 15 gallons nor more than 100 gallons.
- (6) *Water-heating facilities.* Every dwelling unit shall have supplied water-heating facilities which are properly installed, are maintained in a safe and good working condition, are properly connected with hot water lines required under the provisions of subsection (4) of this section, and are capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than 120 degrees Fahrenheit. Such supplied water-heating facilities shall be capable of meeting the requirements of this subsection when the dwelling or dwelling unit heating facilities required under the provisions of section 34-234(5) are not in operation.
- (7) *Means of egress.* Every dwelling unit shall have safe, unobstructed means of egress leading to safe and open space at ground level which complies with applicable city and state regulations.
- (8) *Maintenance of plumbing and plumbing fixtures.* All plumbing, water closets and other plumbing fixtures in a dwelling unit shall be maintained in good order and repair and in accordance with the requirements of the city building code and plumbing code.

- (9) *Penalty.* Any violation of this section is subject to a penalty pursuant to section 34-37. In accordance with section 34-37, any owner-occupant who violates this section shall not be subject to a civil fine as provided for in section 34-37(d), but rather shall only be subject to sections 34-37(a)-(c).

(Code 1968, § 34-41; Ord. No. 06-054(sub 1), § 3, 10-19-06)

Sec. 34-232. - Smoke-detection devices; requirements.

(a) *Installation required.*

- (1) *Dwellings.* All structures and dwellings shall be equipped with smoke detectors and fire protection equipment as required by the provisions of chapter 4 and the city's building code.
 - (2) *Unlawful acts:* In addition to and not in lieu of any other provisions of this section and of this Code, it shall be unlawful for any person responsible for the installation of a smoke detector to fail to so install it. It shall be unlawful for any person to tamper with, damage or render inoperative, such as, but not exclusively, by disconnecting electrical wiring or by removing the batteries from any smoke detector.
- (b) *Type of detection devices.* Detection devices shall be of the photo-electric or ionization type and shall be electric, 110 volts, alternating current, or battery-powered smoke detectors, Underwriters' Laboratory or Factory Mutual Approved.
- (1) Electric units shall be direct-wired on a separate circuit on the line side of service equipment, immediately fused with proper size fuse. Detector wiring shall be minimum 14 gauge wire. All wiring shall comply with the National Electric Code and shall be performed by registered, licensed electricians.
 - (2) Battery-powered units shall be permitted only in structures built prior to 1983 or not substantially renovated since 1983. Where battery-powered units are permitted, the battery shall be of the type approved for the detector and shall provide a minimum of 12 months' service. Battery-powered units shall be equipped with an audible sounding device to alert occupants of the need for battery replacements. In rental dwelling units where battery-powered devices are permitted, after installation of the detection device at the landlord's expense, in accordance with subsection (a) of this section, it shall be the tenant's responsibility, unless otherwise provided in the tenant's lease agreement, to:
 - a. Make periodic inspections of the unit to determine that it is in proper working order;
 - b. Notify the landlord of any malfunction of such detection device which the landlord shall then repair or replace at his own expense; and
 - c. Replace the batteries when necessary during the entire term of the rental agreement.
- (c) *Audible signal.* Detection devices shall be equipped with an audible sounding device that provides a steady signal with a minimum decibel rating of 85 decibels.
- (d) *Number of devices required.* A minimum of one device shall be required in one-story and two-story single-family dwelling units. Dwelling units consisting of three or more stories

shall be equipped with a minimum of two devices. Buildings containing two or more dwelling units shall be equipped with a minimum of one device for each individual dwelling unit. The minimum requirement of this section is that one detector shall be installed on the first floor level at or near the stairs leading to the second floor level, or one detector shall be placed at the second floor level at or near the top of the stairs. In dwellings having basements or cellars, an additional smoke detector shall be installed at or near the top of the stairs leading from the basement or cellar to the first floor level. This section shall not limit the number of detectors required in residential buildings, where the design, arrangement or configuration of the interior would require additional detectors in additional areas of the protected premises, when in the judgment of the authority having jurisdiction, placement of additional detectors is necessary for the protection of the occupants.

- (e) *Authority having jurisdiction.* The commissioner of licenses and inspections and the fire marshal shall have concurrent jurisdiction for purposes of enforcing compliance with this section. The authority vested in the commissioner of licenses and inspections for enforcement of the provisions of the housing and building codes for purposes of conformity with the provisions of this section may be delegated to the office of the fire marshal.
- (f) *Supervision of enforcement.* All general contractors, subcontractors and their agents who install electric, 110-volt alternating-current powered smoke-detection devices shall be registered with the office of the city fire marshal in order to sell, distribute, furnish or install smoke-detection equipment within the city. It shall be the responsibility of the contractor, installer, or seller of electrical 110-volt, alternating current-powered smoke detectors to certify in writing to the commissioner of licenses and inspections that such device is in compliance with this section. This subsection shall not apply to persons who perform the actual installation of smoke detectors in dwelling units they own; however, such installations shall still require any applicable inspections required by the building code.

(Code 1968, § 34-41.1; Ord. No. 92-053(sub 1), § 21(b), 7-2-92)

State Law reference— Basic equipment and facilities, 31 Del. C. § 4116 et seq.; residential smoke detectors, 16 Del. C. § 1622 et seq.

Sec. 34-232.1. - Carbon monoxide alarm devices; requirements.

Every building of residential or mixed occupancy, in which there are one or more residential units, shall be equipped with approved carbon monoxide alarms in accordance with this chapter.

- (1) *Location.* Not less than one approved carbon monoxide alarm shall be installed in each residential unit. The alarm shall be installed within 40 feet of each room used for sleeping purposes. The carbon monoxide alarm should be placed so it will be easily audible in all sleeping rooms. The carbon monoxide alarm shall be installed according to the manufacturer's instructions.

In every hotel and motel, one approved carbon monoxide alarm shall be installed for every 10,000 square feet of floor area, or fraction thereof, (1) on every floor on which a fossil fuel-burning boiler or furnace is located, and (2) on every floor on which sleeping rooms are heated by any type of warm air heating plant that burns fossil fuel. The floor area shall be computed separately for each floor. The carbon monoxide alarm should be

placed so it will be easily audible to all sleeping rooms. The carbon monoxide detector shall be installed according to the manufacturer's specifications.

- (2) *Exemptions.* The following residential units and hotels/motels shall not be required to have carbon monoxide alarms:
 - a. A residential unit in a building or hotel/motel that does not rely on combustion of fossil fuel for heat, ventilation or hot water, and is not sufficiently close to any ventilation source of carbon monoxide, as determined by the commissioner of licenses and inspections or his or her designee, to receive carbon monoxide from that source.
 - b. A residential unit or hotel/motel that:
 1. Is heated by steam, hot water or electric heat;
 2. Is not connected by ductwork or ventilation shafts to any room containing a fossil fuel-burning boiler or heater; and
 3. Is not sufficiently close to any ventilated source of carbon monoxide, as determined by the commissioner of licenses and inspections or his designee, to receive carbon monoxide from that source.
- (3) *Dwelling units heated by space heaters.* Each dwelling unit or hotel/motel employing space heating equipment that is located within the dwelling unit or hotel/motel room and that burns fossil fuel shall be equipped with at least one carbon monoxide alarm. The carbon monoxide alarm should be installed according to the manufacturer's specifications.
- (4) *Standards.* Every approved carbon monoxide alarm shall comply with all applicable federal and state regulations, and shall bear the label of a nationally recognized standard testing laboratory, and shall meet the standard of UL 2034 or its equivalent. The commissioner of licenses and inspections may issue rules and regulations not inconsistent with the provisions of this chapter, for the implementation and administration of the provisions of this chapter relating to carbon monoxide alarms.
- (5) *Battery removal violations.* It shall be unlawful for any person to remove batteries from a carbon monoxide alarm required under this chapter, or in any way to make inoperable a carbon monoxide alarm required under this chapter, except that this provision shall not apply to any building owner or manager or his agent in the normal procedure of replacing batteries.
- (6) *Owner's and tenant's responsibilities.* The owner of a structure shall install the carbon monoxide alarm(s) and supply required carbon monoxide testing and maintenance information to at least one adult tenant in each dwelling unit. The tenant shall test, provide general maintenance, and replace required batteries for carbon monoxide alarms located in the tenant's dwelling unit.
- (7) *Building heated by central fossil fuel powered heating unit.* The owner or owner's agent of every residential building with more than one unit within the building that is heated by one main central fossil fuel powered heating unit, and that is not exempted under this section, shall install one approved carbon monoxide alarm on the floor containing the

central heating unit. The owner shall test, provide general maintenance, and replace required batteries for carbon monoxide alarms located in this area. The carbon monoxide alarm shall be installed according to the manufacturer's instructions.

- (8) *Fossil fuel defined.* Whenever used in this chapter, the term "fossil fuel" shall include coal, natural gas, kerosene, oil, propane and wood.

(Ord. No. 01-003(sub 1), § 1, 3-15-01)

Sec. 34-233. - Mobile home fire safety requirements.

Any mobile home shall be equipped with smoke detection devices as described in section 34-232 of both the electric type and the battery-powered type as backup detection devices, both of which detection devices shall be located outside of bedrooms, between the bedrooms, and the living room. Each mobile home shall be equipped with at least one handheld fire extinguisher to be located in the kitchen area. No propane bottled gas shall be permitted in any mobile home unless an alternative fuel supply is not available. No portable kerosene stove or other fuel burning portable appliances for heating or cooking shall be permitted; portable means any stove except one designed for and connected to a flue outlet. Each mobile home shall be equipped with an automatic sprinkler system of a type approved by the commissioner of licenses and inspections and the fire department. Violations of this section shall be punishable as provided in section 34-232 for violations of that section.

(Code 1968, § 34-41.2)

State Law reference— Fire safety requirements, 31 Del. C. § 4118.

Sec. 34-234. - Light, ventilation and heating; pest control.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- (1) *Window or skylight for light in habitable rooms.* Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be ten percent of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light-obstruction structures are located less than three feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least ten percent of the total floor area of such room.
- (2) *Ventilation of habitable rooms.* Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total of openable window area in every habitable room shall be equal to

at least 50 percent of the minimum window area size or minimum skylight-type window size, as required in subsection (1) of this section, except where there is supplied some other device affording adequate ventilation and approved by the enforcement officer.

- (3) *Light and ventilation for bathrooms, etc.* Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms contained in subsections (1) and (2) of this section.
- (4) *Electrical outlets and fixtures.* Every habitable room of any dwelling shall contain at least one electric convenience outlet. Every such outlet and fixture shall be properly installed, shall be maintained in good and safe working condition, and shall be connected to the source of electric power in a safe manner.
- (5) *Heating facilities generally.* Every dwelling shall have supplied heating facilities which are properly installed, are maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments in every dwelling unit located therein to a temperature of at least 68 degrees Fahrenheit, at a distance of three feet above flood level when the outdoor temperature is at or above zero degrees Fahrenheit.
- (6) *Space heater requirements.* Every supplied space heater shall comply with all of the following requirements:
 - a. No space heater burning solid, liquid or gaseous fuels shall be of the portable type.
 - b. Every space heater burning solid, liquid or gaseous fuel shall be properly vented to a chimney or duct leading to outdoor space.
 - c. Every space heater shall have a fire-resistant panel beneath it.
 - d. Every space heater shall comply with all the requirements of the building code and fire code of the city and the equipment shall be approved by the electrical department of the Middle Department Association of Fire Underwriters.
- (7) *Minimum temperatures.* Every owner or operator of any dwelling who rents, leases or lets for human habitation any dwelling unit contained within such dwelling on terms, either expressed or implied, to supply or furnish heat to the occupants thereof, shall maintain therein a minimum temperature of 68 degrees Fahrenheit between the hours of 6:00 a.m. and 10:00 p.m. of each day and 60 degrees Fahrenheit between the hours of 10:00 p.m. and 6:00 a.m. of each day, whenever the outdoor temperature shall fall below 50 degrees Fahrenheit during such hours. Whenever a dwelling is heated by means of a furnace, boiler or other heating apparatus under the control of the owner or operator of the dwelling, such owner or operator, in the absence of a written contract or agreement to the contrary, shall be deemed to have contracted, undertaken or bound himself to furnish heat in accordance with the provisions of this subsection to every dwelling unit which contains radiator, furnace heat duct outlets or other heating apparatus outlets.
- (8) *Lighting of public halls and stairways.* Every common area, public hall and stairway in every multiple dwelling containing three or more dwelling units shall be adequately lighted at all times. Every common area, public hall and stairway in structures devoted solely to dwelling occupancy and containing not more than two dwelling units may be

supplied with conveniently located light switches, controlling an adequate lighting system which may be turned on when needed, instead of fulltime lighting. The owner or operator shall have the following responsibilities:

- a. The owner or operator of any multiple dwelling shall have the duty of providing and the responsibility for proper maintenance of the structure's lighting system.
 - b. The owner or operator shall be responsible for having the wiring in the lighting system so arranged that the owner or operator is the party directly responsible for payment of all utility charges for that part of the lighting system by which the lighting required in this section of all common areas, public halls and stairways is provided.
- (9) *Screens, etc.—For insect control.* During that portion of each year when the enforcement officer deems it necessary for protection against mosquitoes, flies and other insects, every window or other device with openings to outdoor space, used or intended to be used for ventilation, shall be supplied with screens covering at least 33 percent of the window area; provided, that such screens shall not be required during such periods in rooms deemed by the enforcement officer to be located high enough in the upper stories of buildings as to be free from such insects, and in rooms located in areas of this city which are deemed by the enforcement officer to have so few such insects as to render screens unnecessary. This subsection shall not apply to those buildings which have central air conditioning approved by the building official.
- (10) *Same—For rodent control.* Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with a screen or such other device as will effectively prevent their entrance.
- (11) *Penalty.* Any violation of this section is subject to a penalty pursuant to section 34-37. In accordance with section 34-37, any owner-occupant who violates this section shall not be subject to a civil fine as provided for in section 34-37(d), but rather shall only be subject to sections 34-37(a)-(c).

(Code 1968, § 34-42)

State Law reference— Light, ventilation and space requirements, 31 Del. C. § 4115; extermination, 31 Del. C. § 4121.

Sec. 34-235. - Space, use and location requirements.

No person shall occupy or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- (1) *Floor space of dwelling units.* Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof, regardless of age, the floor space to be calculated on the basis of total habitable room area, exclusive of stairways.

- (2) *Floor space of sleeping rooms.* In every dwelling unit of two or more rooms, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant thereof.
- (3) *Use of cellar space.* No cellar space shall be used as a habitable room or dwelling unit unless it fully complies with the building code as adopted and amended in chapter 4 of this Code and the floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness.
- (4) *Use of basement space.* No basement space shall be used as a habitable room or dwelling unit unless it shall have been shown to the satisfaction of the building official to comply with the building code as adopted and amended in chapter 4 of this

Code and the floors and walls are impervious to leakage of underground and surface runoff of water and are insulated against dampness.

(Code 1968, § 34-43)

State Law reference— Space requirements, 31 Del. C. § 4115.

Sec. 34-236. - Responsibilities of owners.

- (a) No person shall own a building or structure within the city which does not comply with the following requirements, particularly with respect to any evidence of decay of any of the items enumerated:
 - (1) *Foundations, exterior walls and roofs.* Every foundation, exterior wall and roof shall be weathertight, watertight, rodentproof and insectproof. Any evidence of decay of a foundation, exterior wall or roof shall be a violation of this section.
 - (2) *Interior partitions, walls, floors and ceilings.* Every interior partition, wall, floor and ceiling shall be capable of affording privacy and shall be kept in a good state of repair and in a clean and sanitary condition. Any evidence of decay shall be a violation of this section.
 - (3) *Drainage and removal of rain water from roofs.* All rain water shall be so drained and conveyed from every roof so as to not cause dampness in the walls, ceilings or floors of any habitable room or of any bathroom, toilet room or floors of any habitable room or of any bathroom, toilet room, basement or cellar. Any evidence of decay of a roof shall be a violation of this section.
 - (4) *Windows, exterior doors and basement hatchways.* Every window, exterior door and basement hatchway shall be weathertight and rodentproof. Any evidence of decay of a window, exterior door or basement hatchway shall be a violation of this section.
 - (5) *Exterior wood and metal surfaces.* All exterior wood and metal surfaces shall be protected from the elements and against decay by paint or other approved protective coating applied in a workmanlike fashion. Any evidence of decay such as cracking, scaling, peeling or loose paint or decay of any other protective coating, regardless of the type of surface painted or upon which any other protective coating has been placed,

shall be a violation of this section. With regard to surfaces other than wood or metal, once the decaying paint or protective covering is removed, a property owner shall repaint or re-apply any other protective coating if a protective coating is necessary to protect the surface from decay or otherwise make it weather tight.

- (6) *Stairways, porches, etc.* Every inside and outside stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon. Any evidence of decay of a stairway, porch, etc., shall be a violation of this section.
- (7) *Plumbing fixtures; water and waste pipes.* Every supplied plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition. Any evidence of decay of such plumbing fixture, water pipe or waste pipe shall be a violation of this section.
- (8) *Chimneys and smoke pipes.* Every chimney and every supplied smoke pipe shall be adequately supported.
- (9) *Toilet room and bathroom floors.* Every toilet room, floor surface and bathroom floor surface shall be maintained so as to be impervious to water and shall be kept in a clean and sanitary condition.
- (10) *Facilities, equipment and utilities generally.* Every supplied facility, piece of equipment or utility which is required under this chapter shall be so constructed or installed that it will function properly and shall be maintained in good working condition.
- (11) *Removing, discontinuing, etc., services, facilities, equipment or utilities.* No owner or operator shall cause any service, facility equipment or utility which is required to be supplied under the provisions of this chapter to be removed from, shutoff from or discontinued for any occupied building, except for such temporary interruption as may be necessary while actual repairs, replacements or alterations are in the process of being made.
- (12) *Pest control.* Every owner of a building shall be responsible for the extermination of insects, rodents or other pests on the premises. Whenever infestation exists in any building or any part of any building, extermination thereof shall be the responsibility of the owner and extermination must be performed by a licensed exterminator.
- (13) *Cleanliness, etc., of communal, shared or public areas.* Every owner of a building shall be responsible for maintaining in a clean and sanitary condition all communal, shared or public areas of the building and the premises thereof.
- (14) *Cleanliness, etc., of occupied buildings generally.* No owner shall occupy or rent to any other person for occupancy or allow any other person to occupy any vacant building or any part thereof, unless it is clean, sanitary and in compliance with all provisions of this chapter and all rules and regulations promulgated pursuant thereto.
- (15) *Open ditches or excavations.* All open ditches or excavations that present a safety or health hazard shall be filled or protected to eliminate such hazard.
- (16) *Drainage generally.* All parts of all buildings and premises shall be so drained as to prevent unsanitary accumulation of water in cellars or basements or any nuisance to or excessive drainage upon sidewalks and adjoining properties.

- (17) *Fences*. All fences located on an individual's property shall be maintained in good condition. Evidence of disrepair such as large holes, collapsed sections, missing sections, missing or broken railings and/or posts, shall be a violation of this section.
- (b) Any person violating any order of the commissioner of licenses and inspections based on the provisions of this section or any provision of any rule or regulation adopted by the department of licenses and inspections 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 a penalty pursuant to section 34-37 and any applicable remediation costs.
- (c) Each week's failure to comply with any order of the commissioner of licenses and inspections, based upon the provisions of this section, or the provisions of any rule or regulation adopted by the department of licenses and inspections before the enforcement and implementation of any provision of this section or any such rule or regulation shall constitute a distinct and separate offense and be punishable as such.
- (d) When, in the opinion of the commissioner of licenses and inspections, the structural integrity of any structure is potentially compromised, the commissioner of licenses and inspections may order that a structural analysis be performed by a licensed structural engineer to determine the integrity of the structure. The structural engineer shall submit a detailed report on how to repair or address any hazardous situation presented by such structure. The cost of the structural engineer's report shall be classified as an enforcement cost and shall be recoverable from the owner of the property.

(Code 1968, § 34-44; Ord. No. 97-092, § 1, 12-4-97

State Law reference— Responsibilities of owners and occupants, 31 Del. C. § 4120.

Sec. 34-237. - Responsibilities of occupants; penalties for violations.

- (a) The occupants of every dwelling or dwelling unit shall comply with the following requirements:
- (1) *Cleanliness and sanitation generally*. Every occupant of a dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies and controls.
 - (2) *Disposal of rubbish*. Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish in a clean and sanitary manner by placing it in the rubbish containers required by sections 34-231 and 13-7.
 - (3) *Disposal of garbage*. Every occupant of a dwelling or dwelling unit shall dispose of all his garbage and any other organic waste which might provide food for rodents in a clean and sanitary manner by placing it in the garbage disposal facilities or garbage storage containers required by sections 34-231 and 13-7.
 - (4) *Screens, storm doors and windows*. Every occupant of a dwelling or dwelling unit shall be responsible for handling all screens and double or storm doors and windows whenever the same are required under the provisions of this chapter or of any rule or

regulation adopted pursuant thereto, except where the owner has agreed to supply such service.

- (5) *Pest control.* Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. The owner's responsibilities are as follows:
 - (a) Notwithstanding the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a ratproof or reasonably insect-proof condition, extermination shall be the responsibility of the owner.
 - (b) Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.
 - (6) *Plumbing fixtures.* Every occupant of a dwelling unit shall keep all plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.
 - (7) *Heating facilities.* Every occupant of a dwelling unit shall be responsible for the exercise of reasonable care, proper use and proper operation of supplied heating facilities.
 - (8) *Care and use generally.* Every occupant of a dwelling unit which is let or rented from another shall be responsible for the exercise of reasonable care and the proper use of the dwelling unit and its component parts and supplied facilities and equipment such as screens, screen doors, garbage and rubbish containers. No occupant of a dwelling unit which is let or rented from another shall neglect the maintenance of the dwelling unit such that it has an injurious effect on the health, safety or welfare of the occupants themselves or of immediate neighbors.
- (b) Any person violating any order of the commissioner of licenses and inspections based on the provisions of this section or any provision of any rule or regulation adopted by the department of licenses and inspections 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 a penalty pursuant to section 34-37 and any applicable remediation costs.
 - (c) Each week's failure to comply with any order of the commissioner of licenses and inspections 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 any provision of this section or any such rule or regulation shall constitute a distinct and separate offense and be punishable as such.

(Code 1968, § 34-45; Ord. No. 06-054(sub 1), § 3, 10-19-06)

State Law reference— Responsibilities of owners and occupants, 31 Del. C. § 4120.

Secs. 34-238—34-265. - Reserved.

DIVISION 2. - PREREQUISITES TO COMPLIANCE^[3]

Footnotes:

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Editor's note— Ord. No. 06-054(sub 1), §§ 4, 5, adopted Oct. 19, 2006, repealed sections 34-267, 34-268, in their entirety and renumbered former sections 34-269—34-278 as new sections 34-267—34-276. Former sections 34-267, 34-268 pertained to garbage and rubbish storage and disposal, and derived from the Code of 1968, §§ 34-47, 34-48.

Sec. 34-266. - Plumbing and plumbing fixtures.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to plumbing and plumbing fixtures unless the following requirements are met:

- (1) *Contamination of water supply generally.* All plumbing is so designed and installed as to prevent contamination of the water supply through backflow, backsiphonages and any other method of contamination.
- (2) *Direct connection to nonpotable water supply.* All plumbing is so designed and installed that no potable water supply line or plumbing fixture is directly connected to a nonpotable water supply.
- (3) *Cross-connections.* Every water supply line is so constructed that there is no possibility of a cross-connection between a potable and a nonpotable water supply line in accordance with the building code.
- (4) *Condition of water supply lines, valves.* Every water supply line is in good working condition and every valve therein is in good working condition.
- (5) *Water supply inlets.* Every water supply inlet is located above the flood level of any installed sink, lavatory, bathtub or automatic washing and similar water-using fixture, or above some unobstructible overflow thereof; and there are no submerged inlets, except submerged inlets installed with a vacuum breaker of a type approved by the enforcement officer.
- (6) *Traps in waste lines.* The waste line of every water-using fixture is trapped.
- (7) *Draining and condition of waste line drains.* Every waste line drains freely without obstruction or leaks.
- (8) *Maintenance and cleanliness generally.* All plumbing and plumbing fixtures are maintained in good working condition, and all plumbing fixtures are kept clean.
- (9) *Water pressure.* Water pressure is adequate when it permits a flow of two gallons per minute of water from any open water faucet at all times.
- (10) *Construction, etc., of flush toilets.* Every flush water closet or toilet shall be constructed with a bowl and trap made in one piece, which is of such shape and form and which holds a sufficient quantity of water so that no fecal matter will collect on the surface of

the bowl and which is equipped with flushing rims which permit the bowl to be properly flushed and scoured when water is discharged through the flushing rims.

(Code 1968, § 34-46; Ord. No. 92-053(sub 1), § 21(f), 7-2-92)

State Law reference— Plumbing requirements, 31 Del. C. § 4116.

Sec. 34-267. - Gas facilities.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to gas facilities unless the following requirements are met:

- (1) *Venting*. All gas-burning hot water heaters and space heaters are properly vented to a chimney or duct leading to outdoor space.
- (2) *Condition of pipes generally*. Every gas pipe is sound and tightly put together, with no leaks.
- (3) *Corrosion or obstruction of pipes*. No gas pipe is corroded or obstructed so as to reduce gas pressure or volume.
- (4) *Pipe material*. Every gas appliance is connected to a gas line with metal piping.
- (5) *Gas pressure*. Gas pressure is adequate to permit a proper flow of gas from all open gas valves at all times.

