

SUBSTITUTE NO. 2 TO ORDINANCE NO. 20-006

**AN ORDINANCE TO AMEND CHAPTER 34 OF THE CITY CODE REGARDING
BED BUG EXTERMINATION AND TREATMENT**

**Rev. 2
#4762**

Sponsor:

**Council
President
Shabazz**

Co-Sponsor:

**Council
Members
Oliver
Johnson**

WHEREAS, the City of Wilmington is comprised mainly of row homes, attached structures and other higher density housing that can contribute to widespread bed bug infestation; and

WHEREAS, tenants and owners of buildings and premises containing two or more dwelling units have an equally important role in preventing and eradicating bed bugs; and

WHEREAS, Wilmington residents as well as the general public lack awareness about bed bug prevention and treatment, and the rights and responsibilities of tenants, landlords, property owners and managers, and dwelling facility operators to safely eliminate bed bugs from their properties.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. An infestation of bed bugs is declared a public nuisance dangerous to the public health.

SECTION 2. Chapter 34 of the City Code is hereby amended by adding the underlined language as follows:

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:

...

Extermination means the control and elimination of insects, including bed bugs; 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.

...

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

Sec. 34-236. - Responsibilities of owners.

(a) No person shall own a building within the city which does not comply with the following requirement, particularly with respect to any evidence of decay of any of the items enumerated:

...

(12) Pest Control. Every owner of a dwelling containing two or more dwelling units shall be responsible for the extermination of insects, including bed bugs, rodents or other pests on the premises. Whenever an infestation exists in two or more of the dwelling units in a dwelling or in the shared or public parts of any dwelling containing two or more units, extermination thereof shall be the responsibility of the owner.

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

(a) The occupants of every dwelling or dwelling unit shall comply with the following requirements:

...

(5) Pest control. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, including bed bugs, 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....

SECTION 3. Chapter 34 of the City Code is hereby amended by adding the underlined language as follows:

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.

(a) Bed Bugs

(1) Definitions. The following words, terms and phrases, when used in this section, shall be defined as follows:

- a) "Pest Management Professional" means a person who: (i) is licensed, registered or certified by the State of Delaware to perform pest control services (ii) has attended courses or undergone training for the proper method for the extermination of bed bugs; and (iii) follows National Pest Management Association Best Practices for the extermination of bed bugs.
- b) "Dwelling facility operator" means the governing association of a condominium or cooperative building; the operator of any apartment building; the operator of any group living home or facility; or the operator of a hotel or other transient facility.
- c) "Dwelling facility resident" shall mean the owner of a condominium unit or occupant of a unit in a cooperative building; a resident of any apartment building, group living home or facility; or a resident or guest of any hotel or other transient facility.
- d) "Informational brochure" means a brochure or other document prepared by the Department of Licenses and Inspections that sets forth information on how to prevent the spread of bed bugs, how to detect the presence of bed bugs, and describes landlord and tenant rights and

responsibilities with respect to bed bugs extermination under this Chapter.

- e) "Rental unit" means any dwelling unit which is not owner-occupied and is held out for rent to tenants, including any single-family home held out for rent to tenants
- f) "Landlord" means the owner of a dwelling unit or a building containing multiple dwelling units leased for residential purposes.

(2) Education

- a) The Commissioner of Licenses & Inspections shall be responsible for the development of an informational brochure, and its posting on the City of Wilmington's website, containing, at a minimum, the following:
 - i. A statement that the presence of bed bugs in any building or dwelling unit is a public nuisance;
 - ii. Information on how to detect the presence of bed bugs;
 - iii. Information on how to prevent the spread of bed bugs within dwelling units and buildings;
 - iv. A statement that tenants shall contact their landlord as soon as practicable if they know or suspect they have bed bugs in their dwelling unit; and
 - v. Contact information as to where people can obtain more information
- b) For any rental agreement for a dwelling unit entered into or renewed after the effective date of this ordinance, the landlord or any person authorized to enter into such agreement on his behalf shall provide to such tenant the informational brochure on bed bugs provided by the Department of Licenses and Inspections.
 - i. The landlord shall maintain a written record signed by the tenant in acknowledgement of the receipt of the informational brochure. Such record shall be available upon request by the Commissioner of Licenses and Inspections, or his or her designee.

