

AN ORDINANCE TO AMEND CHAPTER 34 OF THE CITY CODE TO REVISE CERTAIN ENFORCEMENT PROVISIONS AND PROVIDE CIVIL FINES FOR OWNERS OF RENTAL PROPERTIES

#0018

Sponsor:

**Council
Member
Cabrera**

Co-Sponsors:

**Council
Members
Walsh
Spadola
Oliver
Field
Fields
Johnson**

WHEREAS, the 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 as it relates to rental properties; and

WHEREAS, City Council believes subjecting owners of rental properties that fail to comply with applicable City Code provisions to civil fines will have a greater 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 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 deems it appropriate to amend certain penalty, notice and appeal provisions to increase efficiency and effectiveness; and

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

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

SECTION 1. Chapter 34 of the City Code is hereby amended by deleting the stricken language and adding the underlined language to read 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:

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.

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.

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

- (a) This chapter shall be enforced by the commissioner of licenses and inspections or his authorized representatives in the department of licenses and inspections, and the commissioner of licenses and inspections or any such authorized representative shall impose civil fines and 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.

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. The term "week" as used in this section shall mean a period of seven (7) consecutive calendar days.
- (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 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. With respect to rental~~

dwelling units only, any person owning 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 subject to and liable for a civil fine of \$250 for each 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 civil fine in the same amount. A civil fine authorized pursuant to this subsection shall not apply to owner-occupied properties.

- (e) Pursuant to title 25, chapter 29 of the Delaware Code, any fines imposed by any court for violations of this chapter or any civil fine imposed pursuant to the provisions of this subsection shall give rise to a lien(s). The 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.

Sec. 34-38. - Notice of violation -- 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 ~~45~~ 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 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. Upon request, the commissioner of licenses and inspections, or his designee, may, at his discretion and for good cause shown, extend the time period provided in the notice for the performance of any required act.

(5) Include a statement that a building permit maybe required for certain repairs, additions, alterations or replacements to the building or structure and direct the person to contact the department of licenses and inspections for further information and to make application for a building permit.

- (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~~ 1) the owner, operator or occupant's address and 2) 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 or her, 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 5 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 may appeal the violation notice to the board of license and inspection review. The appeal shall be in writing and filed within ~~ten~~ 20 calendar days after of the receipt of effective date of the violation notice as described in subsection (b), above. 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.

Sec. 34-39. - Same—When not required.

Notwithstanding any other provision of this chapter to the contrary, whenever any person fails to obtain ~~the permit~~ a 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, a rental dwelling unit business license as required by chapter 5 or fails to register a rental dwelling unit as required by section 5-92, no

notice of such violations ~~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.

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

- ~~(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.~~

Sec. 34-40. - Reserved.

Sec. 34-86. - Limitation of occupancy notification, rental registration and business license— ~~Required Requirement and Penalty.~~

- ~~(c) Any owner or operator who fails to obtain a business license required by section 5-34 or fails to register a rental 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 of a misdemeanor as provided in section 34-37~~ subject to and liable for a civil fine of \$500 per rental dwelling unit.~~

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

- ~~(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.~~

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

- (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.~~

- ~~(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.~~

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.~~

Sec. 34-236. - Responsibilities of owners.

- ~~(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.~~
- ~~(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 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.~~

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

~~(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 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 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.~~

SECTION 3. This Ordinance shall become effective on July 1, 2021.

First Reading..... February 4, 2021

Second Reading..... February 4, 2021

Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2021.

Mayor

SYNOPSIS: This Ordinance makes the following amendments to Chapter 34 of the City Code:

- changes the enforcement of Chapter 34 with respect to rental properties from criminal enforcement to civil enforcement with civil fines for non-compliance;
 - owner-occupied properties will continue to be subject to criminal enforcement proceedings;
- provides a \$500 per unit civil fine for failing to obtain a rental license, register rental units or obtain occupancy limitations;
- removes imprisonment as a potential penalty in criminal enforcement proceedings;
- provides that fines may be imposed for each week’s failure to correct violations rather than a daily fine;

- changes the general time period for compliance from 45 days to 30 days;
- revises the effective date for notices;
- requires notices to be mailed to the owner, operator or occupant's property address and the tax address for the property;
- extends the time period in which to appeal a violation notice from 10 days to 20 calendar days;
- provides that the appeal fee shall be refunded if the appeal is successful; and
- deletes duplicate or inconsistent penalty provisions throughout the chapter.

FISCAL IMPACT STATEMENT: The fiscal impact as a result of the changes implemented by the Ordinance is unknown.

W0113091