(Code 1968, § 34-49; Ord. No. 06-054(sub 1), § 5, 10-19-06)

Sec. 34-268. - Electric wiring and facilities generally.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to electric wiring and facilities unless the following requirements are met:

- (1) *Insulation of wire*. Every exposed electric wire has insulation which is in good condition.
- (2) *Installation of switch and outlet plates*. Every switch plate and outlet plate is properly fastened in position.
- (3) *Short circuits, etc.* No short circuit or break exists in any electric line.
- (4) *Functioning, etc., of fixtures and outlets*. Every fixture and outlet functions properly and is properly fastened in place.
- (5) *Shock hazards*. No obvious shock hazard exists. In order to eliminate the potential for shock hazards, particularly in bathrooms and kitchens, the installation and maintenance in good order of ground fault circuit interrupters (GFCIs), as defined in the National Electrical Code 1996 Edition, shall be required in all dwelling units.
- (6) *Temporary wiring*. No temporary wiring is used, except extension cords which run directly from portable electric fixtures to convenience outlets, and which do not lie underneath floor-covering materials or extend through doorways, transoms or other similar apertures through structural elements.

(Code 1968, § 34-50; Ord. No. 98-037, § 1, 4-2-98; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Electrical facilities, 31 Del. C. § 4118.

Sec. 34-269. - Heating and heating facilities generally.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to heating and heating facilities unless the following requirements are met:

- (1) *Central systems generally.* When the dwelling or dwelling unit is heated by a central heating system:
 - a. The central heating unit is in good operating condition.
 - b. Every heat duct, steam pipe and hot water pipe is free of leaks and functions so that adequate heat is delivered where intended.
 - c. Every seal between the sections of a hot air furnace is in good repair.
- (2) *Portable heaters.* There are no portable heaters burning solid, liquid or gaseous fuels.
- (3) *Smoke pipes and chimneys.* Every smoke pipe and every chimney is adequately supported and maintained in such condition that there will be no leakage or backing up of noxious gases.

(Code 1968, § 34-51; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Heating facilities, 31 Del. C. § 4117.

Sec. 34-270. - Lighting.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to lighting unless every public hall, stairway and foyer has sufficient lighting through windows or from electric lights to provide illumination of at least one foot-candle on every part of such areas at all times of the day and night, except as otherwise provided by section 34-234(8).

(Code 1968, § 34-52; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Lighting requirements, 31 Del. C. § 4115.

Sec. 34-271. - Insect and rodent control.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to exclusion of insects and rodents unless it complies with sections 34-234(9) and 34-234(10) and with the requirement that every basement or cellar window shall be supplied with a heavy wire screen of not larger than one-fourth-inch mesh.

(Code 1968, § 34-53; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Extermination, 31 Del. C. § 4121.

Sec. 34-272. - Roofs.

The roof of every dwelling shall be tight and have no defects that admit rain.

(Ord. No. 92-053(sub 1), § 21(g)(34-54), 7-2-92; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Roofs, 31 Del. C. § 4113(f).

Sec. 34-273. - Stairs and porches.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to stairs and porches unless the following requirements are met:

- (1) *Holes, grooves and cracks.* Every flight of stairs and porch is free of holes, grooves and cracks which are large enough to constitute possible accident hazards.
- (2) *Rails generally.* Every stairwell, and every flight of stairs which is more than three risers high, has rails not less than two feet, six inches, measured vertically from the nose of the treads to the top of the rail, and every porch which is more than three risers high has rails not less than three feet, six inches above the platform.
- (3) *Fastening and maintenance of rails, etc.* Every rail and balustrade is firmly fastened and is maintained in good condition.
- (4) *Settling, etc.* No flight of stairs has settled more than one inch out of its intended position or has pulled away from supporting or adjacent structures.
- (5) *Supports.* No flight of stairs has rotting or deteriorating supports.
- (6) *Treads, height.* The treads of every flight of stairs are uniform in height and comply with the building code as adopted and amended in chapter 4 of this Code.
- (7) *Condition, etc., generally.* Every stair tread is sound and is securely fastened in position.
- (8) *Strength.* Every stair tread is strong enough to bear a concentrated load of at least 400 pounds without danger of breaking through.
- (9) *Porches, floors.* Every porch has a sound floor.
- (10) *Porch supports.* No porch has rotting or deteriorating supports.

(Code 1968, § 34-56; Ord. No. 06-054(sub 1), § 5, 10-19-06)

Sec. 34-274. - Bathroom and water closet compartment floors.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to water closet compartment and bathroom floors unless every water closet compartment floor and bathroom floor is made of terrazzo, tile, smooth concrete, dense hardwood with tightly fitting joints, rubber, asphalt tile, linoleum or other similar material providing a surface which is reasonably impervious to water and is easily cleanable; or such

floor is made of one of the denser soft woods, with tightly fitting joints, and is covered with varnish, lacquer or other similar coating providing a surface which is reasonably impervious to water and is easily cleanable.

(Code 1968, § 34-57; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Plumbing facilities, 31 Del. C. § 4116.

Sec. 34-275. - General sanitation.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to general sanitation unless the following requirements are met:

- (1) *Floors and floor coverings.* Every floor and floor covering is kept reasonably clean and is not littered or covered with dirt, dust, garbage, human or animal fecal matter, or any other unsanitary thing.
- (2) *Walls and ceilings.* Every wall and ceiling is reasonably clean and is not littered or covered with dust, dirt, cobwebs or greasy film.
- (3) *Stagnant water.* No stagnant water is allowed to accumulate or stand anywhere about the premises.

(Code 1968, § 34-58; Ord. No. 06-054(sub 1), § 5, 10-19-06)

Sec. 34-276. - All windows to be operable.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to windows unless every window is operable and readily opened and closed. The requirements of this section shall mean that both parts of a double-hung window shall be moveable up and down and that any window that opens outward or that opens inward shall be maintained so as to do so. This provision shall apply to type R-3 one- and two-family dwellings only.

(Ord. No. 98-077, § 1, 7-30-98; Ord. No. 98-135, § 1, 11-20-98; Ord. No. 06-054(sub 1), § 5, 10-19-06; Ord. No. 14-023, § 1, 6-5-14)

Secs. 34-277—34-300. - Reserved.

ARTICLE IV. - HOTELS AND ROOMING HOUSES^{[\[4\]](#)}

Footnotes:

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Cross reference— Rooming house license, § 5-91.

DIVISION 1. - GENERALLY

Sec. 34-301. - Compliance required.

No person shall operate a hotel or a rooming house, or shall occupy or let to another for occupancy any hotel unit in any hotel or any rooming unit in any rooming house, except in compliance with the provisions of every section of this chapter except the provisions of section 34-231 and section 34-237.

(Code 1968, § 34-59)

Sec. 34-302. - Operation and occupancy of rooming houses, generally.

- (a) Every rooming unit located within a rooming house shall comply with the requirements for dwelling units as established in accordance with the provisions of this chapter, and rooming houses shall, in addition, be subject to the following special requirements:
 - (1) Each rooming house owner or operator within the city shall file, on or before January 1 of each year, a notarized registration statement listing the street address and parcel number of each such rooming house and the number of rooming units therein, together with an annual registration of rooming house fee of \$100.00 per rooming house. Such registration fee is in addition to and not in lieu of the license fee requirements of chapter 5 of this Code and is in addition to and not in lieu of the permit fee requirements of this article. Such registration statement and fees shall be filed with the revenue division of the department of finance.
 - (2) The department of licenses and inspections and the fire department shall inspect such registered rooming houses at least once per year.
- (b) *Standards of operation.*
 - (1) The floor space requirements for rooming houses shall be a minimum of 70 square feet per rooming unit, except in instances of occupancy by more than one person in which case the minimum floor space requirements shall be 70 square feet per person occupying such room unit.
 - (2) Each floor of a rooming house shall be equipped with a smoke detector of the hard wired variety, an emergency lighting system, and at least one fire extinguisher; in addition, at least one smoke detector shall be installed in the basement of the rooming house building.
 - (3) Each floor of a rooming house shall have a common hallway, and each individual rooming unit shall contain at least one window; in addition, fire escapes shall be provided to service the third floor of a building where rooming units exist, with unobstructed access to such fire escapes. In no case shall access to any fire escape be located solely within a rooming unit or within or through any other private or normally closed room.
 - (4) Partitions used in rooming house construction shall consist of two-by-four wood or steel studs and shall be covered on both sides with one hour fire-rated drywall.
 - (5) The use of paneling in buildings dedicated to rooming house use is prohibited unless such paneling or any finish wall covering carries a minimum class C fire rating; in no

case shall paneling be permitted in common hallway or stairway areas and the commissioner of licenses and inspection shall be empowered to order the removal of paneling from such common areas.

- (6) Common doorways between adjoining rooming house buildings shall be permitted only with the specific approval of the commissioner of licenses and inspections; any such doorway between rooming house buildings shall be equipped with a fire-rated class B door and permission shall be granted by the commissioner only upon a showing of exceptional need for the same by the owner or operator thereof.
- (7) A common or central kitchen facility in a rooming house may be maintained on an optional basis, but only after securing specific permission to do so from the city's department of licenses and inspections; in no case shall the use of hot plates or similar portable cooking devices be permitted in a rooming unit, or in any other area of a rooming house.
- (8) In addition to and not in lieu of the requirements of section 34-338, the department of licenses and inspections and the fire marshal's office shall inspect or cause to be inspected the electrical system in rooming houses and shall order the upgrading of such electrical system if such upgrading is necessary to meet the demands to be placed upon the electrical system and to assure the safety of rooming house occupants and nearby residents.

(Code 1968, § 34-59.1; Ord. No. 92-053(sub 1), § 21(h), 7-2-92)

Sec. 34-303. - Guest register.

The operator of a hotel or a rooming house shall keep a list of all occupants up to date at all times in a permanently bound volume and such volume shall be available for inspection by the commissioner of licenses and inspections or his authorized representative.

(Code 1968, § 34-60)

Sec. 34-304. - Toilet, etc., facilities.

At least one flush water closet, lavatory basin and bathtub or shower, properly connected to a water and sewer system, approved by the enforcement officer and in good working condition, shall be supplied for each six persons or fraction thereof residing within a hotel and for each four persons or fraction thereof residing within a rooming house, excluding members of the operator's family who shall have their own facilities; provided, that in a hotel or rooming house where rooms are let only to males, flush urinals may be substituted for not more than one-half the required number of water closets. All such facilities shall be so located within the dwelling as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot water at all times. No such facilities shall be located in a basement except by written approval of the enforcement officer. All such facilities shall be located within a room which affords privacy and when not provided within a hotel unit or rooming unit, they shall not be more than one story removed from the hotel unit or rooming unit intended to be served by such facilities.

(Code 1968, § 34-61)

Sec. 34-305. - Bedding and towels.

The operator of every hotel or rooming house shall change supplied bed linen and towels therein at least once each week, and prior to the letting of any room to any occupant. The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.

(Code 1968, § 34-62)

Sec. 34-306. - Floor space requirements for hotels.

Every room in a hotel occupied for sleeping purposes by one person shall contain at least 70 square feet of floor space, and every such room occupied for sleeping purposes by more than one person shall contain at least 50 square feet of floor space for each occupant thereof.

(Code 1968, § 34-63)

Sec. 34-307. - Means of egress generally.

Every hotel unit and every rooming unit shall have safe, unobstructed means of egress leading to safe and open space at ground level as required by the enforcement officer or the fire marshal.

(Code 1968, § 34-64)

Sec. 34-308. - Separate access required.

There shall be for each dwelling unit and for each rooming unit in a rooming house and for each hotel unit in a hotel a separate access either to a hallway, landing, stairway or street.

(Code 1968, § 34-65)

Sec. 34-309. - Maintenance generally.

The operator of every hotel or rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for maintenance of a sanitary condition in every other part of the hotel or rooming house. He shall be further responsible for the sanitary maintenance of the entire premises when the entire structure or building is leased or occupied by the operator.

(Code 1968, § 34-66)

Sec. 34-310. - Dwelling units to comply with established requirements.

Every dwelling unit located within a hotel or a rooming house shall comply with all of the requirements for dwelling units as established in accordance with the provisions of this chapter.

(Code 1968, § 34-67)

Sec. 34-311. - Preparing or cooking food in hotels—Generally.

No occupant of a hotel shall prepare or cook food in a hotel unless such food is prepared or cooked in a dwelling unit contained therein.

(Code 1968, § 34-68)

Sec. 34-312. - Same—Communal kitchens prohibited.

No communal kitchen shall be contained in any hotel.

(Code 1968, § 34-69)

Sec. 34-313. - Preparing or cooking food in sleeping rooms of rooming houses.

Food shall not be prepared or cooked in any room in a rooming house used for sleeping purposes.

(Code 1968, § 34-70)

Secs. 34-314—34-335. - Reserved.

DIVISION 2. - OPERATION PERMIT

Sec. 34-336. - Required.

- (a) No person shall operate a hotel or a rooming house unless he holds a valid hotel permit or rooming house permit, issued by the commissioner of licenses and inspections in the name of such operator and for the specific dwelling or dwelling unit. The operator shall apply to the commissioner of licenses and inspections for such permit, which shall be issued by such commissioner upon compliance by the operator with the applicable provisions of this chapter and of any rules and regulations adopted pursuant thereto. Such permit shall be displayed in a conspicuous place within the hotel or rooming house at all times. No such permit shall be transferable.
- (b) Every person holding such a permit shall give notice in writing to the commissioner of licenses and inspections within 24 hours after having sold, transferred, given away or otherwise disposed of ownership of, interest in, or control of any hotel or rooming house. Such notice shall include the name and address of the person succeeding to the ownership or control of such hotel or rooming house. The new owner or operator of a hotel or a rooming house shall also notify the commissioner of licenses and inspections within ten days of any transfer of such hotel or rooming house to the new owner. Every hotel permit and every

rooming house permit shall expire at the end of one year following its date of issuance, unless sooner suspended or revoked as provided by this article.

(Code 1968, § 34-71)

Sec. 34-337. - Application generally.

The application for a hotel permit or a rooming house permit as required by this article shall be made on forms furnished by the department of licenses and inspections. Such application shall include:

- (1) The name and address of the operator and the name and address of the owner if the operator is not the owner.
- (2) The location of the hotel or rooming house including the street and number of each entrance.
- (3) The number of hotel units or rooming units occupied or available for occupancy and the number of persons who may be accommodated in accordance with the occupancy provisions of this chapter and with the provisions of other applicable municipal ordinances and regulations.
- (4) Such other information as the commissioner of licenses and inspections may require.

(Code 1968, § 34-72)

Sec. 34-338. - Fire marshal's certificate to accompany application.

Every applicant for a hotel permit or a rooming house permit as required by this article shall procure from the fire marshal a certificate to the effect that the buildings and premises for which the permit is desired are free from fire hazards and comply with all provisions of chapter 12 and other fire laws, ordinances and rules and regulations applicable thereto and designed for fire protection and control. Such certificate shall be filed with the commissioner of licenses and inspections at the time the application for a permit is made.

(Code 1968, § 34-73)

Sec. 34-339. - Application fees.

Accompanying the application for a rooming house permit or a hotel permit, as required by this article, there shall be an initial application fee in the amount of \$10.00 for the initial application plus \$5.00 for each rooming unit within a rooming house and \$5.00 for each hotel unit within a hotel. There shall be no annual renewal fees.

(Code 1968, § 34-74)

Sec. 34-340. - Hearing upon denial of application.

Any person whose application for a permit to operate a hotel or a rooming house has been denied may request and shall be granted a hearing on the matter before the board of licenses and inspections review under the procedure provided by section 34-34.

(Code 1968, § 34-75)

Sec. 34-341. - Issuance generally.

A hotel permit or a rooming house permit shall be issued by the commissioner of licenses and inspections to the operator or owner upon reasonable proof:

- (1) That the hotel or rooming house complies with the applicable provisions of this chapter and with the rules and regulations issued thereunder and with other applicable municipal ordinances and regulations; and
- (2) That a certificate of occupancy and a certificate of zoning have been issued by the department of licenses and inspections pursuant to the provisions of chapter 48 of this Code.

(Code 1968, § 34-73)

Sec. 34-342. - Effect of issuance.

The issuance of a hotel permit or a rooming house permit under this article shall not in any way signify or imply that the hotel or rooming house conforms with the zoning ordinance of the city, the building code of the city or other municipal or state regulations.

(Code 1968, § 34-77)

Sec. 34-343. - Procedure for suspension.

Whenever upon inspection of any hotel or rooming house the enforcement officer finds that conditions or practices exist which are in violation of any provision of this chapter or of any rule or regulation adopted pursuant thereto, the enforcement officer shall give notice in writing to the operator of such hotel or rooming house that unless such conditions or practices are corrected within a reasonable period, to be determined by the enforcement officer, the operator's hotel permit or rooming house permit will be suspended. At the end of such period the enforcement officer shall reinspect such hotel or rooming house, and if he finds that such conditions or practices have not been corrected, he shall give notice in writing to the operator that the latter's permit has been suspended. Upon receipt of notice of suspension, such operator shall immediately cease operation of such hotel or rooming house, and no person shall occupy for sleeping or living purposes any hotel unit or rooming unit therein.

(Code 1968, § 34-78)

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EXHIBIT B

Chapter 34 — HOUSING AND BUILDING MAINTENANCE CODE^{41[1]}.

Footnotes:

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Charter reference— General powers of city, § 1-102.

Cross reference— Buildings and building regulations, ch. 4; businesses, ch. 5; regulation of owners, operators or lessors of mobile homes or mobile home lots, § 5-100; consumer protection, ch. 9.

State Law reference— Landlord-tenant code, 25 Del. C. § 5101 et seq.; Delaware State Housing Code, 31 Del. C. § 4101 et seq.

ARTICLE I. - IN GENERAL

Sec. 34-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Basement means a portion of a building located partly underground, but having 3½ feet or more of its floor-to-ceiling height above the average level of the adjacent finished grade.

Building means a structure enclosed with exterior walls or fire walls, built, erected, or framed of component structural parts, designed for the housing shelter, enclosure or support of individuals, animals or property of any kind. When used herein “building” and “structure” shall be interchangeable except where the context clearly indicates otherwise.

Cellar means a portion of a building located partly or wholly underground, and having less than 3½ feet of its floor-to-ceiling height above the average level of the adjacent finished grade.

Civil fine shall mean a fine of \$250 unless another amount is specified in this Chapter. Where the Code provides alternative penalties or remedies, civil fines shall be cumulative and the imposition of any civil fines shall not prevent the appropriate City agency from invoking any other penalty or remedy provided for in the Code.

Dwelling means any house or building or portion thereof which is used or intended to be used in whole or in part as a home, residence or sleeping place of one or more human beings, either permanently or transiently.

Dwelling unit means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating, including a mobile home for single-family use which meets the requirements of the building and zoning codes.

Enforcement officer means the commissioner of licenses and inspections of the department of licenses and inspections of the city or his authorized representatives.

Extermination means the control and elimination of insects; rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve

as their food; by poisoning, spraying, fumigating, trapping; or by any other recognized and legal pest elimination methods approved by the enforcement officer.

Family means one adult occupant plus one or more persons who are legally related to such occupant as husband or wife, son or daughter, mother or father, mother-in-law or father-in-law, brother or sister, or any foster child or ward.

Garbage means animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Habitable room means a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers or communicating corridors, closets and storage spaces.

Hotel means any dwelling, or that part of any dwelling, in which sleeping accommodations are offered for pay by the owner or operator to four or more persons who are transients.

Hotel unit means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping in a hotel, but not for cooking.

Infestation means the presence, within or around a dwelling, of any insects, rodents or other pests.

Multiple dwelling means any dwelling containing more than one dwelling unit.

Occupant means any person, over one year of age, living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

Operator means any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

Owner means any person who, alone or jointly or severally with others, shall have:

- (1) Legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
- (2) Charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

Plumbing means all of the following supplied facilities and equipment: gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catchbasins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

Premises means a lot, piece or parcel of land including the buildings or structures thereon.

Rental dwelling unit means any room or group of rooms located within one or more buildings and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating, and which is let or rented to another for the purpose of living therein. Rental property shall have the same meaning as rental dwelling unit.

Remediation costs shall mean any and all costs and expenses incurred by the City of Wilmington to eliminate or remedy a violation of this chapter, including but not limited to, any demolition costs or repair costs.

Rooming house means any dwelling, or part thereof, containing four or more rooming units designed to be used for sleeping accommodations and to be let, for compensation, by the owner or operator thereof to four or more persons who are not husband or wife, son or daughter, mother or father, sister or brother, father-in-law or mother-in-law of the operator or owner.

Rooming unit means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Rubbish means combustible and noncombustible waste materials, except garbage; and such term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust, and the residue from the burning of wood, coal, coke and other combustible material.

Structure means an object or other construction created by the combination of materials for the purpose of occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land, provided the word "structure" shall be construed when used herein as though followed by the phrase "or part or parts thereof and all equipment therein," unless the context clearly requires a different meaning.

Supplied means paid for, furnished or provided by, or under the control of, the owner or operator.

Unfit dwelling or dwelling unit means any dwelling or dwelling unit which:

- (1)—___ Is so damaged, decayed, dilapidated, unsanitary, difficult to heat, unsafe or vermin-infested that it creates a hazard to the health or welfare of the occupants or the community;
- (2)—___ Lacks illumination, ventilation or sanitary facilities adequate to protect the health or welfare of the public; or
- (3) —___ Because of its general condition or location is unsanitary or otherwise dangerous to the health or welfare of the occupants or the public.

Whenever the words "dwelling," "dwelling unit," "rooming house," "rooming unit," "hotel," "hotel unit" and "premises," are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

Vacant means a building or structure for which no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, nontransient basis.

Week means a seven day period.

(Code 1968, § 34-1)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 34-2. - Compliance required.

- (a) All repairs, additions, alterations or replacements to structures, dwellings, dwelling units or premises to bring such structures, dwellings, dwelling units or premises into compliance with this chapter shall conform to all provisions of this Code and other city ordinances and regulations governing the construction, replacement, repair or alteration of such structures, dwellings, dwelling units and premises and the facilities and equipment contained therein.
- (b) Any owner-occupant who violates this chapter shall not be subject to a civil fine as provided for in section 34-37(d), but rather shall only be subject to criminal enforcement as provided for in section 34-37(a)-(c).

(Code 1968, § 34-2)

Sec. 34-3. - Construction of chapter—Authority of city relative to nuisances.

Nothing in this chapter shall be construed or interpreted to in any way impair or limit the authority of the city or any department or agency thereof to define and declare nuisances and to cause the removal or abatement of nuisances by appropriate proceedings as provided by law.

(Code 1968, § 34-12)

Sec. 34-4. - Same—Other city regulations.

- (a) ~~—~~ The provisions of this chapter shall not be construed to abrogate the responsibility of any person to comply with the other provisions of this Code and any other zoning, building, fire, safety, electrical, plumbing or public health ordinance or regulation of the city.
- (b) ~~—~~ In any case where a provision of this chapter is found to be in conflict with any other provision of this Code or with a provision of any zoning, building, fire, safety, electrical, plumbing or public health ordinance of this city ~~existing on July 3, 1962~~, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.

(Code 1968, § 34-13)

Sec. 34-5. - Right of access of owner, etc., for purposes of making required repairs, etc.

Every occupant of a structure, dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such structure, dwelling or dwelling unit, or its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or with any lawful rule or regulation adopted or any lawful order issued pursuant to the provisions of this chapter.

(Code 1968, § 34-3)

Sec. 34-6. - Reprisals against tenant for reporting violations prohibited.

- (a) ~~—~~ No owner, landlord, firm or corporation or any agent, officer or employee thereof shall threaten to take reprisals against any tenant for reporting or complaining of the existence or belief of the existence of any building maintenance, housing, health, sanitary or building code violation to any governmental authority.
- (b) ~~—~~ Receipt of a notice to quit the leased premises without cause within 90 days after making such report or complaint shall create a rebuttable presumption that such notice is a reprisal against the tenant for making such report or complaint.

(Code 1968, § 34-7.1)

Sec. 34-7. - Unlawful lease-purchase practices.

- (a) ~~—~~ It shall be unlawful for any owner to accept or retain any deposit of sums of money pursuant to any purported installment contract of sale, or any purported rental with an option to buy, or any purported lease-purchase of any dwelling, dwelling unit or rooming house in the city from any person in the absence of a duly executed written agreement for the same. It shall further be unlawful for any owner to refuse to make full refund of any deposit of sums of money paid by any person for such purported purposes in the absence of a duly executed written agreement for the same or to refuse to any such person occupancy of the subject premises without making full refund of any such deposit.
- (b) ~~—~~ Complaints by any persons alleging violations of the provisions of subsection (a) of this section shall be filed with the office of the commissioner of licenses and inspections for investigation ~~and prosecution in the municipal court.~~
- (c) ~~—~~ Any owner violating the provisions of this section shall ~~upon conviction thereof before the municipal court be fined an amount upbe subject to \$500.00 and liable for each such violation plus thea Civil Fine and any applicable remediation costs of prosecution~~ and shall make full restitution of any and all deposits of money paid to such owner by any person in violation of this section.

(Code 1968, § 34-17.2)

Sec. 34-8. - Proof of state of mind not required for strict liability violations.

It is unnecessary to prove the defendant's state of mind with regard to offenses under this chapter which constitute violations as the legislative purpose is to impose strict liability for such offenses.