(3) Responsibilities of Owners

- a) Prior to renting a dwelling unit, the owner or property manager shall visually inspect the unit for any evidence of the presence of bed bugs, which may be indicated by observation of a living bed bug, bed bug carapace, eggs or egg casings, or brownish or blood spotting on linens, mattresses, or furniture. An owner or property manager may not offer for rent a dwelling unit that he or she knows or suspects is infested with bed bugs.
 - i. If tenant notifies landlord in writing within 30 days after the lease commencement date that tenant found or reasonably suspects a bed bug infestation, landlord shall be responsible for the costs of investigating and remediating the infestation.
- b) Prior to renting a dwelling unit, a landlord shall disclose to a prospective tenant if an adjacent unit or units are currently infested with or are being treated for bed bugs. The landlord shall maintain a written record, signed by the tenant, acknowledging the presence or absence of a bed bug infestation, or the treatment thereof, in an adjacent unit at the time of entering into the lease or rental agreement.
- c) Upon request from a tenant or prospective tenant, a landlord shall disclose the last date that the dwelling unit the landlord seeks to rent, or an adjacent unit or units were inspected and found to be free of a bed bug infestation.
- d) In accordance with Section 34-236(a)(12), if a bed bug 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.
 - i. Pest control services. Where a bed bug infestation exists or is reasonably suspected in two or more dwelling units or in the shared or public parts of a dwelling containing two or more dwelling units, the owner must provide extermination services by a pest management professional.
 - a. The owner shall provide the pest control services to determine whether an infestation exists within 48 hours after (1) a bed bug is found or reasonably suspected anywhere in the shared or public parts of any dwelling containing two or more dwelling units; or (2) being notified in writing by the tenants of two or more dwelling units of a known or reasonably suspected bed bug infestation on the premises or in the tenants' rental units.

- b. In buildings of four or more dwelling units, such as multi-unit apartment buildings, high rises, or commercial dwelling facility, the owner must obtain investigatory services by a pest management professional for any unit directly adjacent to, above or below the unit from which the original report of bed bugs came.
 - c. Owner must provide all tenants of units infested with bed bugs with written notice of the pest management professional's determination within two business days of receipt of information from the professional.
 - d. If the pest management professional determination that an infestation exists, the owner is responsible for extermination treatment until such a time that no evidence of bed bugs can be found and verified.
- ii. Record of pest control. The owner must maintain a written record or treatment report of the pest control measures performed by the pest management professional in the dwelling units and areas of the premises where an infestation is found or reasonably suspected. The record shall include reports and receipts prepared by the pest management professional, detailing the chemicals used for the treatment. The record shall be maintained for a period of four years and shall be open to inspection by authorized personnel of the Department of Licenses and Inspections.

(4) Responsibilities of tenants.

- a) In accordance with Section 34-237(a)(5), the occupant(s) of a single family dwelling shall be responsible for the extermination of bed bugs. If bed bugs are found or reasonably suspected in a dwelling unit in a dwelling containing more than one dwelling unit, the tenant shall be responsible for such extermination if his dwelling unit is the only unit infested. The tenant's responsibilities are as follows:
 - i. A tenant shall not knowingly bring into the building personal furnishings or belongings that are known or reasonably suspected to be infested with bed bugs.
 - ii. A tenant who finds or reasonably suspects a bed bug infestation in the tenant's dwelling unit or in a common area of the building shall notify the owner or property manager in writing as soon as

is practicable but no later than 24 hours after finding or suspecting the infestation.

- a. If the tenant fails to report a known or suspected bed bug infestation within his or her unit, the tenant shall be responsible for any liability or costs resulting to the landlord as a result of the tenant's failure to timely report such condition.
 - b. If the tenant lives in a dwelling with two or more dwelling units, and the owner or property manager has not received notice of known or reasonably suspected infestation in a separate unit within the dwelling, the tenant shall be responsible for the extermination of his or her unit. The owner shall inform the tenant within 48 hours, by written notice, of the tenant's responsibility to obtain extermination services for the dwelling unit by a pest management professional.
 - c. The tenant shall obtain pest control services, at his or her expense, within 48 hours of receiving notice from the owner or property manager of the tenant's responsibilities under this Section, unless the responsibility to pay for such services is waived by the owner or an alternate payment schedule is agreed to, in writing, by the landlord and tenant.
 - d. The tenant shall provide to the owner or property manager a written record or treatment report of the pest control measures performed by the pest management professional in the dwelling unit. The record shall include reports and receipts prepared by the pest management professional, detailing the chemicals used for the treatment.
- iii. A tenant who notifies a landlord of a suspected infestation, or that is advised by a landlord in writing of a suspected infestation in the building, shall cooperate with reasonable recommendations provided by a pest management professional hired by the landlord to investigate and remediate the infestation, including by:
- a. Granting access during business hours to the tenant's unit for purposes of inspection and remediation, upon reasonable notice by the landlord;

- b. Not interfering with inspections or remediation efforts; and
- c. Carrying out reasonable preparations, such as cleaning or moving furniture, before treatment, in accordance with the recommendations of the pest management professional.