(Ord. No. 94-002, § 6, 2-24-94)

~~Sec. 34-9. - Violations and penalties; community service.~~

~~Upon conviction of any person for any violation of the provisions of this chapter, the judicial sentencing official may prescribe a certain number of hours of community service to be provided by the convicted person to the city's department of public works in street cleaning activities for any such housing code violation, the penalty for which is a fine of no less than \$250.00 and no more than \$1,000.00 for the first offense; no less than \$500.00 and no more than \$2,500.00 for the second offense; and no less than~~

~~\$1,000.00 and no more than \$5,000.00 for the third and subsequent offenses; said hours of community service to be either in addition to such fine or in lieu of such fine as the sentencing official deems appropriate. The department of public works shall coordinate the administration of this section with the state office of probation and parole.~~

~~(Ord. No. 98-098, § 2, 9-30-98; Ord. No. 03-075(sub 1), § 13, 12-4-03)~~

Secs. 34-~~109~~—34-35. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

DIVISION 1. - GENERALLY

Sec. 34-36. - Enforcement generally; initiation of prosecution for violations.

- (a) ~~—~~ This chapter shall be enforced by the commissioner of licenses and inspections or his authorized representatives or designees in the department of licenses and inspections, and the commissioner of licenses and inspections or any such authorized representative shall initiate criminal prosecutions for violations in the manner and form provided by law.
- (b) ~~—~~ The department of licenses and inspections shall maintain records relating to the inspection of each property and shall make available to the office of the city solicitor such records for purposes of review and use as evidence in prosecutions for violations and the administration and enforcement of this chapter.

(Code 1968, § 34-9)

Sec. 34-37. - Violations and penalties generally.

- (a) ~~—~~ Except as otherwise specifically provided by this chapter and subsection (d) of this section, any person violating any order of the commissioner of licenses and inspections based on the provisions of this chapter or any provision of any rule or regulation adopted by the department of licenses and inspections and approved by resolution of the city council for the enforcement or implementation of this chapter, or violating any provision of this chapter, or any provision of any such rule or regulation, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250.00 for each ~~period of one to seven days of each~~ offense of violating such order, or provision of this chapter, or provision of such rule or regulation up to a maximum fine of \$1,000.00 for each such offense, together with the costs and disbursements of prosecution, ~~or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment, for the first conviction.~~ For any conviction of a violation that is the second conviction for the same violation as a previous violation which has not been corrected, the minimum fine for any person or corporation shall be not less than \$500.00 nor more than \$2,500.00; for the third conviction not less than \$1,000.00 nor more than \$5,000.00, which shall not be suspended; for the fourth conviction \$1,500.00; for the fifth and subsequent conviction of the same violation that still has not been corrected, the minimum fine for each conviction shall be not less than \$5,000.00, which shall not be suspended. Upon conviction of a violation of this chapter, the court may order the defendant to correct the violation by a date certain. If the defendant fails

to correct the violation by the court ordered date, the court may impose a fine of \$50.00 per day to be calculated from the date of conviction to the date by which the court had ordered the violation to be corrected.

- (b) ~~After conviction and punishment for violation of such order of the commissioner of licenses and inspections based upon the provisions of this chapter or any provision of any rule or regulation adopted by the department of licenses and inspections and approved by resolution of the city council for the enforcement or implementation of this chapter, if such person shall continue in violation of such order, such person shall be liable for further prosecution, conviction and punishment upon such same order, without any necessity of the commissioner of licenses and inspections issuing a new order until such order has been complied with. Any notice herein required shall, if mailed, be deemed to be effective upon mailing. When done in conjunction with certified or registered mail service, a copy of the notice may be posted in a conspicuous place on the premises and such a procedure shall be deemed the equivalent of personal service.~~
- (c) ~~Each day's week's failure to comply with any order of the commissioner of licenses and inspections based upon the provisions of this chapter or the provisions of any rule or regulation adopted by the department of licenses and inspections and approved by resolution of the city council for the enforcement and implementation of this chapter, and each day's week's failure to comply with any provision of this chapter or any such rule or regulation shall constitute a distinct and separate offense and be punishable as such.~~
- (d) ~~Pursuant to title 25, chapter 29 of the Delaware Code, any fines imposed by any court for violations of this chapter shall give rise to a lien(s). The~~ (d) With respect to vacant properties and rental dwelling units only, any person owning a vacant property or a rental dwelling unit who violates any order of the commissioner of licenses and inspections based on the provisions of this chapter or any provision of any rule or regulation adopted by the department of licenses and inspections for the enforcement or implementation of this chapter, or violating any provision of this chapter, or any provision of any such rule or regulation shall be immediately subject to and liable for a civil fine of \$250 for such violation and any applicable remediation costs. Each week's failure following any applicable cure period to comply with any order of the commissioner of licenses and inspections based upon the provisions of this chapter or the provisions of any rule or regulation adopted by the department of licenses and inspections for the enforcement and implementation of this chapter, and each week's failure following any applicable cure period to comply with any provision of this chapter or any such rule or regulation shall constitute a distinct and separate offense and be punishable by a fine in the same amount. Pursuant to title 25, chapter 29 of the Delaware Code, any civil fine imposed pursuant to the provisions of this subsection shall give rise to a lien. Any unpaid amounts of such fines may be added to local property tax billings for the property which was the subject of said violation. "Fines" shall also include any civil judgment entered pursuant to section 4101 of title 11 of the Delaware Code. A civil fine authorized pursuant to this subsection shall not apply to owner occupied properties. The civil fines authorized in this subsection shall expire on January 1, 2024 unless they are re-enacted prior to such expiration date. This expiration date shall not affect any liens created pursuant to this subsection prior the expiration date.

(Code 1968, § 34-8; Ord. No. 96-020, § 2, 4-12-96; Ord. No. 98-124, § 2, 10-19-98; Ord. No. 99-082(sub 1), § 3, 11-4-99; Ord. No. 99-008, § 3, 5-17-01; Ord. No. 03-075(sub 1), § 14, 12-4-03)

Sec. 34-38. - Notice of violation—Warning -- Contents, service, appeals.

- (a)— Whenever the commissioner 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 chapter or of any rule or regulation adopted pursuant thereto, he shall give notice of such violation or alleged violation to the person responsible therefor. 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 4530 days from the date of such notice for the performance of any act it requires, unless otherwise provided in this chapter or in the event that the commissioner of licenses and inspections or his designee determines that a lesser period of time less than 45 days is essential to protect the health, safety or welfare of the occupants or of occupants of an adjacent property-; or the dwelling is deemed unfit for habitation, in which case 3 days are required for the performance of any act it requires.
- (b)— The notice of violation shall be served upon the owner or the operator or the occupant, as the case may require. Such notice shall be deemed to be properly served upon such owner or upon such operator or upon such occupant by mailing a copy thereof by either mail service or other form of delivery to his last known address both the property address and such other address(es) that have been designated for the receipt of property tax bills for such property, or if the letter with the copy is returned with a note showing it has not been delivered to him, by posting a copy thereof in a conspicuous place on or about the dwelling affected by the notice- of violation. The commissioner 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 such occupant 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. When done in conjunction with certified or registered mail service, a copy of the notice may be posted in a conspicuous place on the premises and such a procedure shall be deemed the equivalent of personal service.
- (c)— Such notice shall provide that the persons so notified The owner, operator or occupant may appeal the -violation notice to the board of license and inspection review. The appeal shall be in writing and filed within ten twenty calendar days after the receipt of the notice of violation-notice. Any appeal to the board of license and inspection review shall be accompanied with a nonrefundable fee of \$50.00 at the time of filing with a fee of \$50.00 which shall be refunded if the appeal is successful. The board of license and inspection

review shall hear and decide appeals in accordance with its duly prescribed and promulgated rules, regulations and procedures.

(d) Any owner, operator or occupant, 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 chapter and may be penalized pursuant to section 34-37.

(Code 1968, § 34-18(a)—(f); Ord. No. 91-082, § 1, 11-21-91; Ord. No. 95-074, § 1, 12-14-95; Ord. No. 96-077, § 1, 12-5-96; Ord. No. 98-124, § 2, 10-19-98)

Sec. 34-39. - Same—When not required.

Notwithstanding any other provision of this chapter to the contrary, whenever any person fails to obtain the ~~prerental~~rental inspection of any dwelling, habitation or living unit as required by the provisions of section 34-45(a) or the limitation of occupancy notification required by section 34-86, no notice of such violation of section 34-45(a) and section 34-86 shall be required, before civil fines are imposed or legal proceedings, actions or prosecutions are brought.

(Code 1968, § 34-18(g); Ord. No. 96-077, § 1, 12-5-96)

Sec. 34-40. ~~Issuance of warnings— Deleted.~~

- ~~(a) At the discretion of the commissioner of licenses and inspections or any of his designees who are authorized by the commissioner to do so, a written warning may be issued on a form approved by the commissioner and the city solicitor to the owner, agent, or person in control of any building or structure concerning violations of any provision of this chapter that is not a life-threatening violation. If any violation concerning which any warning has been issued has not been corrected within the time allowed, then the department of licenses and inspections shall proceed to obtain compliance as provided in this chapter.~~
- ~~(b) Such notice may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this chapter and with rules and regulations adopted pursuant thereto.~~
- ~~(c) Whenever repairs, additions, alterations or replacements are required to the building or facilities, such notice shall direct that the person in violation shall make application to the department of licenses and inspections for a building permit to cover such requirements.~~

~~(Code 1968, § 34-18(h))~~

Sec. 34-41. - Inspection of structures, buildings, dwellings, etc., generally; right of entry of enforcement officer.

- (a)—The enforcement officer is hereby authorized and directed to make inspections to determine the condition of structures, buildings, dwellings, dwelling units, hotel units, rooming units and premises located within this city, in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellingsstructures and the general public. For the purpose of making such inspections the enforcement officer is hereby authorized to enter, examine and survey between the hours of 8:00 a.m. and 5:00 p.m. all

structures, buildings, dwellings, dwelling units, hotel units, rooming units and premises. The owner or occupant of every structure, building, dwelling, dwelling unit, hotel unit, and rooming unit, or the person in charge thereof, shall give the enforcement officer free access to such structure, building, dwelling, dwelling unit, hotel unit or rooming unit and its premises during such time for the purpose of such inspection, examination and survey; provided, that such inspection, examination or survey shall not have for its purpose the undue harassment of such owner or occupant and that such inspection, examination or survey shall be made so as to cause the least amount of inconvenience to such owner or occupant consistent with the efficient performance of the duties of the enforcement officer.

- (b)— Nothing in this section shall be construed to prohibit the entry of the enforcement officer:
- (1)— At any time when an actual emergency which tends to create an immediate danger to public safety exists; or
 - (2)— At any time when such an inspection, examination or survey may be requested by such owner or occupant.
- (c)— Any person who opposes or impedes an officer or authorized agent or employee of the department of licenses and inspections in the execution of his duty under this chapter shall be deemed guilty of a violation of this chapter. In addition, if an officer or authorized agent or employee of the department of licenses and inspections is denied entrance to a building for purposes of inspection, he may, upon showing of probable cause, obtain a warrant for purposes of entering and inspecting the building, dwelling, land or premises.

(Code 1968, § 34-6; Ord. No. 94-002, § 5, 2-24-94)

Charter reference— Inspections generally, §§ 5-704, 8-412.

Sec. 34-42. ~~Owner of rental units to designate responsible agent.~~ Deleted.

~~(a) In addition to, and not in lieu of any other provision of this Code, the tenants lawfully occupying any single-family rental property shall be responsible for the tasks enumerated below and the owner of every residential dwelling that consists of two or more rental dwelling units therein shall be required to designate an agent, who may be one of the residents thereof, who shall be responsible for the following tasks:~~

~~(1) The removal of empty refuse and garbage collection receptacles or containers from the public right-of-way to a secure location on the property following all regular trash and garbage collections.~~

~~(2) The prompt removal of litter and trash from the premises of the property and from the area of the public right-of-way abutting the property and the sweeping of sidewalks within and along such property.~~

~~(3) The keeping of all sidewalks along the property clear of snow and ice as required in section 42-419.~~

~~(b) The owner of each such property shall file annually with the department of licenses and inspections and post in clear public view in the lobby or other common area of all such dwellings the name, address and telephone number of such designated agent or, in the case of a single-family rental property, file such information concerning the tenants with the department.~~

~~(c) The provisions of this section and the responsibility of tenants of single-family rental properties and the designation by an owner of an agent pursuant to this section shall not be construed to abrogate the legal responsibilities of the owner to comply with the provisions of this chapter and other provisions of this Code.~~

~~(Code 1968, § 34-11.1)~~

Sec. 34-43. - No inspection of property prior to sale or other transfer to be required.

- (a) ~~__~~ No inspection of any dwelling, dwelling unit, hotel, or rooming house in the city shall be required nor shall any inspection be performed by the department of licenses and inspection for enforcement or implementation of the provisions of this chapter and the rules and regulations of the department prior to or in connection with any agreement of sale or conveyance or other transfer of any such property. This provision shall not affect inspections other than those heretofore required in connection with the sale or other transfer of property.
- (b) ~~__~~ The provisions of this section shall not be construed as in any way a limitation upon or modification of any of the other inspection, notice, compliance and enforcement provisions of this chapter.

(Code 1968, § 34-17)

Sec. 34-44. - Recordation of certain agreements of sale; responsibility of seller for violations.

- (a) ~~__~~ Whenever an agreement of sale is entered into containing provisions for the retention of legal title by the seller and providing for deferred installment payments by the buyer for the sale of any dwelling, dwelling unit, rooming house or hotel in the city, the seller shall record such agreement in the county recorder's office.
- (b) ~~__~~ The responsibility for complying with this chapter shall not be affected by such sales agreement. The seller shall remain responsible for code violation compliance imposed upon the owner or person in charge and the buyer shall have the burden of assuming the tenant's responsibilities enumerated in this chapter.

(Code 1968, § 34-17.1)

Sec. 34-45. - Inspections of rented or leased dwellings or buildings for residential occupancy, to include installment sales; no warranty of condition.

- (a) ~~__~~ *Inspection of a rental dwelling or building.* Any person who leases or rents any dwelling or any dwelling unit, regardless of whether that person has a valid rental dwelling business license, shall:

~~(1) Cause~~ cause the same to be inspected by the commissioner of licenses and inspections, or his designee every ~~two~~three years ~~for each dwelling or building consisting of five or fewer units.~~ An initial rental inspection shall be required for each such dwelling or building consistent with a rental inspection schedule set by the commissioner of licenses and inspections. The ~~two~~three-year period referenced in this subsection shall be calculated based upon the rental inspection schedule set by the commissioner of licenses and

inspections. Inspections of dwellings or buildings required under this subsection may consist of a random sampling of units in the dwelling or building as determined by the commissioner of licenses and inspections or his designee. ~~The purpose of all rental inspections shall be enforcement of the provisions of the City Code concerning life safety items which include, but are not limited to: smoke/carbon monoxide detectors, heating sources, hot water sources, electrical systems, sanitary disposal sources, water damage, roofs and means of egress and ingress;~~

~~(2) Cause the same to be inspected by the commissioner of licenses and inspections, or his designee every five years for each dwelling or building consisting of six or more units. An initial rental inspection shall be required for each such dwelling or building consistent with a rental inspection schedule set by the commissioner of licenses and inspections. The five-year period referenced in this subsection shall be calculated based upon the rental inspection schedule set by the commissioner of licenses and inspections. Inspections of dwellings or buildings required under this subsection may consist of a random sampling of units in the dwelling or building as determined by the commissioner of licenses and inspections or his designee. The purpose of all rental inspections shall be enforcement of the provisions of the City Code concerning life safety items which include, but are not limited to: smoke/carbon monoxide detectors, heating sources, hot water sources, electrical systems, sanitary disposal sources, water damage, roofs and means of egress and ingress. The provisions of this section shall apply to the lease or rental of any dwelling or dwelling unit whether it is to be leased to the current tenant or to a new tenant and whether the same is to be done by the current owner or a new owner.~~

~~(3) With the exception of the initial rental~~ (1) If an inspection, a waiver of a subsequent rental inspection required under subsections (1) and (2) above may be granted by reveals the building has no violations, the commissioner of licenses and inspections ~~if all~~ may extend the ~~following conditions are present:~~

- ~~a. The dwelling or building has no outstanding violations of the building, housing, sanitation, vegetation, animal, zoning or licensing provisions of the City Code at the time the waiver is requested;~~
- ~~b. The property owner and/or property manager has not been convicted of, or pled guilty or no contest to, or assessed a civil penalty for any violations of the building, housing, sanitation, vegetation, animal, zoning or licensing provisions of the City Code within the applicable two- or five-year inspection period preceding the waiver request;~~
- ~~c. The dwelling or building has not been the subject of a notice declaring said dwelling or building to be unfit for human habitation by the department of licenses and inspections within the applicable two- or five-year period preceding the waiver request;~~
- ~~d. The property owner and, if applicable, the property manager, is properly registered and licensed by the department of licenses and inspections; and~~
- ~~e. The property owner and, if applicable, the property manager, are in good standing with regard to any city financial obligations.~~

~~A waiver must be requested by the owner of the property, or if applicable, the property manager, each time a rental required under this subsection for a subsequent inspection is required. A request for waiver must be in writing and on a form provided by the department of licenses and inspections. from three years to four years.~~

~~(4)~~ (2) If the dwelling unit is unoccupied at the time of the rental inspection, ~~cause~~ any violations cited during the rental inspection ~~to~~ shall be corrected prior to permitting any tenant or lessee or any other persons to occupy such dwelling or dwelling unit. If the dwelling unit is occupied at the time of the rental inspection, ~~cause~~ any

violations cited during the rental inspection ~~to~~shall be corrected within the time period designated by the commissioner of the department of licenses and inspections or his designee, and the property owner shall cause ~~the~~ dwelling unit to be re-inspected upon correction of the violation(s).

~~The provisions of this section shall apply to the lease or rental of any dwelling or dwelling unit whether it is to be leased to the current tenant or to a new tenant and whether the same is to be done by the current owner or a new owner. In any instance in which a tenant remains in possession during a change in ownership by sale, exchange or any other transfer, the prerental inspection requirements of this chapter shall be applicable and shall be given full force and effect, and any violations cited shall be corrected within a reasonable period of time as shall be determined at the sole discretion of the commissioner of licenses and inspections.~~

(b)— Installment sales. Whenever any person sells any dwelling, dwelling unit, building or rooming house in the city wherein there is a retention of title by the seller and a deferred installment payment plan is set forth in the contract or lease agreement, the seller shall comply with the inspection requirements of subsection (a) of this section and the provisions of section 34-43 shall not be applicable to any such seller of property who or which is subject to the provisions of this subsection.

(c)— Disclaimer of warranty of condition. Nothing contained in this section shall be construed as any manner of warranty or guarantee by the city or by its agent, the department of licenses and inspections, that any particular property at any particular time fully complies with the provisions of this chapter and all rules and regulations adopted pursuant thereto or that any violations of this chapter and the rules and regulations adopted pursuant thereto cited by the department of licenses and inspections are necessarily the only violations existing in or upon a particular property at any particular time or that corrections of violations of this chapter and any rules and regulations adopted pursuant thereto which have been cited by the department of licenses and inspections are necessarily full and complete corrections such that no other violations exist in or upon any particular property at any particular time.

(d)— Fee. If more than one re-inspection is necessary to determine compliance with any violation cited during the initial rental inspection, an additional fee in the amount of ~~\$25~~50.00 will be assessed for each re-inspection, commencing with a second re-inspection. Said re-inspection fee may be waived for good cause shown at the discretion of the code enforcement officer.

(e) Condition of business license. Compliance with the requirements of this section is a condition of a rental dwelling unit business license issued pursuant to chapter 5, sec. 5-92.

(Code 1968, § 34-17.3; Ord. No. 99-083(sub 1), § 1, 11-4-99; Ord. No. 06-016(sub 1), § 1, 4-6-06)

Secs. 34-46—34-60. - Reserved.

DIVISION 2. - DEPARTMENT OF LICENSES AND INSPECTIONS

Sec. 34-61. - Power and duty of department—Specific functions enumerated.

The department of licenses and inspections shall be the department primarily responsible for the administration and enforcement of this chapter. In that regard, it shall:

- (1) ~~(4)~~—Maintain code enforcement performance records and prepare management reports;
 - (a) On a quarterly basis, the commissioner of licenses and inspections shall provide a report to the City Council committee charged with oversight of the department. Such report shall include information related to the results of rental inspections performed and any other information the commissioner believes should be included;
- (2) —____ Maintain files for all housing code enforcement inspections;
- (3)—____ Conduct housing inspections in response to citizen complaints to the extent possible;
- (4)—____ Conduct systematic housing inspections ~~in designated community development target areas;~~
- (5) —____ Supervise the conduct of all city-sponsored demolition activities;
- (6) ~~—Conduct pre-rental~~ Required to conduct annual inspections; of at least 1,500 rental dwelling units located on separate premises.
- (7) —____ Conduct sanitation code enforcement inspections;
- (8) —____ Conduct building inspections for all privately financed construction;
- (9)—____ Conduct all final inspections of properties involved in rehabilitation loan and grant programs; and
- (10)—____ Whenever conducting any code enforcement inspection, distribute information regarding the housing ~~assistance~~ programs of the city and rental programs to owner occupants and tenant occupants.

(Code 1968, § 34-3.1)

Sec. 34-62. - Same—Generally; inspection not to imply warranty.

- (a)—__ The department of licenses and inspections is hereby granted the sole and exclusive power and duty to enforce and administer the provisions of this chapter and all rules and regulations adopted pursuant thereto.
- (b) —__ The commissioner of licenses and inspections shall require that the language of disclaimer be printed beneath a heading in boldface print of "DISCLAIMER OF WARRANTY" on all notices of violations, orders and letters of compliance issued by the department of licenses and inspections.
- (c) —__ Nothing contained in this section shall be construed as in any way a warranty or guarantee by the city or its agent, the department of licenses and inspections, that:
 - (1)—____ Any particular property is at any particular time in full and complete compliance with the provisions of this building maintenance and housing code or with the provisions of any other state or municipal statutes, ordinances, rules or regulations.

- (2) — A particular property which has been cited for a particular violation of the housing code does not at any particular time have other violations of this housing code or of any other state or municipal statute, ordinance, rule or regulation.
- (3) — A property where corrections of violations of this building maintenance and housing code have been satisfactorily made does not have at any particular time other violations of this building maintenance and housing code or of any other state or municipal statute, ordinance, rule or regulation which has not been cited.
- (d) — Neither the city nor its agent, the department of licenses and inspections, warrants or guarantees and the city and its agent, the department of licenses and inspections, hereby expressly disclaim any warranty or guarantee of the condition of any particular property at any particular time. The condition of any property and its compliance with the provisions of this chapter and with any other state or municipal statute, ordinance rule or regulation shall at all times be the responsibility of the owner or his legal agent.

(Code 1968, § 34-4)

Sec. 34-63. - Rules and regulations.

The department of licenses and inspections is hereby authorized and empowered to adopt rules and regulations necessary for the proper enforcement of this chapter; provided, that any such rules and regulations are approved by ~~resolution of the council.~~ City's administrative board. Such rules and regulations adopted by such department and approved by the ~~council~~ City's administrative board shall have the same force and effect as the provisions of this chapter, and the penalty for violation thereof shall be the same as the penalty for violation of the provisions of this chapter.

(Code 1968, § 34-5)

Sec. 34-64. - Liability of officers, etc., of department of licenses and inspections.

No member, officer or agent of the department of licenses and inspections shall be sued or held to liability for any act done or omitted in good faith and with ordinary discretion on behalf of or under such department or pursuant to the charter of the city or any statutes, ordinances or rules and regulations under which such department has authority to act.

(Code 1968, § 34-7)

State Law reference— Tort immunity of local officials, 10 Del. C. § 4011.

Sec. 34-65. ~~Emergency~~ Emergencies and emergency orders.

(a) Whenever the commissioner of licenses and inspections finds that an emergency exists with respect to a building, structure or other property condition which requires immediate action to protect the public health or safety, he may, without notice or hearing, issue an order reciting the existence of such ~~an~~ emergency and requiring that ~~such~~ action be taken as he deems necessary to ~~meet~~ address the emergency. Notwithstanding the other provisions of this chapter, such order

shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately.

(b) When, in the opinion of the building official, there is an actual and immediate danger of collapse or failure of a building or structure or any part thereof that would endanger life or public health or safety, the code official shall cause the necessary work to be done, whether it be by demolition, shoring or other method as determined by the building official, in order to render such building or structure, or part thereof, temporarily or permanently safe, whether or not the legal procedure herein prescribed has been instituted.

(c) Following the performance of any work by the city or its designee to address an emergency that exists with respect to a building, structure or other property condition, the commissioner of licenses and inspections shall provide a notice to the owner or owners of the applicable building, structure or real property that describes the work that was performed.

(d) Any amounts incurred by the City or its designee to address an emergency that exists with respect to a building, structure or other property condition, along with legal interest accrued thereon from the date of expenditure, shall be reimbursed to the city, on demand, by the person or persons who were the owner or owners of the applicable building, structure or real property at the time such work was commenced. The city may maintain an action of law in debt or assumpsit against the owner or owners to recover the sums of money so expended, plus lawful interest and costs.

(e) Any amounts incurred by the City or its designee to address an emergency that exists with respect to a building, structure or other property condition, along with legal interest accrued thereon from the date of expenditure, shall be a lien on the lands and premises on which such work was performed.

(Code 1968, § 34-24)

Sec. 34-66. - Right of commissioner to bring legal proceedings, etc.

No provision or requirement contained in this chapter for a hearing shall in any way whatsoever affect or impair the right of the commissioner of licenses and inspections or city solicitor, or their respective designees, to bring at any time such legal proceedings, actions or prosecutions as are otherwise permitted by law or ordinance. ~~The invalidity of any provision of any section of this code as applied to existing buildings, dwellings, or dwelling units shall not be held to affect the validity of such provision in its application to buildings, dwellings, or dwelling units erected after August 28, 1986.~~

(Code 1968, § 34-23)

Secs. 34-67—34-85. - Reserved.

DIVISION 3. - LIMITATION OF OCCUPANCY NOTIFICATION

AND RENTAL REGISTRATION

Sec. 34-86. - Limitation of occupancy notification and rental registration—Required.

- (a) — Upon approval and issuance of the business license required by section 5-34 for the renting or letting of dwelling units, the department of licenses and inspections shall inspect each dwelling unit for the purpose of determining the maximum permitted occupancy thereof in accordance with the applicable provisions of this chapter. The commissioner of licenses and inspections or his authorized representative shall issue to the owner or operator of the dwelling unit or units a limitation of occupancy notification stating the maximum occupancy permitted in each dwelling unit. The owner or operator shall not rent or let a dwelling unit until a limitation of occupancy notification is issued by the department of licenses and inspections for that unit.
- (b) — Such limitation of occupancy notification shall not be construed or interpreted as implying in any way that the particular dwelling or dwelling unit is in compliance or conformity with the provisions of this chapter or any rule or regulation for the enforcement or implementation of this chapter adopted by the department of licenses and inspections or any ordinance or other law or regulation of the city or the state.
- (c) — Any owner or operator who fails to obtain a business license required by section 5-34 or register a dwelling unit or who rents or lets to another a dwelling unit prior to the issuance of a limitation of occupancy notification shall be deemed guilty subject to and liable for a civil fine of a misdemeanor as \$500.00 per rental unit. This provision supersedes the penalty provided in section 34-37.1-5.

(Code 1968, § 34-11; Ord. No. 92-053(sub 1), § 21(a), 7-2-92; Ord. No. 96-014, § 1, 4-16-96; Ord. No. 03-074, § 4, 11-20-03)

Sec. 34-87. - Reserved.

Editor's note— Ord. No. 03-074, § 5, adopted Nov. 20, 2003, repealed section 34-87 in its entirety. Former section 34-87 pertained to application and fee for rental unit registration, and derived from the Code of 1968, § 34-14; Ord. No. 96-014, § 1, adopted April 16, 1996.

Sec. 34-88. - Same—Copy to be given to tenant.

The owner or operator of any dwelling or dwelling unit to whom a limitation of occupancy notification has been issued under the provisions of this division shall give the person to whom the dwelling or dwelling unit is let or rented a copy of the notification at the time of letting or renting.

(Code 1968, § 34-16; Ord. No. 96-014, § 1, 4-16-96; Ord. No. 03-074, § 6, 11-20-03)

Secs. 34-89—34-110. - Reserved.

Editor's note— Ord. No. 03-074, § 7, adopted Nov. 20, 2003, repealed section 34-89 in its entirety. Former section 34-89 pertained to certificates submitted with application for registration, and derived from the Code of 1968, § 34-15.

DIVISION 4. - CONDEMNATION AND PLACARDING OF UNFIT DWELLINGS, ETC.

Sec. 34-111. - Compliance.

The designation of buildings, structures, dwellings or dwelling units as unfit for human habitation and the procedure for the condemnation and placarding of such buildings, structures, unfit dwellings or dwelling units shall be carried out in compliance with the requirements set forth in this division.

(Code 1968, § 34-25)

Sec. 34-112. ~~Grounds for~~ Right of condemnation.

(a) — Any building, structure, dwelling or dwelling unit which the commissioner of licenses and inspections shall find to have any of the following defects ~~shall~~may be condemned as unfit for human habitation:

- (1)— One which is so damaged, decayed, dilapidated, unsanitary, difficult to heat, unsafe or vermin-infested that it creates a hazard to the health or welfare of the occupants or of the public;
- (2) — One which lacks illumination, ventilation or sanitary facilities adequate to protect the health or welfare of the occupants or of the public; ~~or~~
- (3) — One which, because of its general condition or location, is unsanitary or otherwise dangerous to the health or welfare of the occupants or of the public.

(4) One which lacks adequate exit facilities; or

(5) One which constitutes a fire hazard.

(b) — Any building, structure, dwelling or dwelling unit may be condemned as unfit for human habitation by the commissioner of licenses and inspections if the owner or occupant ~~failed~~fails to comply with any order based on the provisions of this chapter or any rules or regulations adopted pursuant thereto; provided, that such building, structure, dwelling or dwelling unit is, in the opinion of the commissioner of licenses and inspections unfit for human habitation by reason of such failure to comply.

(Code 1968, § 34-26)

Sec. 34-113. - Notice of condemnation ~~and intent to placard~~.

Whenever the commissioner of licenses and inspections has condemned a building, structure, dwelling or dwelling unit as unfit for human habitation, he shall give notice ~~to the owner of such condemnation and of his intent to placard the dwelling or dwelling unit as unfit for human habitation to the owner~~. 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;

- (4) ~~—~~ Include a description of the repairs and improvements required to bring the condemned building, structure, dwelling or dwelling unit into compliance with the provisions of this chapter and any rules or regulations adopted pursuant thereto;
- (5) ~~—~~ Include an explanation of the owner's right to appeal the notice in accordance with the provisions of section 34-38; and
- (6) ~~—~~ Be served upon the owner; provided, that such notice shall be deemed to be properly served upon such owner if a copy thereof is delivered to him personally or if not found by leaving a copy thereof at his usual place of abode, in the presence of someone of the family of suitable age and discretion who shall be informed of the contents thereof, or by sending a copy thereof by registered mail with return receipt requested to his last known address, or, if the registered letter with the copy is returned with a receipt showing it has not been delivered to him by posting a copy thereof in a conspicuous place in or about the dwelling affected by the notice.

(Code 1968, § 34-27)

Sec. 34-114. - ~~Hearing~~Appeal.

~~Any~~The owner ~~affected by any notice relating to the condemnation of a~~ building, structure, dwelling or dwelling unit ~~as that has been condemned as being~~ unfit for human habitation may ~~request and shall be granted a hearing on the matter before the board of licenses and inspections review appeal such determination as provided in section 34-38(c).~~

(Code 1968, § 34-28; Ord. No. 94-002, § 5, 2-24-94)

Sec. 34-115. - Placarding generally.

After ~~the condemnation notice which is required under the provisions of section 34-38 a~~ building, structure, dwelling or dwelling unit has ~~resulted in an order been condemned as being unfit for human habitation,~~ the commissioner of licenses and inspections shall cause a placard ~~the affected to be posted to such building, structure, dwelling or dwelling unit as unfit for human habitation. The commissioner of licenses and inspections shall post,~~ in one or more conspicuous places ~~upon the affected dwelling or dwelling unit, one or more placards,~~ bearing the following words: "Condemned as Unfit for Human Habitation."

(Code 1968, § 34-29; Ord. No. 94-002, § 5, 2-24-94)

Sec. 34-116. - Vacation of structure, dwellings, etc., condemned and placarded.

- (a) ~~—~~ Any building, structure, dwelling or dwelling unit which has been condemned and placarded as being unfit for human habitation by the commissioner of licenses and inspections shall be vacated within a reasonable time as required by such commissioner, but in any event not later than ten days after the property has been condemned and placarded. No owner or operator shall ~~let to permit~~ any person ~~for human habitation and no person shall to~~ occupy any building, structure, dwelling or dwelling unit which has been condemned and placarded by the commissioner of licenses and inspections after the date on which such

commissioner has required the affected building, structure, dwelling or dwelling unit to be vacated.

- (b) — Any owner or operator or tenant or any other person who occupies any building, structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation by the commissioner of licenses and inspections shall do so entirely at that person's own risk. It shall be the duty of the owner or operator or the agent of the owner or operator to ensure that any building, structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation is vacated and not occupied. Nothing contained in this section shall be construed as in any manner imposing upon the city or its agent, the department of licenses and inspections, any liability whatsoever for the health or safety of any person who occupies or continues to occupy any building, structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation.
- (c) — Any person who refuses to comply with an order of the commissioner of the department of licenses and inspections to vacate and continues to occupy any building, structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation, or any person who occupies any such building, structure, dwelling or dwelling unit after placarding, may be forcibly removed from the premises by the police department and the premises shall thereafter be closed. The premises shall not again be occupied ~~as a dwelling place~~ until the defect(s) which caused the building, structure, or dwelling to be declared to be unfit is/are remedied and written approval of the commissioner is obtained.

(d) Any violation of this Section 34-116 is subject to penalty pursuant to section 34-37 and any applicable remediation costs.

(Code 1968, § 34-30; Ord. No. 99-110, § 1, 10-21-99; Ord. No. 00-072, § 1, 10-19-00)

Sec. 34-117. - Use of condemned and placarded dwellings, etc.; removal of placard.

No structure, dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the commissioner of licenses and inspections. The commissioner of licenses and inspections shall remove such placard whenever the defects upon which the condemnation and placarding action were based have been eliminated.

(Code 1968, § 34-31)

Sec. 34-118. - Unauthorized defacing or removal of placard.

No person shall deface or remove the placard from any structure, dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except as provided in section 34-117.

(Code 1968, § 34-32)

Sec. 34-119. - Condemned dwellings declared nuisances, etc.

All structures and dwellings condemned as unfit for human habitation within the provisions of this chapter are hereby declared to be public nuisances and shall be repaired or vacated as provided by this chapter and shall be subject to such other actions as are available at law.

(Code 1968, § 34-33)

Secs. 34-120—34-150. - Reserved.

DIVISION 5. ~~RENT WITHHOLDING~~ RENT WITHHOLDING

Sec. 34-151. - When tenant authorized to withhold rent.

A tenant shall be authorized to withhold the payment of rent when a notice has been issued by the commissioner of licenses and inspections to the owner or operator of a dwelling unit notifying such owner or operator:

- (1) ~~That~~ the dwelling unit or part thereof is in violation of this chapter, and directing the correction of the violation if, in the opinion of the commissioner, the violation is such as to constructively evict the tenant from a portion of the premises occupied by him; or
- (2) ~~That~~ the dwelling unit or part thereof is in violation of this chapter, and that such owner or operator has previously been subject to a notice from the department of licenses and inspections directing that such violation be corrected within a stated reasonable time, but that upon reinspection by such department after such reasonable time has elapsed, some or all of the violations have been found to be not corrected and in the opinion of the commissioner of licenses and inspections, such owner or operator has not made a reasonable effort to comply with such notice.

(Code 1968, § 34-34)

Sec. 34-152. - Tenant's affidavit.

(a) ~~A~~ tenant or occupant of a dwelling unit which he believes to be in violation of this chapter and qualified under ~~section 34-151~~ section 34-151 shall present to the department of licenses and inspections an affidavit containing the following information:

- (1) ~~A~~ description of the alleged violation and a reference to the applicable section of this chapter;
- (2) ~~The~~ name and address of the owner or operator of the premises and the name and the address of the person to whom rent is paid if other than the owner or operator; and
- (3) ~~The~~ date on which rent is due to be paid by the tenant, the amount of rent, and the rent period, i.e., weekly, monthly, etc.

- (b) —In every case wherein this procedure is adopted the tenant shall be instructed by the commissioner of licenses and inspections as to his rights, remedies and responsibilities under this chapter.

(Code 1968, § 34-35)

Sec. 34-153. - Inspection of premises; order to correct or notice of existence, etc., of violations.

Within three working days of the receipt of an affidavit as provided for by ~~section 34-152~~ section 34-152 and pursuant to ~~section 34-151(1)~~ section 34-151(1), the department of licenses and inspections shall inspect the dwelling unit described therein. Within three additional working days, six working days from the date of the receipt of the affidavit by such department, the commissioner of licenses and inspections shall issue an order directing the correction of violations which are found to exist on the premises and notifying the owner or operator that violations exist which are judged by the commissioner of licenses and inspections to constitute a constructive eviction of the tenant and that due to such constructive eviction such tenant has been authorized to withhold the payment of rent pursuant to ~~section 34-151(1)~~ section 34-151(1) and that such withheld rent shall be paid into an escrow fund to be disposed of as provided by ~~section 34-158~~ section 34-158.

(Code 1968, § 34-36)

Sec. 34-154. - Reinspection of premises.

If upon reinspection of a dwelling unit after proper notice to the owner or operator and a reasonable compliance period, some or all of the violations cited in such notice have been found not corrected, and, if in the opinion of the commissioner of licenses and inspections, such owner or operator has not made a reasonable effort to comply with such notice, and, if a tenant or occupant has presented to the department of licenses and inspections an affidavit as provided for by ~~section 34-152 and pursuant to section 34-151(1)~~ section 34-152 and pursuant to section 34-151(2), the commissioner of licenses and inspections within three working days of the receipt of such affidavit shall issue an order to such owner or operator citing such uncorrected violations and such judgment of a lack of reasonable effort to comply, and further notifying the owner or operator that such tenant or occupant has been authorized to withhold the payment of rent pursuant to ~~section 34-151(2)~~ section 34-151(2) and that such withheld rent shall be paid into an escrow fund to be disposed of as provided by ~~section 34-159~~ section 34-159.

(Code 1968, § 34-36.1)

Sec. 34-155. - Date withholding proceedings to begin.

The date of the notice or order issued by the commissioner of licenses and inspections following an inspection of the premises described in ~~section 34-153~~ section 34-153 shall be the date upon which rent withholding proceedings shall begin as provided in the following sections of this division.

(Code 1968, § 34-37)

Sec. 34-156. - Payment of withheld rent to city.

The tenant or occupant shall withhold the rent due the owner or operator of the dwelling unit as authorized and provided by this division and shall pay the same when due to the city. Such tenant shall continue to make such rental payments to the city when due until such time as he is directed to discontinue such payments by the commissioner of licenses and inspections. Rent paid to the city shall be deposited in an escrow account and shall not be commingled with other funds of the city. There shall be no release of funds maintained in this account except upon order of the commissioner of licenses and inspections or a court of competent jurisdiction.

(Code 1968, § 34-38; Ord. No. 91-050, § 1(34-38), 8-1-91)

Sec. 34-157. - Failure to pay rent to city.

No landlord, owner, operator, firm, corporation or any agent, officer or employee thereof shall bring any proceeding to dispossess the tenant during the pendency of rent withholding proceeding under this division. However, if the tenant or occupant, after initiating a rent withholding proceeding, fails to pay the rent when due to the city, the owner or operator of such dwelling unit shall have such rights or remedies at law or in equity in the same manner as if this division did not exist. The commissioner or the tenant may initiate a prosecution in the municipal court of the city against any landlord, owner, operator, firm, corporation or any agent, officer or employee thereof who violates this section and the violator shall be subject to the penalties in accordance with ~~section 34-37~~ section 34-37.

(Code 1968, § 34-38.1; Ord. No. 91-050, § 1, 8-1-91)

Sec. 34-158. - Using withheld rent to correct violations.

Whenever a dwelling unit has been subjected to rent withholding proceedings as authorized by ~~section 34-154~~ section 34-151(1) due to a constructive eviction, the commissioner of licenses and inspections shall require the owner or operator of such dwelling unit to provide, within five working days of the notice of violations having become an order, reasonable assurances in writing and signed by such owner or operator that the violations cited in such notice will be corrected within the time allowed. In addition:

(1) —If the commissioner receives such reasonable assurances in writing and signed by the owner or operator, he shall allow such owner or operator to proceed with the necessary work; except, however, if the commissioner at any time during the period of time allowed has reasonable grounds to believe that such work is not proceeding in a timely manner, he may initiate the procedure for contracting out the necessary work as provided in this section. The department of licenses and inspections shall reinspect such dwelling unit within three days after the day by which such violations were ordered to be corrected. If and when such violations have been corrected and the dwelling unit is no longer in violation of this chapter and the rent deposited in escrow has not been forfeited under subsection (3) of this section, the commissioner of licenses and inspections shall order the release and payment of such rents deposited in escrow to the owner or operator without interest, except for such sums as may be due as fines and/or costs under this chapter. The tenant or occupant shall thereupon resume rent payments directly to the owner, operator or his agent. If upon reinspection the owner or operator is found to have failed to comply with the order issued by the commissioner of licenses and inspections, the commissioner may declare the premises unfit for human habitation as provided in this chapter or initiate prosecution in the municipal court, either or both. In any such case, the rent deposited with the city shall not be returned to the owner or operator until such time as the commissioner of licenses and inspections certifies to the city that the dwelling unit complies with the provisions of this chapter or has been demolished and that such withheld rent is not subject to the forfeiture under subsection (3) of this section nor to any fines and/or costs under this chapter.

(2) —If the commissioner does not receive such reasonable assurances in writing, signed by the owner or operator or, if having received such assurances, he determines at any time during the time allowed that there exist reasonable grounds to believe that such necessary work is not proceeding in a timely manner, he may, in his sole discretion and without the necessity of seeking the consent of the landlord, direct that the rent so collected by the city be used for the correction of any other violations. The commissioner of licenses and inspections shall make a request of the procurement division to receive bids from qualified city-licensed contractors. The procurement division of the department of finance shall award the contract to the successful bidder. Notwithstanding the provision of this chapter that the tenant or occupant shall have the withheld rent in the escrow fund forfeited to him if he vacates the dwelling unit due to the constructive eviction, failure to so vacate before the signing of a contract between the city and such successful bidder shall waive the right of such tenant or occupant to such forfeiture. Any cost of the work contracted which exceeds the moneys collected shall be paid by the city which then shall recover such payments by continuing to collect rent from the tenant until all such costs shall have been recovered. If for any reason the costs cannot be thus recovered, the city shall have a right of action in debt or assumpsit against the owner or operator personally.

(3) —Any violations not noted by the commissioner or his authorized representative at the time of the original inspection and which in the opinion of the commissioner or his authorized representative have resulted from tenant abuse or misuse shall not be the responsibility of the landlord.

(4) —Any work approved by the commissioner of licenses and inspections to be done according to the above procedures shall not be interrupted or interfered with by the owner or operator in any way whatsoever. If, however, the owner or operator completes the specified work prior to commencement of work by the contractor and such work is completed to the satisfaction of the commissioner, he shall be responsible only for a \$25.00 charge to reinstate his occupancy permit; except, that he shall also be liable for any violations of this chapter.

(5) —After the completion of the corrections, the landlord shall permit the tenant to remain on the premises at the original rental amount for at least six months; provided, however, that the tenant abides by his obligations and responsibilities as to the rent and reasonable care of the premises.

(Code 1968, § 34-39; Ord. No. 91-050, § 1, 8-1-91)

Sec. 34-159. - Contract for repairs.

(a) —Whenever a dwelling unit has been subjected to rent withholding proceedings as authorized by ~~section 34-151~~ section 34-151(2) due to lack of reasonable effort by the owner or operator to comply with a violation notice, the commissioner of licenses and inspections in his sole discretion and without the necessity of seeking consent of the landlord may immediately direct the rent so collected by the city toward the correction of any of the violations. The commissioner of licenses and inspections shall make a request of the procurement division to receive bids from qualified city-licensed contractors. The procurement division of the department of finance shall award the contract to the successful bidder. Any cost of the work contracted for which exceeds the moneys collected shall be paid by the city which shall recover for such payments by continuing to collect rent from the tenant until all such costs have been recovered. If for any reason the costs cannot thus be recovered, the department of finance shall have a right of action in debt or assumpsit against the owner or operator personally.

(b) —Any violations not noted by the commissioner or his authorized representative at the time of the original inspection and which in the opinion of the commissioner or his authorized representative have resulted from tenant abuse or misuse shall not be the responsibility of the landlord.

(c) —Any work approved by the commissioner of licenses and inspections to be done according to the above procedures shall not be interrupted or interfered with by the owner or operator in any way whatsoever. If, however, the owner or operator completes the specified work prior to commencement of work by the contractor and such work is completed to the satisfaction of the commissioner, he shall be responsible only for a \$25.00 charge to reinstate his occupancy permit; except, that he shall also be liable for any violations of this chapter. After completion of the corrections, the landlord shall permit the tenant to remain on the premises at the original rental for at least six months; provided, however, the tenants abide by all the tenant's obligations and responsibilities as to rent and reasonable care of the premises.

(Code 1968, § 34-39.1; Ord. No. 91-050, § 1, 8-1-91)

Sec. 34-160. - Forfeiture of withheld rent.

Whenever a dwelling, dwelling unit, rooming house or hotel has been subjected to rental withholding proceedings as authorized by this chapter and the owner or operator has failed to correct violations of this chapter; and the owner or operator responsible for compliance with the provisions of this chapter enters into a contract for the sale of the real estate or permits the lease to expire or voluntarily demolishes the structure; or the commissioner of licenses and inspections orders the structure to be demolished because of its unsafe condition; or the tenant or occupant vacates the structure due to a constructive eviction found by the commissioner of licenses and inspections under ~~section 34-151~~(section 34-151)(2); the withheld rents in the possession of the city shall be paid to the tenant or occupant of the premises upon the order of the commissioner of licenses and inspections or of a court of competent jurisdiction. The person receiving such forfeiture payment shall present a receipt or other written proof demonstrating that such person is entitled to receive the withheld rents.

(Code 1968, § 34-39.2; Ord. No. 91-050, § 1, 8-1-91)

Sec. 34-161. - Termination of agreement; funds in escrow.

Whenever the commissioner of licenses and inspections shall determine that the rent withholding provisions of this division are no longer applicable to effect the work to be done, either by the owner, agent or operator, or that the repairs shall not or will not be made by the city, pursuant to ~~section 34-158~~, section 34-158, the rent withholding agreement shall be terminated. Funds, if any, held in escrow at the time of termination shall be disbursed to the owner, agent, or operator, or to the tenant, or to both, as directed by the commissioner of licenses and inspections. Any future rental payments shall be the responsibility of the tenant.

(Code 1968, § 34-39.3; Ord. No. 91-050, § 1(34-39.3), 8-1-91)

Sec. 34-162. - Eviction proceedings prohibited during proceedings.

Except as otherwise provided by ~~section 34-157~~, section 34-157, during the pendency of any proceedings under this division for rent withholding, no owner or operator shall bring any proceedings to dispossess the tenant for nonpayment of rent or any action for rent or rental value.

(Code 1968, § 34-40)

Secs. 34-163—34-185. - Reserved.

DIVISION 6. - OCCUPANCY OF CERTAIN RENTAL UNITS, VIOLATING CHAPTER, UNDER CERTAIN CONDITIONS

Sec. 34-186. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commissioner of licenses and inspections means the commissioner or his duly authorized delegate.

Landlord means the owner of a dwelling unit or a building containing multiple dwelling units for residential purposes.

(Code 1968, § 34-40.1)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 34-187. - Landlord's permit.

Whenever the owner of property shall by affidavit swear or affirm to the commissioner of licenses and inspections that because of vandalism, malicious mischief or any other valid security reason, he has been unable to meet all of the requirements of the city building maintenance and housing code as they relate to those requirements other than those basic to human safety and health, the commissioner, upon the applicant's payment of a \$25.00 fee, may grant a temporary certificate allowing such premises to be rented under the following conditions:

- (1) — That the landlord have a bona fide tenant who is willing to rent the premises in their present condition and resides therein.
- (2) — That the landlord shall have already engaged the services of a licensed contractor and obtained the necessary permits if required. Wherein the landlord states that he intends to correct the violation himself, he will be required to sign an affidavit to this effect. All work must be completed within a 90-day period.

(Code 1968, § 34-40.2(a))

Sec. 34-188. - Payment of rent to city.

Until all violations of this chapter existing at the time occupancy is permitted and the new violations which occur not as a result of tenant abuse are corrected, the entire rent will be paid to the department of finance of the city. As soon as compliance is achieved, the tenant shall make future payments directly to the landlord and a regular certificate of occupancy shall issue.

(Code 1968, § 34-40.2(b))

Sec. 34-189. - Use of rent to correct violations.

The commissioner of licenses and inspections in his sole discretion and without the necessity of seeking further permission from the landlord may direct the rent collected by the department of finance toward the correction of any of the violations according to a progress chart which shall be agreed upon by the commissioner and landlord at the time the temporary occupancy permit is issued.

(Code 1968, § 34-40.2(c))

Sec. 34-190. - Procurement and records division to receive bids.

The commissioner of licenses and inspections shall make a request of the procurement and records division to receive bids from qualified city-licensed contractors. The procurement and records division of the department of finance will award the work to the successful bidder. The cost of the work contracted shall at no time exceed the monies collected for the subject unit.

(Code 1968, § 34-40.2(d); Ord. No. 92-053(sub 1), § 1(c), 7-2-92)

Sec. 34-191. - Violations not noted in original inspection.

Any violations not noted by the commissioner or his delegate at the time of the original inspection and which in the opinion of the commissioner or his delegate have resulted from tenant abuse or misuse shall not be the responsibility of the landlord.

(Code 1968, § 34-40.2(e))

Sec. 34-192. - Landlord not to interrupt work.

Any work not begun by the landlord in the specified time and subsequently approved by the commissioner of licenses and inspections to be done according to the procedures in this chapter shall not be interrupted or interfered with by the landlord in any way whatsoever. The commissioner may in his discretion, however, extend the time allotted in the progress chart for good cause shown. If the landlord, however, completes the specified work prior to the commencement of work by the contractor, and such work is completed to the satisfaction of the commissioner, he shall be responsible only for a \$50.00 late charge in order to reinstate his occupancy permit.