(5) Tenant Protections

- a) A tenant may not be evicted in retaliation for reporting a known or suspected bed bug infestation.
- b) If a tenant is unable to comply with treatment preparations due to a physical disability, upon notice to the owner or property manager by the tenant of the need for assistance, the landlord shall offer a reasonable accommodation, in accordance with the Fair Housing Act, to enable the tenant's compliance. A landlord may charge a reasonable amount for any assistance necessary to enable the tenant's compliance, after first disclosing what the cost of such an accommodation may be and upon written agreement by the tenant. Repayment of any costs incurred by a landlord to provide a reasonable accommodation to a tenant under this Section shall be subject to a reasonable payment schedule not to exceed six months unless an extension or waiver of costs is agreed to in writing by the landlord and tenant.

(6) Bed Bugs and Dwelling Facility Operators

- a) No dwelling facility operator shall knowingly lease or provide a room or unit in its facility in which a bed bug infestation exists.
- b) No dwelling facility operator shall retaliate against a dwelling facility resident, employee, contractor, lessee or other user of its facility for reporting a suspected or known bed bug infestation to the facility operator or for sharing such information with other residents or users.
- c) A dwelling facility resident shall notify the dwelling facility operator, in writing, of any known or reasonably suspected bed bug infestation in an occupied room or unit as soon as is practicable but no later than 24 hours after finding or suspecting the infestation, and cooperate with the dwelling facility operator in the investigation and remediation of the infestation. Verbal notice is sufficient to owners or operators of motels, hotels or other commercial dwelling facilities.

(7) Enforcement and Violations

- a) The Department of Licenses and Inspections shall have the authority to enforce this Section. The Commissioner of the Department of Licenses and Inspections or his or her Inspector or designee is authorized to inspect for bed bugs the interior and exterior of dwellings, dwelling units, buildings, other structures or parcels on which a building is located.

- b) A violation of this Section has occurred when a tenant, dwelling facility resident, owner or dwelling facility operator is required by this Section to obtain extermination services to treat a known or reasonably suspected bed bug infestation and fails to so act.
 - i. All violations of this Section shall be reported to the Department of Licenses and Inspections which shall enforce this Section pursuant to Sections 34-237(b)-(d).

 - ii. A property owner of a multi-unit dwelling or dwelling facility operator in violation of any order of the Commissioner of Licenses based on the provisions of this Section shall be denied the right to renew or obtain a rental business license.

SECTION 4. This Ordinance shall become effective ninety (90) days upon its date of passage by the City Council and approval by the Mayor and apply only with respect to leases or the renewal of leases entered into after the effective date of this Ordinance.

First Reading.....February 6, 2020

Second Reading.....February 6, 2020

Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
 City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Substitute No. 2 to Ordinance 20-006 would prescribe the duties of landlords and tenants with regard to the treatment and control of bed bugs. For any rental agreement for a dwelling unit entered into or renewed after the effective date of this ordinance, the landlord or any person authorized to enter into such agreement shall provide to such tenant an informational brochure on bed bug prevention and treatment prepared by the Department of Licenses and Inspections (L&I).

FISCAL IMPACT STATEMENT: The projected fiscal impact of this Ordinance is a nominal increase relevant to the development and availability of the bed bugs educational brochure.

POLICY STATEMENT: The resurgence of bed bugs has created significant concern in the pest management industry and in society overall. The spread of bed bug infestations is a burden on the resources of Wilmington residents, property owners and health and social services providers in both the public and private sectors. In a time of fiscal austerity, cities should choose strategies that are both cost-efficient and highly effective. Smart, dedicated action can prevent the spread of bed bugs, thereby saving money and preventing waste in the long term. Municipalities across the country are creating and/or strengthening legislation on this issue. Examples of such proactive local jurisdictions include Philadelphia, Chicago, Jersey City, San Francisco, New York City, Boston, Cincinnati and Detroit. The goal of these regulations is not to overburden landlords, but to raise the bar and ensure to the extent possible that landlords are responsible stewards of their properties, working with the municipality to ensure safe, clean and healthy neighborhoods.