(Code 1968, § 34-40.2(f))

Sec. 34-193. - Disposition of funds.

All funds collected by the department of finance shall be expended to correct deficiencies, it being the express purpose of this division to improve housing units and not otherwise. If the tenant vacates the unit, voluntarily or otherwise, the funds so held shall be held without further application for a period of 90 days or when a new tenant is found, whichever first occurs, and a new progress chart shall be instituted between the landlord and commissioner. If after 90 days a new tenant is not found, the fund shall be returned to the landlord without interest.

(Code 1968, § 34-40.2(g))

Sec. 34-194. - Tenant's rights, remedies and responsibilities.

In every case wherein this procedure is adopted, the tenant shall be instructed by the commissioner as to his rights, remedies and responsibilities under this division.

(Code 1968, § 34-40.2(h))

Sec. 34-195. - Landlord to sign agreement.

Every landlord applying for a temporary permit under this division shall sign an agreement to the effect that he understands its provisions and agrees to abide by them. Any landlord who in his opinion is aggrieved by the action of the commissioner may appeal such decision to the board of license and inspection review.

(Code 1968, § 34-40.2(i))

Sec. 34-196. - Rights of tenants and landlord not affected.

This division shall in no way affect the right of any tenant or landlord under any existing state law regarding landlords and tenants in effect at the time of its passage.

(Code 1968, § 34-40.3)

Secs. 34-197—34-~~230~~199. - Reserved.

DIVISION 7. IMPROVEMENTS TO EXTERIORS OF VACANT BUILDINGS

34-200. – Authorizations of improvements to exteriors of vacant buildings or structures; procedures; liens for the costs incurred.

(a) Authorization. The Department of Licenses and Inspections is authorized to initiate the making of improvements to the exteriors of vacant buildings or structures in accordance with this section and pursuant to the provisions of 25 Del. C. ch. 29 (§ 2901 et seq.) and 25 Del. C. ch. 46 (§ 4601 et seq.).

(1) Eligible buildings or structures. If the owner has failed to rehabilitate or demolish:

- i. A building that is vacant or abandoned and deemed to be unsafe, or
- ii. Any other building or structure that is vacant and amendable to rehabilitation if made secure, the commissioner of licenses and inspections may recommend that exterior improvements be made or caused to be made to such building or structure so as to render the building or structure safe and secure and to prevent further structural damage from rain and other natural causes, and that a lien be duly recorded in order that the city may recover the costs incurred by public expenditure for the same.

(2) Types of improvements. Exterior improvements, authorized herein, may include, but are not limited to: Repairs to or replacement of any of the structural components of such buildings or structures, sidewalks in the right-of-way or on the lot on which the building or structure is located, steps, porches, railings, columns, windows, doors, exterior painting, brick pointing and roofing, and any other repairs or replacements deemed appropriate to protect and secure the structural integrity of the building or structure and to prevent further damage that would render the building or structure unsafe. The costs incurred by the city for any such improvements shall be referred to as "exterior improvement costs." Such exterior improvement costs incurred by the city shall be recorded by lien in accordance with the provisions of 25 Del. C. ch. 46 (§ 4601 et seq.).

- (3) Approval and certification of improvements to be made. The commissioner of licenses and inspections, his duly authorized designee, the director of real estate and housing and the director of planning, or the duly authorized designee of each of the same, shall by majority approval of a written authorization certify that specific exterior improvements shall be made to a building or structure, identified by street address and tax parcel number, in accordance with this subsection. Such written authorization shall be forwarded to the procurement and records division and to the finance director with specifications prepared for the particular improvements authorized to be made and for no other improvements. In an emergency affecting the public safety as determined by the commissioner of licenses and inspections or his designee, the rendering of exterior improvements to secure the structure may be expedited in lieu of the requirements of this certification subsection.
- (4) Notice to owner. When exterior improvements have been authorized as aforesaid and specifications for the same have been prepared, the department of licenses and inspections shall provide notice to the record owner or owners of the subject building or structure and to any record lien holders that such exterior improvements will be undertaken and the date of commencement of the same. For purposes of this subsection, the mailing of a certified letter, return receipt requested, at least 30 days prior to the commencement of the exterior improvements, to the last known address of the record owner, owners or lien holders and notifying same of the address of the property to be improved, the tax parcel number, the condition of the property and the legal right of the city to obtain a judgment against the owner and a lien against the property after completion of the exterior improvements, shall be deemed to be sufficient notice.
- (b) Costs incurred as debt owing to city. Whatever expenses are incurred in relation to authorized exterior improvements pursuant to this subsection shall be paid by the city treasurer out of monies in the treasury and the owner or owners shall be jointly and severally liable to the city for the full amount so expended. Whenever exterior improvement costs have been incurred as aforesaid, the expenditure of public funds for exterior improvements to any vacant or abandoned building deemed to be unsafe or any other vacant building or structure, following notice to the owners, being the costs so incurred, with legal interest thereon from the date of expenditure, shall be reimbursed to the city, on demand, by the person or persons who were the owner or owners of such building or structure at the time such work of exterior improvement commenced. The city may maintain an action of law in debt or assumpsit against the owner or owners to recover the sums of money so expended, plus lawful interest and cost. When any person is found guilty, whether by trial or admission, of violating any provision of this chapter or chapter 4, in any instance in which such person, at the time of sentencing for such violation, also has not reimbursed the city for the costs incurred by the city in making or causing to be made any exterior improvements, pursuant to this subsection, to any building or structure regarding which such person or persons have been found guilty, as

provided, the court shall order such person or persons to make full restitution to the city for such exterior improvement costs in addition to and not in lieu of any fines which the court may impose.

- (c) Entering of lien. When the city expends public funds for the purpose of exterior improvements to any vacant or abandoned building or structure deemed to be unsafe or any other vacant building or structure within the city, after such notice as aforesaid, the city may enter a lien for the amount so expended, with interest accrued thereon, on the lands and premises on which such work of exterior improvements was performed by means of the department of finance and the city solicitor forwarding directions to the prothonotary for New Castle County for the entering of such exterior improvement liens in a docket for the same.
- (d) Satisfaction. When the department of finance and the city solicitor have determined the exterior improvement costs and interest, the entering of the lien shall be done by forwarding to the prothonotary the information as aforesaid. Whenever any such lien is satisfied by payment, the department of finance and the city solicitor may so advise the prothonotary in order that there shall be entered in the prothonotary's records the date of final payment and the words 'satisfied in full' pursuant to 25 Del. C. § 4603(d).
- (e) Rules and regulations. The department of licenses and inspections may adopt rules and regulations as deemed necessary and proper for the administration of this subsection, subject to approval by the administrative board.

Secs. 34-201 – 34-209. – Reserved.

DIVISION 8 – REGISTRATION OF VACANT BUILDINGS AND REGISTRATION FEES

Sec. 34-210. – Annual registration of vacant buildings and registration fees.

- (a) Purpose. The purpose of this section requiring the registration of all vacant buildings and the payment of registration fees is to assist the city government, particularly the department of licenses and inspections (DLI) in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the city to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this chapter, the health and sanitation code, and any other applicable provisions of the Wilmington City Code.

(b) Definitions and applicability; registration statement and fees.

(1) Definitions. For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:

- (A) Boarded: A building or structure subject to the provisions of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.
- (B) Exterior maintenance and major systems: The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, drive-way, if any, area of the lot, as applicable and as enforced by the department of licenses and inspections.
- (C) Occupied: Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid city business license, or the most recent, federal, state, or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of pre-rental inspection.
- (D) Occupancy ready: Any building that is vacant, but has been recently rehabilitated and a certificate of occupancy or certificate of completion has been issued by the department of licenses and inspections allowing the building to be lawfully occupied, or if the property has not been recently rehabilitated, the property meets all minimum code requirements and may be immediately occupied. Whether a building is "occupancy ready" shall be determined by department of licenses and inspections through an inspection of the building. The classification "occupancy ready" shall only apply to the vacant registration requirements of this section, and does not apply to any other section of the code.
- (E) Open: A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and, or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or

not capable of being locked and secured from intrusion, or any combination of the same.

- (F) Owner: An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.
- (G) Vacant: A building or structure shall be deemed to be vacant if no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, nontransient basis.

(2)

Applicability. The requirements of this section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 6 consecutive months and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant at least 6 consecutive months. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the department of licenses and inspections. The registration fee(s) as required by subsection (b)(3) of this section shall be billed by the department of licenses and inspections and shall be paid by the first business day of January of each year. For purposes of this section, the following shall also be applicable:

- (A) If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the secretary of state;
 - (B) If an estate, the name and business address of the executor of the estate;
 - (C) If a trust, the name and address of all trustees, grantors, and beneficiaries;
 - (D) If a partnership, the names and residence addresses of all partners with an interest of ten percent or greater;
 - (E) If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten percent or greater;
 - (F) If an individual person, the name and residence address of that individual person.
- (3) Registration statement and fees; local agent. If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who

shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open, vacant and boarded, or occupancy ready and shall be required within 30 days of whenever any building has remained vacant for at least six consecutive months and within 30 days of a change in ownership of a building that has been vacant at least six consecutive months. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering. The owner of the vacant property as of November 1 of each calendar year shall be responsible for the payment of the non-refundable registration fee, except buildings deemed "occupancy ready" by the department of licenses and inspections and actively for sale or lease shall be exempt from imposition of the annual registration fee. However, buildings deemed "occupancy ready" by the department of licenses and inspections shall only be exempt from imposition of the annual registration fee for no more than 2 consecutive billing cycles. Except as provided in subsection (b)(3)(ix)(A) below, said fee shall be billed by the department of licenses and inspections and based on the duration of the vacancy as determined by the following scale:

- (i.) No fee for properties that are vacant for less than one year;
- (ii.) \$500.00 for properties that are vacant for at least one year but less than two years;
- (iii.) \$1,000.00 for properties that are vacant for at least two years but less than three years;
- (iv.) \$5,000.00 for properties that are vacant for at least three years but less than four years;
- (v.) \$10,000.00 for properties that are vacant for at least four years but less than five years;
- (vi.) \$12,000.00 for properties that are vacant for at least five years, but less than six years;
- (vii.) \$14,000.00 for properties that are vacant for at least six years, but less than seven years;
- (viii.) \$16,000.00 for properties that are vacant for at least seven years, but less than eight years; and
- (ix.) \$18,000.00 for properties that are vacant for at least eight years, and an additional \$2,000.00 for each year in excess of eight years.
- (A) The vacant registration fee billed to a housing provider meeting the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code and who receives a vacant building directly from the city or who receives public funds from the city for the

- acquisition, rehabilitation or redevelopment of a vacant building shall not be based on the duration of the vacancy prior to the non-profit housing provider receiving the vacant building from the city or receiving the funds from the city, but rather from the time it received the vacant building or funds from the city. This provision shall be retroactive to May 1, 2003.
- (B) The vacant registration fee billed to the purchaser of a property from the Wilmington Neighborhood Conservancy Land Bank Corporation shall not be based on the duration of the vacancy prior to purchase, but rather from the time the purchaser received the vacant building from the Wilmington Neighborhood Conservancy Land Bank Corporation.
- (4) Appeal rights. The owner shall have the right to appeal the imposition of the registration fees to the Licenses and Inspection Review Board, upon filing an application in writing with the applicable \$50.00 non-refundable filing fee to the Department of Licenses and Inspections no later than 30 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy, as defined in Section 34-500(b)(1)(C).
- (5) One time waiver of registration fee. A one-time waiver of the registration fee, or an extension of a waiver for up to 12 months form the date of the billing statement immediately following the waiver, may be granted by the Commissioner of Licenses and Inspections upon application of the owner and upon review and advice of the law department, within 30 calendar days from the date of the bill for the registration fee, if the owner
- (i.) Demonstrate with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and
 - (ii.) Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or
 - (iii.) Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period.
- (6) Four-year waiver. Upon application by the owner and satisfaction of subsection (b)(5) above, the commissioner may, upon advice and review of the law department, grant a one-time four year waiver of the registration fee, or an extension of a waiver for up to 12 months from the date of the billing statement immediately following the waiver, if the owner meets the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code. With regard to an extension of a waiver only, the time period of the extension shall commence from the date of the billing statement (November 1 of the applicable calendar year) and, in no event, shall the extension exceed 12 months. An extension of a waiver shall only be granted once.

- (7) Delinquent registration fees as a lien. After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to subsection (b) (4) above, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the city, and the city may commence a civil action to collect such the unpaid debt.
- (c) Duty to amend registration statement. If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same to contact the department of licenses and inspections within 30 days of the occurrence of such change and advise the department in writing of those changes.
- (d) Exceptions. This section shall not apply to any building owned by the United States, the state, the city, nor to any of their respective agencies or political subdivisions and the Wilmington Neighborhood Conservancy Land Bank Corporation.
- (e) Violations; penalties.
- (1) The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall be subject to and liable for a fine pursuant to sec. 34-37.
- (2) The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building as required by subsection (b)(3) above, shall be subject to and liable for a civil fine of \$500.00.
- (f) Abatement of delinquent vacant registration fees. Upon application of the owner, the city, in its discretion, may enter into an agreement with the owner of a vacant property whereby the city agrees to void all delinquent vacant registration fees owed by the owner if the owner obtains a certificate of occupancy or certificate of completion for the property within six (6) months of the date of the agreement such that the building may be lawfully occupied.
- (1) Eligibility. At the time of application, the owner must provide the following documentation to the Commissioner of Licenses and Inspections:
- (i) Proof that he or she owns the property; and
 - (ii) A detailed scope of the work required to obtain a certificate of occupancy or certificate of completion for the property; and
 - (iii) Objective, satisfactory proof that he or she has adequate funds and/or financing to complete all work necessary to obtain a certificate of occupancy or certificate of completion within six (6) months of the date of the agreement; and
 - (iv) If applicable, satisfactory proof that a licensed contractor has been engaged to perform the required work; and
 - (v) Satisfactory proof that the intended use of the property conforms with all zoning requirements; and

- (vi) The owner must be current on all other city obligations, including but not limited to charges related to taxes, water, sewer, stormwater, permits, registration fees, business licenses, parking tickets, civil penalties, and red light tickets.
- (2) If the owner satisfies subsection (f)(1), and the city enters into an agreement with the owner as contemplated by subsection (f), the city shall not file a monition action against the subject property for the length of the agreement. However, the delinquent vacant registration fees shall remain a lien against the property.
- (3) Delinquent vacant registration fees subject to the agreement contemplated by subsection (f) shall only be voided under this subsection if the owner obtains a certificate of occupancy or certificate of completion for the property within six (6) months of the date of the agreement such that the building may be lawfully occupied. If the owner fails to obtain a certificate of occupancy or certificate of completion within the six (6) month time period, the delinquent vacant registration fees remain liens on the property, and the property is subject to monition by the city.
- (4) A decision by the city not to enter into an agreement under this subsection shall not be subject to appeal.

Secs. 34-211 – 34-230. – Reserved.

ARTICLE III. - MINIMUM STANDARDS AND REQUIREMENTS^[2]

Footnotes:

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Cross reference— Lead paint, § 13-131 et seq.

DIVISION 1. - GENERALLY

Sec. 34-231. - Basic equipment and facilities.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking or eating therein, which does not comply with the following requirements:

- (1)— Kitchen sink. Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to the city water and sewer system.
- (2) — Toilet room, toilet and lavatory. Every dwelling unit shall contain a room which affords privacy to a person with such room and which is equipped with a flush water closet and a lavatory basin in good working condition and properly connected to the city water and sewer system.

- (3) — Bathroom, bathtub or shower. Every dwelling unit shall contain, within a room which affords privacy to a person within such room, a bathtub or shower in good working condition and properly connected to the city water and sewer system, and these facilities may be situate in the same room as those required by subsection (2) of this section.
- (4) — Hot and cold water. Every kitchen sink, lavatory basin and bathtub or shower required under the provisions of subsections (1), (2) and (3) of this section shall be properly connected with both hot and cold water lines.
- (5) — Garbage disposal and garbage and rubbish storage facilities. Every dwelling unit shall have adequate garbage disposal facilities or garbage storage containers and adequate rubbish storage facilities, the type and location of which are approved by the enforcement officer. Garbage shall be kept in storage containers separate from rubbish storage containers. Every dwelling unit shall have a sufficient number of metal or plastic containers covered with a watertight metal or plastic lid and of a capacity of not less than 15 gallons nor more than 100 gallons.
- (6) — Water-heating facilities. Every dwelling unit shall have supplied water-heating facilities which are properly installed, are maintained in a safe and good working condition, are properly connected with hot water lines required under the provisions of subsection (4) of this section, and are capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than 120 degrees Fahrenheit. Such supplied water-heating facilities shall be capable of meeting the requirements of this subsection when the dwelling or dwelling unit heating facilities required under the provisions of section 34-234(5) are not in operation.
- (7) — Means of egress. Every dwelling unit shall have safe, unobstructed means of egress leading to safe and open space at ground level which complies with applicable city and state regulations.
- (8) — Maintenance of plumbing and plumbing fixtures. All plumbing, water closets and other plumbing fixtures in a dwelling unit shall be maintained in good order and repair and in accordance with the requirements of the city building code and plumbing code.
- (9) Penalty. Any violation of this section is subject to a penalty pursuant to section 34-37. In accordance with section 34-37, any owner-occupant who violates this section shall not be subject to a civil fine as provided for in section 34-37(d), but rather shall only be subject to sections 34-37(a)-(c).

(Code 1968, § 34-41; Ord. No. 06-054(sub 1), § 3, 10-19-06)

Sec. 34-232. - Smoke-detection devices; requirements.

(a) *Installation required.*

- (1) — Dwellings. All structures and dwellings shall be equipped with smoke detectors and fire protection equipment as required by the provisions of chapter 4 and the city's building code.

- (2) — Unlawful acts: In addition to and not in lieu of any other provisions of this section and of this Code, it shall be unlawful for any person responsible for the installation of a smoke detector to fail to so install it. It shall be unlawful for any person to tamper with, damage or render inoperative, such as, but not exclusively, by disconnecting electrical wiring or by removing the batteries from any smoke detector.
- (b) — Type of detection devices. Detection devices shall be of the photo-electric or ionization type and shall be electric, 110 volts, alternating current, or battery-powered smoke detectors, Underwriters' Laboratory or Factory Mutual Approved.
- (1) — Electric units shall be direct-wired on a separate circuit on the line side of service equipment, immediately fused with proper size fuse. Detector wiring shall be minimum 14 gauge wire. All wiring shall comply with the National Electric Code and shall be performed by registered, licensed electricians.
- (2) — Battery-powered units shall be permitted only in structures built prior to 1983 or not substantially renovated since 1983. Where battery-powered units are permitted, the battery shall be of the type approved for the detector and shall provide a minimum of 12 months' service. Battery-powered units shall be equipped with an audible sounding device to alert occupants of the need for battery replacements. In rental dwelling units where battery-powered devices are permitted, after installation of the detection device at the landlord's expense, in accordance with subsection (a) of this section, it shall be the tenant's responsibility, unless otherwise provided in the tenant's lease agreement, to:
- a. — Make periodic inspections of the unit to determine that it is in proper working order;
 - b. — Notify the landlord of any malfunction of such detection device which the landlord shall then repair or replace at his own expense; and
 - c. — Replace the batteries when necessary during the entire term of the rental agreement.
- (c) Audible signal. Detection devices shall be equipped with an audible sounding device that provides a steady signal with a minimum decibel rating of 85 decibels.
- (d) — Number of devices required. A minimum of one device shall be required in one-story and two-story single-family dwelling units. Dwelling units consisting of three or more stories shall be equipped with a minimum of two devices. Buildings containing two or more dwelling units shall be equipped with a minimum of one device for each individual dwelling unit. The minimum requirement of this section is that one detector shall be installed on the first floor level at or near the stairs leading to the second floor level, or one detector shall be placed at the second floor level at or near the top of the stairs. In dwellings having basements or cellars, an additional smoke detector shall be installed at or near the top of the stairs leading from the basement or cellar to the first floor level. This section shall not limit the number of detectors required in residential buildings, where the design, arrangement or configuration of the interior would require additional detectors in additional areas of the protected premises, when in the judgment of the authority having jurisdiction, placement of additional detectors is necessary for the protection of the occupants.
- (e) — Authority having jurisdiction. The commissioner of licenses and inspections and the fire marshal shall have concurrent jurisdiction for purposes of enforcing compliance with this section. The authority vested in the commissioner of licenses and inspections for

enforcement of the provisions of the housing and building codes for purposes of conformity with the provisions of this section may be delegated to the office of the fire marshal.

- (f) — *Supervision of enforcement.* All general contractors, subcontractors and their agents who install electric, 110-volt alternating-current powered smoke-detection devices shall be registered with the office of the city fire marshal in order to sell, distribute, furnish or install smoke-detection equipment within the city. It shall be the responsibility of the contractor, installer, or seller of electrical 110-volt, alternating current-powered smoke detectors to certify in writing to the commissioner of licenses and inspections that such device is in compliance with this section. This subsection shall not apply to persons who perform the actual installation of smoke detectors in dwelling units they own; however, such installations shall still require any applicable inspections required by the building code.

~~(g) — *Penalties.* Any violation of the provisions of this section shall render the owner or operator or agent of the owner or operator of the building, or the tenant of rental property, if the rental agreement so provides in accordance with subsection (b)(2)b of this section, and/or the general contractor, subcontractors or their agents, liable for a fine of not less than \$300.00 per violation.~~

(Code 1968, § 34-41.1; Ord. No. 92-053(sub 1), § 21(b), 7-2-92)

State Law reference— Basic equipment and facilities, 31 Del. C. § 4116 et seq.; residential smoke detectors, 16 Del. C. § 1622 et seq.

Sec. 34-232.1. - Carbon monoxide alarm devices; requirements.

Every building of residential or mixed occupancy, in which there are one or more residential units, shall be equipped with approved carbon monoxide alarms in accordance with this chapter.

- (1) — *Location.* Not less than one approved carbon monoxide alarm shall be installed in each residential unit. The alarm shall be installed within 40 feet of each room used for sleeping purposes. The carbon monoxide alarm should be placed so it will be easily audible in all sleeping rooms. The carbon monoxide alarm shall be installed according to the manufacturer's instructions.

In every hotel and motel, one approved carbon monoxide alarm shall be installed for every 10,000 square feet of floor area, or fraction thereof, (1) on every floor on which a fossil fuel-burning boiler or furnace is located, and (2) on every floor on which sleeping rooms are heated by any type of warm air heating plant that burns fossil fuel. The floor area shall be computed separately for each floor. The carbon monoxide alarm should be placed so it will be easily audible to all sleeping rooms. The carbon monoxide detector shall be installed according to the manufacturer's specifications.

- (2) — *Exemptions.* The following residential units and hotels/motels shall not be required to have carbon monoxide alarms:
- a. A residential unit in a building or hotel/motel that does not rely on combustion of fossil fuel for heat, ventilation or hot water, and is not sufficiently close to any ventilation source of carbon monoxide, as determined by the commissioner of licenses and inspections or his or her designee, to receive carbon monoxide from that source.

- b. A residential unit or hotel/motel that:
 1. Is heated by steam, hot water or electric heat;
 2. Is not connected by ductwork or ventilation shafts to any room containing a fossil fuel-burning boiler or heater; and
 3. Is not sufficiently close to any ventilated source of carbon monoxide, as determined by the commissioner of licenses and inspections or his designee, to receive carbon monoxide from that source.
- (3) — Dwelling units heated by space heaters. Each dwelling unit or hotel/motel employing space heating equipment that is located within the dwelling unit or hotel/motel room and that burns fossil fuel shall be equipped with at least one carbon monoxide alarm. The carbon monoxide alarm should be installed according to the manufacturer's specifications.
- (4) — Standards. Every approved carbon monoxide alarm shall comply with all applicable federal and state regulations, and shall bear the label of a nationally recognized standard testing laboratory, and shall meet the standard of UL 2034 or its equivalent. The commissioner of licenses and inspections may issue rules and regulations not inconsistent with the provisions of this chapter, for the implementation and administration of the provisions of this chapter relating to carbon monoxide alarms.
- (5) — Battery removal violations—Penalty. It shall be unlawful for any person to remove batteries from a carbon monoxide alarm required under this chapter, or in any way to make inoperable a carbon monoxide alarm required under this chapter, except that this provision shall not apply to any building owner or manager or his agent in the normal procedure of replacing batteries. ~~Any person who violates this section shall be punished by a fine of not less than \$300.00 per violation.~~
- (6) — Owner's and tenant's responsibilities. The owner of a structure shall install the carbon monoxide alarm(s) and supply required carbon monoxide testing and maintenance information to at least one adult tenant in each dwelling unit. The tenant shall test, provide general maintenance, and replace required batteries for carbon monoxide alarms located in the tenant's dwelling unit.
- (7) — Building heated by central fossil fuel powered heating unit. The owner or owner's agent of every residential building with more than one unit within the building that is heated by one main central fossil fuel powered heating unit, and that is not exempted under this section, shall install one approved carbon monoxide alarm on the floor containing the central heating unit. The owner shall test, provide general maintenance, and replace required batteries for carbon monoxide alarms located in this area. The carbon monoxide alarm shall be installed according to the manufacturer's instructions.
- (8) — Fossil fuel defined. Whenever used in this chapter, the term "fossil fuel" shall include coal, natural gas, kerosene, oil, propane and wood.
- ~~(9) — Penalties. Any person who violates any provision of this section, for which a separate penalty is not provided, shall be subject to a fine of not less than \$100.00 and not more than \$1,000.00 per violation. Every day that a violation is allowed to continue shall constitute a separate and distinct offense.~~

(Ord. No. 01-003(sub 1), § 1, 3-15-01)

Sec. 34-233. - Mobile home fire safety requirements.

Any mobile home shall be equipped with smoke detection devices as described in section 34-232 of both the electric type and the battery-powered type as backup detection devices, both of which detection devices shall be located outside of bedrooms, between the bedrooms, and the living room. Each mobile home shall be equipped with at least one handheld fire extinguisher to be located in the kitchen area. No propane bottled gas shall be permitted in any mobile home unless an alternative fuel supply is not available. No portable kerosene stove or other fuel burning portable appliances for heating or cooking shall be permitted; portable means any stove except one designed for and connected to a flue outlet. Each mobile home shall be equipped with an automatic sprinkler system of a type approved by the commissioner of licenses and inspections and the fire department. Violations of this section shall be punishable as provided in section 34-232 for violations of that section.

(Code 1968, § 34-41.2)

State Law reference— Fire safety requirements, 31 Del. C. § 4118.

Sec. 34-234. - Light, ventilation and heating; pest control.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- (1) — *Window or skylight for light in habitable rooms.* Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be ten percent of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light-obstruction structures are located less than three feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least ten percent of the total floor area of such room.
- (2) — *Ventilation of habitable rooms.* Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total of openable window area in every habitable room shall be equal to at least 50 percent of the minimum window area size or minimum skylight-type window size, as required in subsection (1) of this section, except where there is supplied some other device affording adequate ventilation and approved by the enforcement officer.

- (3) — Light and ventilation for bathrooms, etc. Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms contained in subsections (1) and (2) of this section.
- (4) — Electrical outlets and fixtures. Every habitable room of any dwelling shall contain at least one electric convenience outlet. Every such outlet and fixture shall be properly installed, shall be maintained in good and safe working condition, and shall be connected to the source of electric power in a safe manner.
- (5) — Heating facilities generally. Every dwelling shall have supplied heating facilities which are properly installed, are maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments in every dwelling unit located therein to a temperature of at least 68 degrees Fahrenheit, at a distance of three feet above flood level when the outdoor temperature is at or above zero degrees Fahrenheit.
- (6) — Space heater requirements. Every supplied space heater shall comply with all of the following requirements:
 - a. — No space heater burning solid, liquid or gaseous fuels shall be of the portable type.
 - b. — Every space heater burning solid, liquid or gaseous fuel shall be properly vented to a chimney or duct leading to outdoor space.
 - c. Every space heater shall have a fire-resistant panel beneath it.
 - d. Every space heater shall comply with all the requirements of the building code and fire code of the city and the equipment shall be approved by the electrical department of the Middle Department Association of Fire Underwriters.
- (7) — Minimum temperatures. Every owner or operator of any dwelling who rents, leases or lets for human habitation any dwelling unit contained within such dwelling on terms, either expressed or implied, to supply or furnish heat to the occupants thereof, shall maintain therein a minimum temperature of ~~70~~68 degrees Fahrenheit between the hours of 6:00 a.m. and 10:00 p.m. of each day and 60 degrees Fahrenheit between the hours of 10:00 p.m. and 6:00 a.m. of each day, whenever the outdoor temperature shall fall below 50 degrees Fahrenheit during such hours. Whenever a dwelling is heated by means of a furnace, boiler or other heating apparatus under the control of the owner or operator of the dwelling, such owner or operator, in the absence of a written contract or agreement to the contrary, shall be deemed to have contracted, undertaken or bound himself to furnish heat in accordance with the provisions of this subsection to every dwelling unit which contains radiator, furnace heat duct outlets or other heating apparatus outlets.
- (8) — Lighting of public halls and stairways. Every common area, public hall and stairway in every multiple dwelling containing three or more dwelling units shall be adequately lighted at all times. Every common area, public hall and stairway in structures devoted solely to dwelling occupancy and containing not more than two dwelling units may be supplied with conveniently located light switches, controlling an adequate lighting system which may be turned on when needed, instead of fulltime lighting. The owner or operator shall have the following responsibilities:

- a. —The owner or operator of any multiple dwelling shall have the duty of providing and the responsibility for proper maintenance of the structure's lighting system.
 - b. —The owner or operator shall be responsible for having the wiring in the lighting system so arranged that the owner or operator is the party directly responsible for payment of all utility charges for that part of the lighting system by which the lighting required in this section of all common areas, public halls and stairways is provided.
- (9) — Screens, etc.—For insect control. During that portion of each year when the enforcement officer deems it necessary for protection against mosquitoes, flies and other insects, every ~~door opening directly from a dwelling unit to outdoor space shall have supplied screens and a self-closing device; and every~~ window or other device with openings to outdoor space, used or intended to be used for ventilation, shall ~~likewise~~ be supplied with screens covering at least 33 percent of the window area; provided, that such screens shall not be required during such periods in rooms deemed by the enforcement officer to be located high enough in the upper stories of buildings as to be free from such insects, and in rooms located in areas of this city which are deemed by the enforcement officer to have so few such insects as to render screens unnecessary. This subsection shall not apply to those buildings which have central air conditioning approved by the building official.
- (10) — Same—For rodent control. Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with a screen or such other device as will effectively prevent their entrance.
- (11) Penalty. Any violation of this section is subject to a penalty pursuant to section 34-37. In accordance with section 34-37, any owner-occupant who violates this section shall not be subject to a civil fine as provided for in section 34-37(d), but rather shall only be subject to sections 34-37(a)-(c).

(Code 1968, § 34-42)

State Law reference— Light, ventilation and space requirements, 31 Del. C. § 4115; extermination, 31 Del. C. § 4121.

Sec. 34-235. - Space, use and location requirements.

No person shall occupy or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- (1) — Floor space of dwelling units. Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof, regardless of age, the floor space to be calculated on the basis of total habitable room area, exclusive of stairways.
- (2) — Floor space of sleeping rooms. In every dwelling unit of two or more rooms, every room occupied for sleeping purposes by one occupant shall contain at least 70

square feet of floor space, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant thereof.

- (3) — *Use of cellar space.* No cellar space shall be used as a habitable room or dwelling unit unless it fully complies with the building code as adopted and amended in chapter 4 of this Code and the floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness.
- (4) — *Use of basement space.* No basement space shall be used as a habitable room or dwelling unit unless it shall have been shown to the satisfaction of the building official to comply with the building code as adopted and amended in chapter 4 of this

Code and the floors and walls are impervious to leakage of underground and surface runoff of water and are insulated against dampness.

(Code 1968, § 34-43)

State Law reference— Space requirements, 31 Del. C. § 4115.

Sec. 34-236. - Responsibilities of owners.

- (a) — No person shall own a building or structure within the city which does not comply with the following requirements, particularly with respect to any evidence of decay of any of the items enumerated:
 - (1) — *Foundations, exterior walls and roofs.* Every foundation, exterior wall and roof shall be weathertight, watertight, rodentproof and insectproof. Any evidence of decay of a foundation, exterior wall or roof shall be a violation of this section.
 - (2) — *Interior partitions, walls, floors and ceilings.* Every interior partition, wall, floor and ceiling shall be capable of affording privacy and shall be kept in a good state of repair and in a clean and sanitary condition. Any evidence of decay shall be a violation of this section.
 - (3) — *Drainage and removal of rain water from roofs.* All rain water shall be so drained and conveyed from every roof so as to not cause dampness in the walls, ceilings or floors of any habitable room or of any bathroom, toilet room or floors of any habitable room or of any bathroom, toilet room, basement or cellar. Any evidence of decay of a roof shall be a violation of this section.
 - (4) — *Windows, exterior doors and basement hatchways.* Every window, exterior door and basement hatchway shall be weathertight and rodentproof. Any evidence of decay of a window, exterior door or basement hatchway shall be a violation of this section.
 - (5) — *Exterior wood and metal surfaces.* All exterior wood and metal surfaces shall be protected from the elements and against decay by paint or other approved protective coating applied in a workmanlike fashion. Any evidence of decay such as cracking, scaling, peeling or loose paint or decay of any other protective coating, regardless of the type of surface painted or upon which any other protective coating has been placed, shall be a violation of this section. With regard to surfaces other than wood or metal,

once the decaying paint or protective covering is removed, a property owner shall repaint or re-apply any other protective coating if a protective coating is necessary to protect the surface from decay or otherwise make it weather tight.

- (6)—Stairways, porches, etc. Every inside and outside stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon. Any evidence of decay of a stairway, porch, etc., shall be a violation of this section.
- (7) —Plumbing fixtures; water and waste pipes. Every supplied plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition. Any evidence of decay of such plumbing fixture, water pipe or waste pipe shall be a violation of this section.
- (8) —Chimneys and smoke pipes. Every chimney and every supplied smoke pipe shall be adequately supported.
- (9) —Toilet room and bathroom floors. Every toilet room, floor surface and bathroom floor surface shall be maintained so as to be impervious to water and shall be kept in a clean and sanitary condition.
- (10)—Facilities, equipment and utilities generally. Every supplied facility, piece of equipment or utility which is required under this chapter shall be so constructed or installed that it will function properly and shall be maintained in good working condition.
- (11) —Removing, discontinuing, etc., services, facilities, equipment or utilities. No owner or operator shall cause any service, facility equipment or utility which is required to be supplied under the provisions of this chapter to be removed from, shutoff from or discontinued for any occupied ~~dwelling or dwelling unit let or occupied by him~~building, except for such temporary interruption as may be necessary while actual repairs, replacements or alterations are in the process of being made.
- (12) —Pest control. Every owner of a ~~dwelling containing two or more dwelling units~~building shall be responsible for the extermination of insects, rodents or other pests on the premises. Whenever infestation exists in ~~two~~any building or ~~more~~any part of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling unitsany building, extermination thereof shall be the responsibility of the owner; and extermination must be performed by a licensed exterminator.
- (13) —Cleanliness, etc., of communal, shared or public areas. Every owner of a ~~dwelling containing two or more dwelling units~~building shall be responsible for maintaining in a clean and sanitary condition all communal, shared or public areas of the ~~dwelling~~building and ~~the~~ premises thereof ~~which are used or shared by the occupants of two or more dwelling units.~~
- (14) —Cleanliness, etc., of occupied dwelling-unit buildings generally. No owner shall occupy or rent to any other person for occupancy or allow any other person to occupy any vacant ~~dwelling-unit~~building or any part thereof, unless it is clean, sanitary and ~~complies in compliance~~ adoptionpromulgated with all provisions of this chapter and all rules and regulations adoptedpromulgated pursuant thereto.

- (15) —*Open ditches or excavations.* All open ditches or excavations ~~which~~that present a safety or health hazard shall be filled or protected to eliminate such hazard.
- (16) —*Drainage generally.* All parts of ~~dwelling, dwelling units or rooming units~~all buildings and premises shall be so drained as to prevent unsanitary accumulation of water in cellars or basements or any nuisance to or excessive drainage upon sidewalks and adjoining properties.
- (17) —*Fences.* All fences located on an individual's property shall be maintained in good condition. Evidence of disrepair such as large holes, collapsed sections, missing sections, missing or broken railings and/or posts, shall be a violation of this section.
- (b) —Any person violating any order of the commissioner of licenses and inspections based on the provisions of this section or any provision of any rule or regulation adopted by the department of licenses and inspections 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 ~~deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not less than \$100.00, together with costs and disbursements of prosecution, or be imprisoned for a period not exceeding six months, or by both such fine and imprisonment, subject to a penalty pursuant to section 34-37 and any applicable remediation costs.~~
- ~~(c) —After conviction and punishment for violation of such order of the commissioner of licenses and inspections based upon the provisions of this section, or any provision of any rule or regulation adopted by the department of licenses and inspections for the enforcement or implementation of this section, if such person shall continue in violation of such order, then such person shall be liable for further prosecution, conviction and punishment upon such same order, without any necessity of the commissioner of licenses and inspections issuing a new order, until such order has been complied with.~~
- ~~(d) —Each day's~~(c) Each week's failure to comply with any order of the commissioner of licenses and inspections, based upon the provisions of this section, or the provisions of any rule or regulation adopted by the department of licenses and inspections before the enforcement and implementation of any provision of this section or any such rule or regulation shall constitute a distinct and separate offense and be punishable as such.
- (d) When, in the opinion of the commissioner of licenses and inspections, the structural integrity of any structure is potentially compromised, the commissioner of licenses and inspections may order that a structural analysis be performed by a licensed structural engineer to determine the integrity of the structure. The structural engineer shall submit a detailed report on how to repair or address any hazardous situation presented by such structure. The cost of the structural engineer's report shall be classified as an enforcement cost and shall be recoverable from the owner of the property.

(Code 1968, § 34-44; Ord. No. 97-092, § 1, 12-4-97; ~~Ord. No. 14-033(sub 1), § 1, 2-18-16~~)

State Law reference— Responsibilities of owners and occupants, 31 Del. C. § 4120.

Sec. 34-237. - Responsibilities of occupants; penalties for violations.

- (a) —The occupants of every dwelling or dwelling unit shall comply with the following requirements:

- (1) — Cleanliness and sanitation generally. Every occupant of a dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies and controls.
- (2) — Disposal of rubbish. Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish in a clean and sanitary manner by placing it in the rubbish containers required by sections 34-231 and 13-7.
- (3) — Disposal of garbage. Every occupant of a dwelling or dwelling unit shall dispose of all his garbage and any other organic waste which might provide food for rodents in a clean and sanitary manner by placing it in the garbage disposal facilities or garbage storage containers required by sections 34-231 and 13-7.
- (4) — Screens, storm doors and windows. Every occupant of a dwelling or dwelling unit shall be responsible for handling all screens and double or storm doors and windows whenever the same are required under the provisions of this chapter or of any rule or regulation adopted pursuant thereto, except where the owner has agreed to supply such service.
- (5) — Pest control. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. The owner's responsibilities are as follows:
 - (a) — Notwithstanding the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a ratproof or reasonably insect-proof condition, extermination shall be the responsibility of the owner.
 - (b) — Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.
- (6) — Plumbing fixtures. Every occupant of a dwelling unit shall keep all plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.
- (7) — Heating facilities. Every occupant of a dwelling unit shall be responsible for the exercise of reasonable care, proper use and proper operation of supplied heating facilities.
- (8) — Care and use generally. Every occupant of a dwelling unit which is let or rented from another shall be responsible for the exercise of reasonable care and the proper use of the dwelling unit and its component parts and supplied facilities and equipment such as screens, screen doors, garbage and rubbish containers. No occupant of a dwelling unit which is let or rented from another shall neglect the maintenance of the dwelling unit such that it has an injurious effect on the health, safety or welfare of the occupants themselves or of immediate neighbors.
- ~~(9) — High grass and weeds. Every occupant of a dwelling unit which is let or rented shall be responsible for weeds or grasses growing or accumulating on land of which he or she is the occupant, which includes, but is not limited to any public right-of-way or alley facing, adjoining or~~

~~abutting the occupant's property so as to create a nuisance to health or safety thereon or to adjoining property. Weeds or grasses growing in the public right-of-way, including but not limited to growth occurring in cracks, fractures, expansion joints in the curbs and sidewalk, more than four inches in height and or six inches in width, and weeds or grasses more than eight inches in height growing in any other location referenced in this section shall be removed and/or cut.~~

- ~~(b) Any person violating any order of the commissioner of licenses and inspections based on the provisions of this section or any provision of any rule or regulation adopted by the department of licenses and inspections 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 deemed guilty of a misdemeanor and upon conviction thereof after trial before the justice of the peace court, shall be punished by a fine of not less than \$250.00 for each period of one to seven days of each offense up to a maximum fine of \$1,000.00 for each such offense, together with the costs and disbursements of prosecution, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment, for the first conviction. For any conviction of a violation that is the second conviction for the same violation as a previous violation which has not been corrected, the minimum fine shall be not less than \$500.00 and not more than \$5,000.00; for the third conviction not less than \$1,000.00 nor more than \$5,000.00, which shall not be suspended; for the fourth conviction \$1,500.00, which shall not be suspended; and for the fifth and each subsequent conviction of the same violation that still has not been corrected, the minimum fine for each conviction shall be not less than \$5,000.00, which shall not be suspended. Upon conviction of a violation of this section, the court may order the defendant to correct the violation by a date certain. If the defendant fails to correct the violation by the court ordered date, the court may impose a fine of \$50.00 per day to be calculated from the date of conviction to the date by which the court had ordered the violation to be corrected.~~
- ~~(c) After conviction and punishment for violation of such order of the commissioner of licenses and inspections based upon (b) Any person violating any order of the commissioner of licenses and inspections based on the provisions of this section or any provision of any rule or regulation adopted by the department of licenses and inspections for the enforcement or implementation of this section, if such person shall continue in violation of such order, then such person shall be liable for further prosecution, conviction and punishment upon such same order, without any necessity of the commissioner of licenses and inspections issuing a new order, until such order has been complied with or violating any provision of this section, or any provision of any such rule or regulation, shall be subject to a penalty pursuant to section 34-37 and any applicable remediation costs.~~
- ~~(d)~~ (c) Each ~~day's~~week's failure to comply with any order of the commissioner of licenses and inspections 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 any provision of this section or any such rule or regulation shall constitute a distinct and separate offense and be punishable as such.

(Code 1968, § 34-45; Ord. No. 06-054(sub 1), § 3, 10-19-06)

State Law reference— Responsibilities of owners and occupants, 31 Del. C. § 4120.

Secs. 34-238—34-265. - Reserved.

DIVISION 2. - PREREQUISITES TO COMPLIANCE^{[a][3]}

Footnotes:

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Editor's note— Ord. No. 06-054(sub 1), §§ 4, 5, adopted Oct. 19, 2006, repealed sections 34-267, 34-268, in their entirety and renumbered former sections 34-269—34-278 as new sections 34-267—34-276. Former sections 34-267, 34-268 pertained to garbage and rubbish storage and disposal, and derived from the Code of 1968, §§ 34-47, 34-48.

Sec. 34-266. - Plumbing and plumbing fixtures.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to plumbing and plumbing fixtures unless the following requirements are met:

- (1) — Contamination of water supply generally. All plumbing is so designed and installed as to prevent contamination of the water supply through backflow, backsiphonages and any other method of contamination.
- (2) — Direct connection to nonpotable water supply. All plumbing is so designed and installed that no potable water supply line or plumbing fixture is directly connected to a nonpotable water supply.
- (3) — Cross-connections. Every water supply line is so constructed that there is no possibility of a cross-connection between a potable and a nonpotable water supply line in accordance with the building code.
- (4) — Condition of water supply lines, valves. Every water supply line is in good working condition and every valve therein is in good working condition.
- (5) — Water supply inlets. Every water supply inlet is located above the flood level of any installed sink, lavatory, bathtub or automatic washing and similar water-using fixture, or above some unobstructible overflow thereof; and there are no submerged inlets, except submerged inlets installed with a vacuum breaker of a type approved by the enforcement officer.
- (6) — Traps in waste lines. The waste line of every water-using fixture is trapped.
- (7) — Draining and condition of waste line drains. Every waste line drains freely without obstruction or leaks.
- (8) — Maintenance and cleanliness generally. All plumbing and plumbing fixtures are maintained in good working condition, and all plumbing fixtures are kept clean.
- (9) — Water pressure. Water pressure is adequate when it permits a flow of two gallons per minute of water from any open water faucet at all times.
- (10) — Construction, etc., of flush toilets. Every flush water closet or toilet shall be constructed with a bowl and trap made in one piece, which is of such shape and form and which holds a sufficient quantity of water so that no fecal matter will collect on the surface of the bowl and which is equipped with flushing rims which permit the bowl to be properly flushed and scoured when water is discharged through the flushing rims.

(Code 1968, § 34-46; Ord. No. 92-053(sub 1), § 21(f), 7-2-92)

State Law reference— Plumbing requirements, 31 Del. C. § 4116.

Sec. 34-267. - Gas facilities.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to gas facilities unless the following requirements are met:

- (1) — *Venting*. All gas-burning hot water heaters and space heaters are properly vented to a chimney or duct leading to outdoor space.
- (2) — *Condition of pipes generally*. Every gas pipe is sound and tightly put together, with no leaks.
- (3) — *Corrosion or obstruction of pipes*. No gas pipe is corroded or obstructed so as to reduce gas pressure or volume.
- (4) — *Pipe material*. Every gas appliance is connected to a gas line with metal piping.
- (5) — *Gas pressure*. Gas pressure is adequate to permit a proper flow of gas from all open gas valves at all times.

(Code 1968, § 34-49; Ord. No. 06-054(sub 1), § 5, 10-19-06)

Sec. 34-268. - Electric wiring and facilities generally.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to electric wiring and facilities unless the following requirements are met:

- (1) — *Insulation of wire*. Every exposed electric wire has insulation which is in good condition.
- (2) — *Installation of switch and outlet plates*. Every switch plate and outlet plate is properly fastened in position.
- (3) — *Short circuits, etc.* No short circuit or break exists in any electric line.
- (4) — *Functioning, etc., of fixtures and outlets*. Every fixture and outlet functions properly and is properly fastened in place.
- (5) — *Shock hazards*. No obvious shock hazard exists. In order to eliminate the potential for shock hazards, particularly in bathrooms and kitchens, the installation and maintenance in good order of ground fault circuit interrupters (GFCIs), as defined in the National Electrical Code 1996 Edition, shall be required in all dwelling units.
- (6) — *Temporary wiring*. No temporary wiring is used, except extension cords which run directly from portable electric fixtures to convenience outlets, and which do not lie underneath floor-covering materials or extend through doorways, transoms or other similar apertures through structural elements.

(Code 1968, § 34-50; Ord. No. 98-037, § 1, 4-2-98; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Electrical facilities, 31 Del. C. § 4118.

Sec. 34-269. - Heating and heating facilities generally.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to heating and heating facilities unless the following requirements are met:

- (1) ~~—~~ *Central systems generally.* When the dwelling or dwelling unit is heated by a central heating system:
 - a. ~~—~~ The central heating unit is in good operating condition.
 - b. ~~—~~ Every heat duct, steam pipe and hot water pipe is free of leaks and functions so that adequate heat is delivered where intended.
 - c. ~~—~~ Every seal between the sections of a hot air furnace is in good repair.
- (2) *Portable heaters.* There are no portable heaters burning solid, liquid or gaseous fuels.
- (3) *Smoke pipes and chimneys.* Every smoke pipe and every chimney is adequately supported and maintained in such condition that there will be no leakage or backing up of noxious gases.

(Code 1968, § 34-51; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Heating facilities, 31 Del. C. § 4117.

Sec. 34-270. - Lighting.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to lighting unless every public hall, stairway and foyer has sufficient lighting through windows or from electric lights to provide illumination of at least one foot-candle on every part of such areas at all times of the day and night, except as otherwise provided by section 34-234(8).

(Code 1968, § 34-52; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Lighting requirements, 31 Del. C. § 4115.

Sec. 34-271. - Insect and rodent control.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to exclusion of insects and rodents unless it complies with sections 34-234(9) and 34-234(10) and with the requirement that every basement or cellar window shall be supplied with a heavy wire screen of not larger than one-fourth-inch mesh.

(Code 1968, § 34-53; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Extermination, 31 Del. C. § 4121.

Sec. 34-272. - Roofs.

The roof of every dwelling shall be tight and have no defects that admit rain.

(Ord. No. 92-053(sub 1), § 21(g)(34-54), 7-2-92; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Roofs, 31 Del. C. § 4113(f).

Sec. 34-273. - Stairs and porches.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to stairs and porches unless the following requirements are met:

- (1)— *Holes, grooves and cracks.* Every flight of stairs and porch is free of holes, grooves and cracks which are large enough to constitute possible accident hazards.
- (2)— *Rails generally.* Every stairwell, and every flight of stairs which is more than three risers high, has rails not less than two feet, six inches, measured vertically from the nose of the treads to the top of the rail, and every porch which is more than three risers high has rails not less than three feet, six inches above the platform.
- (3)— *Fastening and maintenance of rails, etc.* Every rail and balustrade is firmly fastened and is maintained in good condition.
- (4)— *Settling, etc.* No flight of stairs has settled more than one inch out of its intended position or has pulled away from supporting or adjacent structures.
- (5)— *Supports.* No flight of stairs has rotting or deteriorating supports.
- (6)— *Treads, height.* The treads of every flight of stairs are uniform in height and comply with the building code as adopted and amended in chapter 4 of this Code.
- (7)— *Condition, etc., generally.* Every stair tread is sound and is securely fastened in position.
- (8)— *Strength.* Every stair tread is strong enough to bear a concentrated load of at least 400 pounds without danger of breaking through.
- (9)— *Porches, floors.* Every porch has a sound floor.
- (10)— *Porch supports.* No porch has rotting or deteriorating supports.

(Code 1968, § 34-56; Ord. No. 06-054(sub 1), § 5, 10-19-06)

Sec. 34-274. - Bathroom and water closet compartment floors.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to water closet compartment and bathroom floors unless every water closet compartment floor and bathroom floor is made of terrazzo, tile, smooth concrete, dense hardwood with tightly fitting joints, rubber, asphalt tile, linoleum or other similar material providing a surface which is reasonably impervious to water and is easily cleanable; or such floor is made of one of the denser soft woods, with tightly fitting joints, and is covered with varnish, lacquer or other similar coating providing a surface which is reasonably impervious to water and is easily cleanable.

(Code 1968, § 34-57; Ord. No. 06-054(sub 1), § 5, 10-19-06)

State Law reference— Plumbing facilities, 31 Del. C. § 4116.

Sec. 34-275. - General sanitation.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to general sanitation unless the following requirements are met:

- (1) — *Floors and floor coverings*. Every floor and floor covering is kept reasonably clean and is not littered or covered with dirt, dust, garbage, human or animal fecal matter, or any other unsanitary thing.
- (2) — *Walls and ceilings*. Every wall and ceiling is reasonably clean and is not littered or covered with dust, dirt, cobwebs or greasy film.
- (3) — *Stagnant water*. No stagnant water is allowed to accumulate or stand anywhere about the premises.

(Code 1968, § 34-58; Ord. No. 06-054(sub 1), § 5, 10-19-06)

Sec. 34-276. - All windows to be operable.

No dwelling or dwelling unit shall be deemed to comply with the requirements of this chapter relating to windows unless every window is operable and readily opened and closed. The requirements of this section shall mean that both parts of a double-hung window shall be moveable up and down and that any window that opens outward or that opens inward shall be maintained so as to do so. This provision shall apply to type R-3 one- and two-family dwellings only.

(Ord. No. 98-077, § 1, 7-30-98; Ord. No. 98-135, § 1, 11-20-98; Ord. No. 06-054(sub 1), § 5, 10-19-06; Ord. No. 14-023, § 1, 6-5-14)

Secs. 34-277—34-300. - Reserved.

ARTICLE IV. - HOTELS AND ROOMING HOUSES⁽⁴⁾⁽⁴⁾

Footnotes:

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Cross reference— Rooming house license, § 5-91.

DIVISION 1. - GENERALLY

Sec. 34-301. - Compliance required.

No person shall operate a hotel or a rooming house, or shall occupy or let to another for occupancy any hotel unit in any hotel or any rooming unit in any rooming house, except in

compliance with the provisions of every section of this chapter except the provisions of section 34-231 and section 34-237.

(Code 1968, § 34-59)

Sec. 34-302. - Operation and occupancy of rooming houses, generally.

(a) — Every rooming unit located within a rooming house shall comply with the requirements for dwelling units as established in accordance with the provisions of this chapter, and rooming houses shall, in addition, be subject to the following special requirements:

- (1) — Each rooming house owner or operator within the city shall file, on or before January 1 of each year, a notarized registration statement listing the street address and parcel number of each such rooming house and the number of rooming units therein, together with an annual registration of rooming house fee of \$100.00 per rooming house. Such registration fee is in addition to and not in lieu of the license fee requirements of chapter 5 of this Code and is in addition to and not in lieu of the permit fee requirements of this article. Such registration statement and fees shall be filed with the revenue division of the department of finance.
- (2) — The department of licenses and inspections and the fire department shall inspect such registered rooming houses at least once per year.

(b) *Standards of operation.*

- (1) — The floor space requirements for rooming houses shall be a minimum of 70 square feet per rooming unit, except in instances of occupancy by more than one person in which case the minimum floor space requirements shall be 70 square feet per person occupying such room unit.
- (2) — Each floor of a rooming house shall be equipped with a smoke detector of the hard wired variety, an emergency lighting system, and at least one fire extinguisher; in addition, at least one smoke detector shall be installed in the basement of the rooming house building.
- (3) — Each floor of a rooming house shall have a common hallway, and each individual rooming unit shall contain at least one window; in addition, fire escapes shall be provided to service the third floor of a building where rooming units exist, with unobstructed access to such fire escapes. In no case shall access to any fire escape be located solely within a rooming unit or within or through any other private or normally closed room.
- (4) — Partitions used in rooming house construction shall consist of two-by-four wood or steel studs and shall be covered on both sides with one hour fire-rated drywall.
- (5) — The use of paneling in buildings dedicated to rooming house use is prohibited unless such paneling or any finish wall covering carries a minimum class C fire rating; in no case shall paneling be permitted in common hallway or stairway areas and the commissioner of licenses and inspection shall be empowered to order the removal of paneling from such common areas.

- (6) — Common doorways between adjoining rooming house buildings shall be permitted only with the specific approval of the commissioner of licenses and inspections; any such doorway between rooming house buildings shall be equipped with a fire-rated class B door and permission shall be granted by the commissioner only upon a showing of exceptional need for the same by the owner or operator thereof.
- (7) — A common or central kitchen facility in a rooming house may be maintained on an optional basis, but only after securing specific permission to do so from the city's department of licenses and inspections; in no case shall the use of hot plates or similar portable cooking devices be permitted in a rooming unit, or in any other area of a rooming house.
- (8) — In addition to and not in lieu of the requirements of section 34-338, the department of licenses and inspections and the fire marshal's office shall inspect or cause to be inspected the electrical system in rooming houses and shall order the upgrading of such electrical system if such upgrading is necessary to meet the demands to be placed upon the electrical system and to assure the safety of rooming house occupants and nearby residents.

(Code 1968, § 34-59.1; Ord. No. 92-053(sub 1), § 21(h), 7-2-92)

Sec. 34-303. - Guest register.

The operator of a hotel or a rooming house shall keep a list of all occupants up to date at all times in a permanently bound volume and such volume shall be available for inspection by the commissioner of licenses and inspections or his authorized representative.

(Code 1968, § 34-60)

Sec. 34-304. - Toilet, etc., facilities.

At least one flush water closet, lavatory basin and bathtub or shower, properly connected to a water and sewer system, approved by the enforcement officer and in good working condition, shall be supplied for each six persons or fraction thereof residing within a hotel and for each four persons or fraction thereof residing within a rooming house, excluding members of the operator's family who shall have their own facilities; provided, that in a hotel or rooming house where rooms are let only to males, flush urinals may be substituted for not more than one-half the required number of water closets. All such facilities shall be so located within the dwelling as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot water at all times. No such facilities shall be located in a basement except by written approval of the enforcement officer. All such facilities shall be located within a room which affords privacy and when not provided within a hotel unit or rooming unit, they shall not be more than one story removed from the hotel unit or rooming unit intended to be served by such facilities.

(Code 1968, § 34-61)

Sec. 34-305. - Bedding and towels.

The operator of every hotel or rooming house shall change supplied bed linen and towels therein at least once each week, and prior to the letting of any room to any occupant. The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.

(Code 1968, § 34-62)

Sec. 34-306. - Floor space requirements for hotels.

Every room in a hotel occupied for sleeping purposes by one person shall contain at least 70 square feet of floor space, and every such room occupied for sleeping purposes by more than one person shall contain at least 50 square feet of floor space for each occupant thereof.

(Code 1968, § 34-63)

Sec. 34-307. - Means of egress generally.

Every hotel unit and every rooming unit shall have safe, unobstructed means of egress leading to safe and open space at ground level as required by the enforcement officer or the fire marshal.

(Code 1968, § 34-64)

Sec. 34-308. - Separate access required.

There shall be for each dwelling unit and for each rooming unit in a rooming house and for each hotel unit in a hotel a separate access either to a hallway, landing, stairway or street.

(Code 1968, § 34-65)

Sec. 34-309. - Maintenance generally.

The operator of every hotel or rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for maintenance of a sanitary condition in every other part of the hotel or rooming house. He shall be further responsible for the sanitary maintenance of the entire premises when the entire structure or building is leased or occupied by the operator.

(Code 1968, § 34-66)

Sec. 34-310. - Dwelling units to comply with established requirements.

Every dwelling unit located within a hotel or a rooming house shall comply with all of the requirements for dwelling units as established in accordance with the provisions of this chapter.

(Code 1968, § 34-67)

Sec. 34-311. - Preparing or cooking food in hotels—Generally.

No occupant of a hotel shall prepare or cook food in a hotel unless such food is prepared or cooked in a dwelling unit contained therein.

(Code 1968, § 34-68)

Sec. 34-312. - Same—Communal kitchens prohibited.

No communal kitchen shall be contained in any hotel.

(Code 1968, § 34-69)

Sec. 34-313. - Preparing or cooking food in sleeping rooms of rooming houses.

Food shall not be prepared or cooked in any room in a rooming house used for sleeping purposes.

(Code 1968, § 34-70)

Secs. 34-314—34-335. - Reserved.

DIVISION 2. - OPERATION PERMIT

Sec. 34-336. - Required.

- (a) — No person shall operate a hotel or a rooming house unless he holds a valid hotel permit or rooming house permit, issued by the commissioner of licenses and inspections in the name of such operator and for the specific dwelling or dwelling unit. The operator shall apply to the commissioner of licenses and inspections for such permit, which shall be issued by such commissioner upon compliance by the operator with the applicable provisions of this chapter and of any rules and regulations adopted pursuant thereto. Such permit shall be displayed in a conspicuous place within the hotel or rooming house at all times. No such permit shall be transferable.
- (b) — Every person holding such a permit shall give notice in writing to the commissioner of licenses and inspections within 24 hours after having sold, transferred, given away or otherwise disposed of ownership of, interest in, or control of any hotel or rooming house. Such notice shall include the name and address of the person succeeding to the ownership or control of such hotel or rooming house. The new owner or operator of a hotel or a rooming house shall also notify the commissioner of licenses and inspections within ten days of any transfer of such hotel or rooming house to the new owner. Every hotel permit and every rooming house permit shall expire at the end of one year following its date of issuance, unless sooner suspended or revoked as provided by this article.

(Code 1968, § 34-71)

Sec. 34-337. - Application generally.

The application for a hotel permit or a rooming house permit as required by this article shall be made on forms furnished by the department of licenses and inspections. Such application shall include:

- (1) — The name and address of the operator and the name and address of the owner if the operator is not the owner.
- (2) — The location of the hotel or rooming house including the street and number of each entrance.
- (3) — The number of hotel units or rooming units occupied or available for occupancy and the number of persons who may be accommodated in accordance with the occupancy provisions of this chapter and with the provisions of other applicable municipal ordinances and regulations.
- (4) — Such other information as the commissioner of licenses and inspections may require.

(Code 1968, § 34-72)

Sec. 34-338. - Fire marshal's certificate to accompany application.

Every applicant for a hotel permit or a rooming house permit as required by this article shall procure from the fire marshal a certificate to the effect that the buildings and premises for which the permit is desired are free from fire hazards and comply with all provisions of chapter 12 and other fire laws, ordinances and rules and regulations applicable thereto and designed for fire protection and control. Such certificate shall be filed with the commissioner of licenses and inspections at the time the application for a permit is made.

(Code 1968, § 34-73)

Sec. 34-339. - Application fees.

Accompanying the application for a rooming house permit or a hotel permit, as required by this article, there shall be an initial application fee in the amount of \$10.00 for the initial application plus \$5.00 for each rooming unit within a rooming house and \$5.00 for each hotel unit within a hotel. There shall be no annual renewal fees.

(Code 1968, § 34-74)

Sec. 34-340. - Hearing upon denial of application.

Any person whose application for a permit to operate a hotel or a rooming house has been denied may request and shall be granted a hearing on the matter before the board of licenses and inspections review under the procedure provided by section 34-34.

(Code 1968, § 34-75)

Sec. 34-341. - Issuance generally.

A hotel permit or a rooming house permit shall be issued by the commissioner of licenses and inspections to the operator or owner upon reasonable proof:

- (1) — That the hotel or rooming house complies with the applicable provisions of this chapter and with the rules and regulations issued thereunder and with other applicable municipal ordinances and regulations; and
- (2) — That a certificate of occupancy and a certificate of zoning have been issued by the department of licenses and inspections pursuant to the provisions of chapter 48 of this Code.

(Code 1968, § 34-~~76~~)

73)

Sec. 34-342. - Effect of issuance.

The issuance of a hotel permit or a rooming house permit under this article shall not in any way signify or imply that the hotel or rooming house conforms with the zoning ordinance of the city, the building code of the city or other municipal or state regulations.

(Code 1968, § 34-77)

Sec. 34-343. - Procedure for suspension.

Whenever upon inspection of any hotel or rooming house the enforcement officer finds that conditions or practices exist which are in violation of any provision of this chapter or of any rule or regulation adopted pursuant thereto, the enforcement officer shall give notice in writing to the operator of such hotel or rooming house that unless such conditions or practices are corrected within a reasonable period, to be determined by the enforcement officer, the operator's hotel permit or rooming house permit will be suspended. At the end of such period the enforcement officer shall reinspect such hotel or rooming house, and if he finds that such conditions or practices have not been corrected, he shall give notice in writing to the operator that the latter's permit has been suspended. Upon receipt of notice of suspension, such operator shall immediately cease operation of such hotel or rooming house, and no person shall occupy for sleeping or living purposes any hotel unit or rooming unit therein.

(Code 1968, § 34-78)

[W0108070](#)

**AN ORDINANCE TO AUTHORIZE AND APPROVE AN AGREEMENT
BETWEEN THE CITY OF WILMINGTON AND PAYMENTUS
CORPORATION FOR AN ONLINE PAYMENT PROCESSING AND BILL
PRESENTMENT SYSTEM (CONTRACT 21017DFPS)**

#4869 **WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the City Charter, the

Sponsor: City of Wilmington is authorized to enter into contracts for the supply of personal property or

Council the rendering of services for a period of more than one year if approved by City Council by

Member ordinance; and

Freel

Co-Sponsor: **WHEREAS**, the City publicly advertised a request for proposals (“RFP”), a copy of

Council which is available for review in the Department of Finance, Procurement Division, for a

President professional services agreement (Contract 21017DFPS) to provide the City with an online

Shabazz payment processing and bill presentment system (the “Agreement”); and

WHEREAS, the City subsequently awarded the Agreement, a copy of which, in

 substantial form, is attached hereto and incorporated herein by reference as Exhibit “A”, to

 Paymentus Corporation (“Paymentus”), the highest ranked proposal; and

WHEREAS, the term of the Agreement is for a period of three (3) years

 commencing upon execution of the Agreement, at an estimated price of Three Hundred

 Thousand Dollars (\$300,000.00) per year, with the possibility of three (3) extensions of one

 (1) year thereafter on the same terms and conditions; and

WHEREAS, it is the recommendation of the Department of Finance that the City

 enter into the Agreement with Paymentus for a period of three (3) years, with the possibility

 of three (3) extensions of one (1) year thereafter on the same terms and conditions.

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

SECTION 1. The Agreement between the City of Wilmington and Paymentus Corporation, a copy of which Agreement, in substantial form, is attached hereto as Exhibit “A”, for the period of three (3) years, with the possibility of three (3) extensions of one (1) year thereafter, is hereby approved, and the Mayor, or his designee, is hereby authorized to execute as many copies of the Agreement, as well as to take all additional undertakings related thereto, as may be necessary.

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

First Reading..... October 15, 2020
Second Reading..... October 15, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the execution an agreement (the “Agreement”) with Paymentus Corporation for an online payment processing and bill presentment system. The Agreement is for a period of three (3) years commencing on the date of its execution, with the possibility of three (3) extensions of one (1) year thereafter on the same terms and conditions.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is a contract for the period of three (3) years at an estimated price of Three Hundred Thousand Dollars (\$300,000.00) per year for a total estimated price of Nine Hundred Thousand Dollars (\$900,000.00) for three (3) years, with the possibility of three (3) extensions of one (1) year thereafter at the same estimated annual price.

W0112260

EXHIBIT A



MASTER SERVICES AGREEMENT

Client:	City of Wilmington (DE)
Client Address:	800 N. French Street, 5 th Floor, Wilmington, DE 19801
Contact for Notices to Client:	Brett Taylor
Estimated Yearly Bills / Invoices:	456,000

This Master Services Agreement (“Agreement”) is entered into as of the date of the last of the signatures set forth below (“Effective Date”), by and between the Client (“City of Wilmington, DE”) identified above and Paymentus Corporation, a Delaware Corporation with a principal place of business at 13024 Ballantyne Corporate Parkway, Suite 400, Charlotte, North Carolina 28277.

STATEMENT OF PURPOSE

Paymentus desires to provide and Client desires to receive electronic bill payment services as more particularly described in this Agreement under the terms and conditions set forth herein.

AGREEMENT

In consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows. This Agreement consists of the following documents:

- (i) this signature page
- (ii) the General Terms and Conditions; and
- (iii) the following Schedules:
Schedule A: Paymentus Service Fee Schedule.

This Agreement represents the entire agreement between the parties with respect to its subject matter, supersedes all prior written or oral agreements or understandings related to the subject matter hereof, and may be changed only by agreements in writing signed by the authorized representatives of each of the parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

CLIENT:

PAYMENTUS CORPORATION

By: _____

By: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

CONFIDENTIAL AND PROPRIETARY

GENERAL TERMS AND CONDITIONS

1 **Definitions:**

For the purposes of the Agreement, the following terms and words have the meaning ascribed to them, unless the context clearly indicates otherwise.

1.1 “Agreement “or “Master Agreement” means the Master Services Agreement between the parties, as amended from time to time.

1.2 “Average Bill Amount” means the total amount of Payments processed through Paymentus in a given month divided by the number of the Payments for the same month.

1.3 “Effective Date” means the date the last party to execute the Agreement does so, or if the Agreement is submitted to Client for acceptance in a manner that does not call for Paymentus to execute it, the date Client agrees to the Agreement.

1.4 “Excess Payment Amount” means the amount by which the total of all Payment Amounts from Non-Qualified Transactions processed in a calendar month exceeds 5% of the total of the Payment Amounts of all card Payments processed that month.

1.5 “Fee Assumptions” means information used to calculate the Paymentus Fee (as defined in Section 3.2), including (i) the projected Average Bill Amount, (ii) the projected payment method mix (credit vs debit vs e-check) and (iii) an assumption by Paymentus that the total Payment Amount processed each month resulting from Non-Qualified Transactions shall not exceed five percent (5%) of the total Payment Amount of all card Payments processed that month.

1.6 “Initial Setup” means the first personalization and activation of the standard service with respect to each channel described on Schedule A as specified during the implementation process.

1.7 “IPN” or “Instant Payment Network™” means the network developed by Paymentus to enable customer engagement, bill presentment and receipt of payments by businesses through multiple channels as enabled from time to time by Paymentus.

1.8 “Launch Date” means the date on which Client completes the introduction to Users of all Services selected by Client as of the Effective Date.

1.9 “Non-Qualified Transaction” means (i) a Payment made with a card or payment method generally issued for business use that results in interchange fees or other processing charges assessed by a Paymentus Authorized Processor or card payment association that are higher than those charged for transactions with cards payment methods issued for consumer use; or (ii) a Payment that does not qualify for reduced interchange fees under programs in which is then currently participating. These high-cost cards payment methods may include, among others, corporate cards, virtual cards, purchase cards, business cards, and travel and entertainment cards.

1.10 “Payment” means payment by a User through the Platform for Client’s services, Client’s bills, or other amounts owed to Client.

1.11 “Payment Amount” means the amount of a Payment.

1.12 “Paymentus Authorized Processor” means a Paymentus authorized merchant account provider or payment processing intermediary or gateway.

1.13 “Paymentus Fee” is defined in Section 3.2.

1.14 “Platform” is defined in Section 2.1.

1.15 “Reversed or Chargeback Transactions” means cancelled transactions due to (i) User error, (ii) a User’s challenge to Payment authenticity, or (iii) an action by a financial institution or a Paymentus Authorized Processor (commonly referred to as ACH or eCheck returns or credit/debit card chargebacks).

1.16 “Services” means the performance by Paymentus of the payment and related services selected by Client as set forth in Schedule A and as provided in Section 2.3.

1.17 “User” means a user of Client’s services.

2 **Description of Services to be Performed**

2.1 **Scope of Services**

When selected on Schedule A, Paymentus will provide Users the opportunity to view and receive bills, make Payments using the payment methods provided under Schedule A and other payment methods and wallets as offered by Paymentus from time to time. The payment methods and other services provided may be used within

the channels described on Schedule A or on other websites or mobile/web apps or chatbots or voice assistants that are part of the Instant Payment Network™, (collectively referred to as the “Platform”). Paymentus will provide a mechanism by which Client may select channels and payment methods it wishes to offer Users. Paymentus will be the exclusive provider to Client of services included in the Services.

2.2 Professionalism

Paymentus will perform in a professional manner all Services required to be performed under the Agreement.

2.3 New or Enhanced Services

From time to time Paymentus may offer Client new or enhanced services, such as new functionality within the IPN, the ability to accept other payment methods, methods of bill presentment, the ability to access alternative payment processors or other service providers or Paymentus Authorized Processors or otherwise modify the terms and conditions under which the Services are provided (“Service Enhancements”). Paymentus will provide Client with notice by email to the person designated as provided in Section 9.1 disclosing the terms, including any contracts or contract amendments, under which the Service Enhancements will be made available. If the Service Enhancements will result in additional fees to or impose additional obligations on Client or Users, Client will have at least thirty (30) days after the date of the notice to opt-out of the Service Enhancements in the manner provided in the notice. If Client does not opt-out, then when the Service Enhancements are introduced they will form part of the Services and Client will be bound by the additional terms as disclosed in the notice, and Schedule A will be deemed amended to reflect changes in the Services and fees.

3 Compensation

3.1 No Fee Installation

Paymentus will charge no fees related to the Initial Setup of standard service.

3.2 Paymentus Fee

Client will be billed the fees as provided in Schedule A (“Paymentus Fee”), unless a fee is User paid, in which case Paymentus will charge each User the Paymentus Fee as provided in Schedule A to be collected in addition to the corresponding Payment as part of the transaction. Paymentus will pay the corresponding processing and related fees (“Transaction Fees”) except for fees related to Reversed or Chargeback Transactions.

The Paymentus Fee is based on the Fee Assumptions. Client will be billed additional Paymentus Fees equal to 3.5% of the Excess Payment Amount for each month during which there is an Excess Payment Amount. Paymentus may amend Schedule A upon prior written notice to Client if there are changes in the card or payment system rules or changes in payment processing fees or other events that increase the cost of processing transactions, such as changes in the average Payment Amount, the mix of payment methods or of interchange rates applied to transactions. The amended Paymentus Fee will take effect 30 days after written notice to Client.

4 Payment Processing

4.1 Integration with Client's Billing System

At no charge from Paymentus to Client, Paymentus will develop one (1) file format interface with Client's billing system using Client's existing text file format currently used to post payments to Client's billing system. Client will be responsible to provide Paymentus with the one file format specification and will fully cooperate with Paymentus during the development of the said interface. If Client chooses to create an automated file integration process to download the posting file, due to Paymentus security requirements, Client will use Paymentus specified integration process. As such, the Paymentus platform does and can function independent of any billing system integration. A payment posting file can be emailed or downloaded from the Paymentus Agent Dashboard. If Client chooses to have the Paymentus platform integrated with its billing system, Paymentus offers two options:

- (i) Paymentus standard integration specification that Client can use to integrate its billing systems with Paymentus platform (“Standard Integration”); or
- (ii) Paymentus to either customize or configure its platform to integrate with Client using file specification or APIs supported by Client's billing system (“Client Specific Integration”).

If Client chooses Standard Integration, Paymentus agrees to fully cooperate with Client and provide its specification to Client. Paymentus also agrees to participate in meetings with Client's software vendor to provide any information or clarifications needed to understand Standard Integration. Paymentus agrees to provide all integration/interface specifications within 30 days from the Effective Date. Client will take commercially reasonable steps to develop the integration within 60 days from the date on which Client has received all integration specifications from Paymentus.

If Client chooses Client Specific Integration, Paymentus agrees to develop that integration at no charge from

Paymentus to Client, provided however, Client agrees to fully cooperate with Paymentus and cause its software vendors and other service providers to fully cooperate with Paymentus. Client agrees to provide all specifications required for Client Specific Integration. Client further agrees to participate in testing with Paymentus and if needed, cause its billing software vendors and other service providers to participate in testing. Client agrees to provide or make available all integration/interface specifications within 30 days from the Effective Date. Paymentus will take commercially reasonable steps to develop the integration within 60 days from the date on which Paymentus has received all the integration specifications from Client or its vendors.

Parties agree that if the parties do not cooperate fully, it can lead to each party being unable to perform its duties to deliver the integration in time.

Based on Client's use of the Platform and its respective modules selected under the Agreement, Paymentus will require the following integration points:

MODULE	INTEGRATION POINT
One-time payment Module	Customer Information: Text File or Real Time Payment Posting: Text File or Real Time
Recurring Payment Module	Text File
E-billing Module for Billing Data	Text File or Real-time link to billing data
Out-bound Notification-Audience File	Text File for customer engagement messages

Each of these can be based on Standard Integration or Client Specific Integration.

The Initial Setup for the Web or IVR interface will be considered complete when the first Standard Integration or Client Specific Integration, as applicable, is completed such that Paymentus and Client are able to exchange files relevant to that interface, as contemplated in this Section 4.1. In the event the Services are implemented without integration, the Initial Setup will be considered complete when a User is able to access the Platform to process a payment.

4.2 Enhancements

The parties agree that the Services are provided on a "platform as a service" basis, and not as a result of custom software development. Paymentus' standard Platform will

be personalized to achieve certain additional functional requirements of Client, as clarified and agreed during implementation ("Enhancements"). Enhancements may include some or all of the features included in any technical requirements or similar document provided to Paymentus. The parties will fully co-operate with one another to: a) ensure that requirements with respect to Enhancements are clarified as needed; b) accept Paymentus proposed reasonable alternatives to achieve Client's functional objectives within the limits of the Paymentus platform; and c) accept Paymentus' reasonable estimates of time for completion, designs and plans with respect to agreed Enhancements. There will be no fee charged by Paymentus to Client for Enhancements, provided Paymentus designs and plans are accepted by Client. If the Services are to be offered at multiple locations, or if the Services include multiple Enhancements, the parties will agree to a phased implementation.

4.3 PCI Compliance

To the extent that either party receives payment card information subject to the Payment Card Industry Data Security Standards ("PCI-DSS") in connection with providing the Services, it will comply with all requirements of the PCI-DSS with respect to storage, transmission and disclosure of payment card information.

4.4 Explicit User Confirmation

Paymentus will confirm the dollar amount of all Payments, and when paid by the User, the corresponding Paymentus Fee to be charged and electronically obtain the User's approval of the charges prior to initiating payment authorizations transaction. Paymentus will provide User with electronic confirmation of all transactions.

4.5 Merchant Account

Paymentus will arrange for Client to have a merchant account with the Paymentus Authorized Processor for processing and settlement of transactions.

4.6 Payment Authorization.

For authorization purposes, Paymentus will electronically transmit all card or other payment transactions to the appropriate processing center, in real time as the transactions occur or as provided in applicable rules. In its discretion, Paymentus may refuse to process any transaction that is submitted in violation of its terms of use or to protect Client, Users, itself or others from potentially illegal, fraudulent or harmful transactions.

4.7 Settlement

Paymentus together with a Paymentus Authorized Processor will forward the payment transactions, and when paid by User, the corresponding Paymentus Fee to the appropriate organizations for settlement (other than the Paymentus Fee) directly to Client's depository bank account previously designated by Client ("Client Bank Account"). When Client pays the Paymentus Fee, Paymentus will invoice Client and debit the fees from the Client Bank Account on a monthly basis.

Paymentus together with the Paymentus Authorized Processor will continuously review its settlement and direct debit processes for its simplicity and efficiencies. Client and Paymentus agree to fully co-operate with each other if Paymentus were to change its settlement and invoicing processes.

4.8 Reversed or Chargeback Transactions

With respect to all Reversed or Chargeback Transactions Client authorizes Paymentus and Paymentus Authorized Processor (and/or the respective payment organizations) to debit the Client Bank Account for the Payment Amount and Paymentus will refund to the payment organization for credit back to the User the corresponding Paymentus Fee, if any.

Paymentus together with Paymentus Authorized Processor will continuously review its processes for Reversed or Chargeback Transactions for simplicity and efficiencies. Client and Paymentus agree to reasonably co-operate with each other if Paymentus requires any change to its settlement and invoicing processes for these transactions.

5 General Conditions of Services

5.1 Service Reports

Paymentus will provide Client with reports summarizing use of the Services by Users for a given reporting period.

5.2 User Adoption Communication by Client

Client will communicate the Services as a payment option to its customers wherever Client usually communicates its other payment options.

Client will make the Services known or available to its customers by different means of customer communication including a) through bills, invoices and other notices; b) if direct payments have been activated, by providing IVR and Web payment details on Client's website including a "Pay Now" or similar link on a mutually agreed prominent place on the web site; c) if IVR payments have been activated, through Client's general

IVR/Phone system; and d) other channels deemed appropriate by Client.

Paymentus will provide Client with logos, graphics and other marketing materials for Client's use in its communications with its customers regarding the Services and/or Paymentus.

5.3 Independent Contractor

Paymentus is an independent contractor.

5.4 Client's Responsibilities

In order for Paymentus to provide the Services outlined in the Agreement, Client will co-operate with Paymentus by:

(i) Entering into (and authorizing Paymentus to do so on its behalf) all applicable merchant processing, cash management, ACH origination, or kiosk agreements, provided that Client is given notice of and approves any additional fees associated with those agreements, and providing information and consents reasonably requested in connection with the agreements.

(ii) Keeping throughout the duration of the Agreement during which direct payments via the web is activated, a bill payment link connecting to the Paymentus Platform at a prominent and mutually agreed location on Client's website. If the IVR channel is activated, the phone number for IVR payments will also be added to the web site and as an option as part of Client's general phone system.

(iii) Sharing User Adoption marketing as described in Section 5.2.

(iv) Launching the Service within 30 days of Paymentus making the system available.

(v) Dedicating sufficient and properly trained personnel to support the implementation process and its use of the Services in compliance with all laws applicable to its use of the Services.

(vi) Providing Paymentus with the file format specification currently used to post payments to the billing system to allow Paymentus to provide Client with a posting file for posting to Client's billing system.

(vii) Fully cooperating with Paymentus and securing the cooperation of its software and service providers and providing the information required to integrate with Client's billing system.

(viii) Fully cooperating with Paymentus to integrate its systems with the Paymentus Platform through the use of Paymentus' APIs to enable Client's access to the IPN, if selected.

6 Indemnification and Limitation of Liability

6.1 Paymentus Indemnification and Hold Harmless

Paymentus agrees to defend, indemnify, and hold harmless Client and its directors, officers or governing officials, or employees (collectively, the "Client Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including reasonable attorney's fees and costs), incurred by any Client Indemnitee arising from (i) a claim or demand brought by a third party to the extent the claim or demand alleges that the Services provided under this Agreement infringe the intellectual property rights of the third-party or (ii) the willful misconduct or negligence of Paymentus in performing the Services.

6.2 Client Indemnification and Hold Harmless

Client agrees to defend, indemnify, and hold harmless Paymentus and its directors, officers, or employees (collectively, the "Paymentus Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including reasonable attorney's fees and costs), incurred by any Paymentus Indemnitee arising from a claim or demand brought by a third party to the extent the claim or demand relates to the underlying relationship or obligations of Client and its Users.

6.3 Indemnification Procedure

The indemnified party will give the indemnifying party prompt written notice of any claim for which indemnification is sought. The indemnifying party will have the right to control the defense and settlement of any claim, provided that any settlement that adversely affects the indemnified party requires the indemnified party's consent, which will not be unreasonably delayed or withheld. The indemnified party will not settle any claim without the consent of the indemnifying party, which will not be unreasonably delayed or withheld.

6.4 Warranty Disclaimer

Except as expressly set forth in the Agreement, Paymentus disclaims all other representations or warranties, express or implied, made to Client or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness, for a particular purpose or otherwise of any services or any good provided incidental to the Services provided under the Agreement.

6.5 Limitation of Liability

Paymentus Master Services Agreement
Proprietary & Confidential

Notwithstanding the foregoing, Paymentus will not be liable for any lost profits, lost savings or other special, indirect or consequential damages, even if it has been advised of or could have foreseen the possibility of these damages. In no event will Paymentus be liable for any losses or damages resulting from the acts, omissions or errors of third parties or of Client or for providing agreements, instructions or information to Users as instructed by Client. Paymentus' total liability for damages for any and all actions associated with the Agreement or the Services will in no event exceed (i) for an error or other action affecting the processing of one or more Payments, the amount of the Paymentus Fee associated with each Payment, (ii) for other claims, the amount of the Paymentus Fee (net of direct processing and other fees paid by Paymentus) paid to Paymentus ("Net Fees") in the six (6) months before the events given rise to the claim or claims arising from the same circumstances; and (iii) in no event more than the lesser of \$1,000,000.00 or the Net Fees under the Agreement.

6.6 Insurance

Paymentus shall provide insurance coverage for itself and all of its employees, if any, used in connection with this Agreement as follows:

- commercial general liability insurance with a \$2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage
- automobile liability insurance with a \$2,000,000 combined single limited per accident for bodily injury and property damage
- workers' compensation as required by the State of Delaware;
- errors and omissions for professional services with a limit of \$2,000,000 per occurrence and \$2,000,000 in the aggregate
- employer's liability coverage with limits of \$500,000 per accident; \$500,000 per disease policy limit; and \$500,000 per disease for each employee.

Paymentus shall provide the Client with a certificate of insurance evidencing the above-stated coverage and naming the Client as an additional insured with respect to the commercial general liability, automobile liability, employer's liability, and errors and omissions policies.

7 Term and Termination

7.1 Term

The term of the Agreement will commence on the Effective Date and continue for a period of three (3) years ("Initial Term") from the Launch Date.

At the end of the Initial Term, the Agreement will automatically renew for up to three (3) successive one (1) year periods unless either Client or Paymentus provide the other party with not less than three (3) months prior written notice before the automatic renewal date that it elects not to automatically renew the term of the Agreement.

7.2 Material Breach

A material breach of the Agreement will be cured within 90 business days ("Cure Period") after a party notifies the other of the breach. In the event the material breach has not been cured within the Cure Period, the non-breaching party can terminate the Agreement by providing the other party with a 30 business days' written notice.

7.3 Upon Termination

Upon termination of the Agreement, the parties agree to cooperate with one another to ensure that all Payments are accounted for and all refundable transactions have been completed. Upon termination, Paymentus will cease all Services being provided hereunder unless otherwise directed and agreed to in writing.

8. Use by Other Localities.

8.1 The parties agree that this Master Services Agreement may be extended, with the authorization of Client, to other public entities or public agencies or institutions of the United States ("Other Public Customers") to permit their use of the Master Services Agreement at the same prices and/or discounts and terms and conditions of this Master Services Agreement. If any other public entity decides to use the Master Services Agreement, Paymentus must deal directly with that public entity concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payment. Client acts only as the "Contracting Agent" for these public entities. It is Paymentus' responsibility to notify the public entities of the availability of this Master Services Agreement. Other public entities desiring to use this Master Agreement must make their own legal determination as to whether the use of this Master Services Agreement is consistent with their laws, regulations, and other policies. Each public entity has the option of executing a separate contract with Paymentus.

Paymentus Master Services Agreement
Proprietary & Confidential

Public entities may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the Master Services Agreement's General Terms and Conditions. If, when preparing such a contract, the general terms and conditions of the public entity are unacceptable to Paymentus, Paymentus may withdraw its extension of the award to that public entity. Client shall not be held liable for any costs or damages incurred by an Other Public Customer as a result of any award extended to that Other Public Customer by Paymentus.

9 Miscellaneous

9.1 Authorized Representative

Each party will designate an individual to act as its representative, with the authority to transmit instructions and receive information. The parties may from time to time designate other individuals or change the individuals.

9.2 Notices

All notices of any type hereunder will be in writing and sent to the addresses indicated below, and except as otherwise provided in these Terms and Conditions will be given by certified mail or a national courier or by hand delivery.

Notices will be considered to have been given or received on the date the notice is physically received. Any party by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which the notice is to be received.

To Client

C/O: Brett Taylor
Address: 800 N. French Street, 5th Floor,
Wilmington, DE 19801
Phone: (302) 576-2401
Fax: (302) 571-4283

To Paymentus

C/O: President and CEO
Address: 13024 Ballantyne Corporate Place
Suite 450
Charlotte, NC 28277
Phone: 888-212-2027
Fax: 704-322-3776

9.3 Interpretation

It is the intent of the parties that no portion of the Agreement will be interpreted more harshly against either of the parties as the drafter.

9.4 **Governing Law**

The Agreement will be governed by the laws of the state of Delaware, without giving effect to any principles of conflicts of law. All disputes regarding this Agreement shall be resolved by the courts of New Castle County, Delaware. Paymentus agrees to submit exclusively to the jurisdiction and venue of said courts.

9.5 **Severability**

If a word, sentence or paragraph herein is declared illegal, unenforceable, or unconstitutional, that word, sentence or paragraph will be severed from the Agreement, and the Agreement will be read as if that word, sentence or paragraph did not exist.

9.6 Attorney's Fees. Should any litigation arise concerning the Agreement between the parties hereto, the parties agree to bear their own costs and attorney's fees.

9.7 **Confidentiality**

Client will not for any purpose inconsistent with the Agreement disclose to any third party or use any confidential or proprietary non-public information it has obtained during the procurement process or during the term of the Agreement about Paymentus' business, including operations, financial condition, technology, systems, know-how, products, services, suppliers, clients, marketing data, plans, and models, and personnel. Paymentus will not for any purpose inconsistent with the Agreement or its privacy policy in effect from time to time disclose to any third party or use any confidential User information it receives in connection with its performance of the services.

9.8 **Intellectual Property**

In order that Client may promote the Services and Paymentus' role in providing the Services, Paymentus grants to Client a revocable, non-exclusive, royalty-free, license to use Paymentus' logo and other service marks (the "Paymentus Marks") for this purpose only. Client does not have any right, title, license or interest, express or implied in and to any object code, software, hardware, trademarks, service mark, trade name, formula, system, know-how, telephone number, telephone line, domain name, URL, copyright image, text, script (including, without limitation, any script used by Paymentus on the IVR or the Website) or other intellectual property right of Paymentus ("Paymentus Intellectual Property"). All Paymentus Marks, Paymentus Intellectual Property, and the Platform and all rights therein (other than rights

expressly granted herein) and goodwill pertain thereto belong exclusively to Paymentus.

9.9 **Force Majeure**

Paymentus will be excused from performing the Services to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond Paymentus' reasonable control and without its fault or judgment, including without limitation, natural disasters, war, terrorist acts, riots, acts of a governmental entity (in a sovereign or contractual capacity), fire, storms, quarantine restrictions, floods, explosions, labor strikes, labor walk-outs, extra-ordinary losses utilities (including telecommunications services), external computer "hacker" attacks, and/or delays of common carrier.

9.10 **Discrimination and Harassment**

In the performance of this Agreement, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

9.11 **Entire Agreement**

The Agreement represents the entire agreement between the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings related to its subject matter and except as provided in the Agreement may be changed only by agreements in writing signed by the authorized representatives of the parties.

The Client's request for proposals, its appendices and amendments (the "RFP"), and all promises, warranties, commitments and representations made in Paymentus' response to the RFP are incorporated herein and shall become an integral part of this Agreement.

9.12 **Counterparts**

The Agreement and any amendment or other document related to the Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. The Agreement and any amendment or other document related to the Agreement may be signed electronically. A photographic or facsimile copy of the signature evidencing a party's execution of the Agreement will be effective as an original signature.



SCHEDULE A – PAYMENTUS FEE SCHEDULE
TO THE MASTER SERVICES AGREEMENT
BETWEEN CITY OF WILMINGTON DE AND PAYMENTUS

The Services will initially consist of the those indicated by a check box on the following table. The Paymentus Fee will be as specified below, and will be paid by the Client, unless designated as a User paid fee.

Utility Payments – When City of Wilmington is fully absorbing the Paymentus Service Fee

Check to Select the Channel	Channels	Advanced Services	Payment Methods & Channels	Paymentus Fee	Check if User Paid Fee
<input checked="" type="checkbox"/>	Instant Payment Network™	Ebill Presentment and Customer Engagement	All payment channels and methods offered under IPN such as PayPal, Venmo, PayPal Credit ,Secure PDF Push, Chatbot, Advanced Notification Service (ECM), Text 2 Pay, Voice Assistants, Mobile Apps and others as offered by Payments from time to time	2.65%	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Direct Payments (Web, IVR, Recurring, Agent Assisted)	Ebill Presentment and Customer Engagement	Credit, Debit, ACH	\$1.95 Credit/Debit \$0.50 ACH	<input type="checkbox"/>

Note: Average Bill Amount: \$190. Maximum Amount per Payment is 1,000.00 Multiple payments may be made.

Chargebacks and returned checks will be billed at \$9.95 per item.

Utility Payments – When the Citizen is assuming the Paymentus Service Fee

Check to Select the Channel	Channels	Advanced Services	Payment Methods & Channels	Paymentus Fee	Check if User Paid Fee
<input checked="" type="checkbox"/>	Instant Payment Network™	Ebill Presentment and Customer Engagement	All payment channels and methods offered under IPN such as PayPal, Venmo, PayPal Credit ,Secure PDF Push, Chatbot, Advanced Notification Service (ECM), Text 2 Pay, Voice Assistants, Mobile Apps and others as offered by Payments from time to time	2.75	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Direct Payments (Web, IVR, Recurring, Agent Assisted)	Ebill Presentment and Customer Engagement	Credit, Debit, ACH	\$2.75	<input checked="" type="checkbox"/>

Note: Average Bill Amount: \$190. Maximum Amount per Payment is 1,000.00 Multiple payments may be made.

Chargebacks and returned checks will be billed at \$9.95 per item.

SCHEDULE A – PAYMENTUS FEE SCHEDULE
TO THE MASTER SERVICES AGREEMENT
BETWEEN CITY OF WILMINGTON DE AND PAYMENTUS

Miscellaneous Government Services Payments

Check to Select the Channel	Channels	Advanced Services	Payment Methods & Channels	Paymentus Fee	Check if User Paid Fee
<input checked="" type="checkbox"/>	Instant Payment Network™	Ebill Presentment and Customer Engagement	All payment channels and methods offered under IPN such as PayPal, Venmo, PayPal Credit, Secure PDF Push, Chatbot, Advanced Notification Service (ECM), Text 2 Pay, Voice Assistants, Mobile Apps and others as offered by Payments from time to time	2.39%	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Direct Payments (Web, IVR, Recurring, Agent Assisted)	Ebill Presentment and Customer Engagement	Credit, Debit, ACH	2.39% Credit/Debit \$0.50 ACH	<input checked="" type="checkbox"/>

Note: Maximum Amount per Payment is \$1,000. Multiple payments may be made.

Chargebacks and returned checks will be billed at \$9.95 per item.

Outbound messaging is at no cost to the City of Wilmington DE

Two (2) Encrypted Card Swipe Devices are included at no cost to the City of Wilmington DE, and \$225 per device thereafter

**AN ORDINANCE TO AUTHORIZE AND APPROVE A ONE-YEAR
EXTENSION OF CONTRACT 20037FD BETWEEN THE CITY OF
WILMINGTON AND CITY TOWING SERVICES, LLC FOR THE
PROVISION OF TOWING AND IMPOUNDING OF VEHICLES**

#4870

Sponsor:

**Council
Member
Adams**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City publicly advertised the specifications for Contract 20037FD – Towing and Impounding of Vehicles (the “Contract”) – in accordance with the requirements of Section 8-200 of the City Charter, and subsequently awarded the Contract, a copy of which is available for review in the Department of Finance, Procurement Division, to City Towing Services, LLC (the “Contractor”), the lowest responsible bidder; and

WHEREAS, the Contract’s term is from December 1, 2019 to November 30, 2020, at a price of zero dollars (\$0.00); and

WHEREAS, in early 2020, the Centers for Disease Control and Prevention designated the Coronavirus Disease 2019 (“COVID-19”) as a serious public health threat, and, therefore, social distancing is required to help mitigate exposure to (and community spread of) COVID-19; and

WHEREAS, the Governor of the State of Delaware declared a State of Emergency for the State of Delaware (“Delaware Emergency Declaration”) on March 13, 2020 due to the ongoing serious public health threat that COVID-19 poses, which has subsequently been modified and extended; and

WHEREAS, the Mayor of the City of Wilmington declared a State of Emergency for the City of Wilmington (the “City Emergency Declaration” and collectively with the

Delaware Emergency Declaration, the “Emergency Declarations”) on March 13, 2020 in connection with COVID-19, which has subsequently been modified and extended; and

WHEREAS, because of the Emergency Declarations, the City stopped booting and towing vehicles for the majority of the calendar year 2020; and

WHEREAS, because of the City’s aforementioned actions, the Contractor did not have the opportunity to perform under the Contract for the majority of the calendar year 2020; and

WHEREAS, in order to (i) provide the Contractor with the opportunity to perform towing services for the City, (ii) provide continuity of an essential service, (iii) minimize disruption, and (iv) secure an additional year of towing services at no cost to the City, the City would like to enter into an amendment to the Contract (the “Amendment”), which would provide a one-year extension of the Contract on the same terms and at the same price; and

WHEREAS, the cost to the City of the Amendment would be zero dollars (\$0.00); and

WHEREAS, it is the recommendation of the Department of Finance that the City enter into the Amendment.

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

SECTION 1. The Amendment to the Contract between the City and City Towing Services, LLC, a copy of which is attached hereto as Exhibit “A”, for a one-year extension of the Contract, at the same cost of zero dollars (\$0.00) and on the same terms, is hereby approved, and the Mayor, or his designee, is hereby authorized to execute as many copies of

the Amendment, as well as to take all additional undertakings related thereto, as may be necessary.

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

First Reading..... October 15, 2020
Second Reading..... October 15, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the City to enter into an amendment to Contract 20037FD - Towing and Impounding of Vehicles (the “Contract”) - between the City and City Towing Services, LLC to extend the Contract for one (1) year from December 1, 2020 through November 30, 2021 on the same terms and at the same cost.

FISCAL IMPACT STATEMENT: There is no fiscal impact to the City because the cost of the Amendment to the City is zero dollars (\$0.00).

W0112236

EXHIBIT A

**AMENDMENT TO CONTRACT 20037FD
(TOWING AND IMPOUNDING OF VEHICLES)
BETWEEN THE CITY OF WILMINGTON AND CITY TOWING SERVICES LLC**

This amendment (this "Amendment") is entered into this _____ day of _____ 2020 by and between the City of Wilmington, a municipal corporation of the State of Delaware, (the "City") and City Towing Services LLC (the "Contractor").

WHEREAS, the City and the Contractor wish to amend Contract 20037FD (Towing and Impounding of Vehicles) (the "Contract") between the parties dated November 25, 2019 to extend the expiration date of the Contract for one year to allow the Contractor to continue to provide towing & impounding services to the City in accordance with the terms of this Amendment and the Contract.

NOW, THEREFORE, WITNESSETH the City and the Contractor hereby agree as follows:

1. The Contractor shall continue to provide towing & impounding services to the City in accordance with the Contract's specifications and other requirements.
2. There is no cost to the City for the Contractor's aforementioned services.
3. The term of this Amendment shall be from December 1, 2020 through November 30, 2021.
4. All other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties, through their duly authorized representatives, have executed this Amendment to the Contract on the date first written above.

THE CITY OF WILMINGTON

WITNESS: _____

By:
Title:

CITY TOWING SERVICES LLC

WITNESS: _____

By:
Title:

Wilmington, Delaware
October 15, 2020

#4871

Sponsor:

**Council
Member
Dixon**

WHEREAS, under Title I of the Housing and Community Development Act of 1974, as amended, the Secretary of the United States Department of Housing and Urban Development (“HUD”) is authorized to extend financial assistance to communities for (i) the elimination or prevention of slums or urban blight, (ii) activities which will benefit low-income and moderate-income persons, and (iii) other urgent community development needs; and

WHEREAS, the City of Wilmington (the “City”) is a participating jurisdiction for purposes of the Emergency Solutions Grant Program (“ESG Program”) and allocates ESG Program funds each year for a variety of eligible activities; and

WHEREAS, on May 16, 2019, City Council adopted Resolution 19-018, which approved the City’s proposed Annual Action Plan for Fiscal Year 2020 (the “Plan”) and authorized the Mayor to submit the Plan to HUD; and

WHEREAS, the Coronavirus Aid, Relief and Economic Security Act of 2020 (the “CARES Act”) makes available supplemental ESG Program funding for grants to prevent, prepare for, and response to the COVID-19 pandemic (“ESG-CV Grants”); and

WHEREAS, in May 2020, HUD advised the City that it was eligible to receive a first tranche of funds under the CARES Act, which included ESG Program funding for ESG-CV Grants; and

WHEREAS, on May 28, 2020, City Council adopted Resolution 20-024, which approved the first substantial amendment to the Plan outlining the proposed use of the first tranche of funds received by the City pursuant to the CARES Act and authorized the Mayor to submit such amendment to HUD; and

WHEREAS, HUD has advised the City that it is eligible to receive a second tranche of ESG Program funds to be utilized for ESG-CV Grants in the amount of \$1,142,202; and

WHEREAS, the City has prepared a substantial amendment to the Plan (the “Substantial Amendment”) in order to outline the proposed use of the second tranche of ESG Program funding to be utilized for ESG-CV Grants that will provide emergency shelters and rapid rehousing; and

WHEREAS, a draft of the Substantial Amendment was on placed on the City’s website for display from August 26, 2020 to September 5, 2020, as required by HUD.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON THAT:

1. The Substantial Amendment to the Fiscal Year 2020 Annual Action Plan for the second tranche of ESG Program funding for ESG-CV Grants, available pursuant to the CARES Act, is hereby approved in all respects.

2. City Council is cognizant of the conditions that are imposed in the undertaking and carrying out of community development activities with federal financial assistance including those relating to (a) the relocation of site occupants, (b) the prohibition of discrimination because of race, color, age, religion, sex, disability, familial status, or national origin, and (c) other assurances as set forth under the certifications.

3. The Mayor of the City of Wilmington is authorized to file an application for financial assistance with the U.S. Department of Housing and Urban Development for the ESG Program funds available pursuant to the CARES Act.

4. The Mayor is hereby authorized to provide such assurances and/or certifications as required by the Housing and Community Development Act of 1974, as amended, the

National Affordable Housing Act of 1990, the Stewart B. McKinney Homeless Assistance Act of 1988, as amended, the CARES Act of 2020, and also any supplemental or revised data which HUD may request in connection with the review of the City's application.

5. The Mayor, or his designee, is authorized to execute on behalf of the City the formal grant contracts, amendments, and other documents relating to this Substantial Amendment to the City's Annual Action Plan for Fiscal Year 2020.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution (i) approves a Substantial Amendment to the Fiscal Year 2020 Annual Action Plan to outline the proposed use of additional ESG Program funding for ESG-CV Grants that is available pursuant to the CARES Act to prevent, prepare for, and respond to the COVID-19 pandemic and (ii) authorizes the Mayor to file an application for financial assistance with the U.S. Department of Housing and Urban Development for such funding.

W0112025