

AN ORDINANCE TO AMEND CHAPTER 34 OF THE CITY CODE TO REVISE THE TIMING OF APPEALS RELATED TO RENTAL DWELLINGS

#0076

Sponsor:

**Council
Member
Cabrerera**

WHEREAS, on February 18, 2021, City Council passed Substitute No. 1 to Ordinance No. 21-006 to, among other things, provide for the assessment of civil fines on owners of rental dwellings that fail to comply with the requirements of Chapter 34 in lieu of a criminal enforcement process; and

WHEREAS, Substitute No. 1 to Ordinance No. 21-006 also increased the time period to file an appeal of a violation notice from 10 business days to 20 calendar days from the date of the violation notice; and

WHEREAS, during the course of public discussion on Substitute No. 1 to Ordinance No. 21-006, some landlords requested an opportunity to appeal not just the violation notice, but also the assessment of civil fines; and

WHEREAS, the landlords explained that while a landlord may not have a dispute with the violation notice, a dispute may arise concerning the adequacy of the repairs undertaken by the landlord and, as it stands, the opportunity to file an appeal would have passed; and

WHEREAS, City Council believes two opportunities to appeal to the Board of Licenses and Inspections Review, with the attendant right to appeal to the Superior Court each time, undermines the efficiency achieved by the change from criminal enforcement to civil enforcement; and

WHEREAS, in order to address the landlords' concern and maintain the efficiency of the civil enforcement process, City Council deems it appropriate 1) to amend the time to appeal violations related to rental dwelling units from the date of the

violation notice to the date the civil fine is assessed; and 2) to permit the appeal to address matters related to both the violation notice and the adequacy of any repairs; and

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

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

SECTION 1. Chapter 34, section 34-37 of the City Code is hereby amended by adding the underlined language to read as follows:

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

- (d) 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. Whenever a civil fine is assessed by the commissioner of licenses and inspections, an invoice statement reflecting the assessed civil fine(s), together with any applicable remediation costs, shall be mailed to the property owner and shall allow 30 calendar days for payment. A civil fine authorized pursuant to this subsection shall not apply to owner-occupied properties.

SECTION 2. Chapter 34, section 34-38 of the City Code is hereby amended by deleting the stricken language and adding the underlined language to read as follows:

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

- (a) Contents of notice. 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;
 - (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. 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; and
 - (6) Include the name of the inspector and instructions on how to contact the inspector for additional information regarding the notice and to request a meeting.
- (b) Service of notice. 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 1) the owner, operator or occupant's address; 2) such other address(es) that have been designated for the receipt of property tax bills for such property; and 3) the property manager designated on the rental dwelling business license if the property in violation is a rental dwelling unit, 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 such property manager 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) Appeal. Such notice shall provide that the persons so notified may file an appeal ~~the violation notice~~ to the board of license and inspection review. The appeal shall be in writing ~~and filed within 20 calendar days of the 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 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.

(1) Timing of appeal and stay. Such notice shall also provide the following information relating to when an appeal may be filed:

(i) For violations related to properties other than rental dwelling units, the persons so notified may file an appeal of the violation notice to the board of license and inspection review within 20 calendar days of the effective date of the violation notice as described in subsection (b), above. The filing of an appeal shall stay further enforcement action until such time as the board of license and inspection review has rendered a decision on the appeal or the appeal is withdrawn.

(ii) For violations related to rental dwelling units only, the persons so notified may file an appeal to the board of license and inspection review within 20 calendar days of the assessment of a civil fine. The appeal may address any issues related to 1) the violation notice; 2) the adequacy of any repairs undertaken in response to the notice; and 3) the assessment of the civil fine. The filing of an appeal shall stay further enforcement action, payment of the civil fine and the assessment of any additional civil fines related to the notice under appeal until such time as the board of license and inspection review has rendered a decision on the appeal or the appeal is withdrawn. With regard to an appeal related to the assessment of a civil fine, the board of license and inspection review may not suspend, in whole or in part, a

civil fine that it determines was lawfully assessed by the commissioner of licenses and inspections.

- (d) Any owner, operator or occupant, as the case may require, who does not appeal the notice as provided for in subsection (c) above 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.

SECTION 3. This Ordinance shall be effective upon passage by City Council and approval by the Mayor.

First Reading..... June 3, 2021
Second Reading..... June 3, 2021
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2021.

Mayor

SYNOPSIS: This Ordinance amends Chapter 34 of the City Code to change the time to appeal violations related to rental dwelling units from 20 calendar days from the date of the violation notice to 20 calendar days from the date the civil fine is assessed. This Ordinance expressly permits the appellant to raise arguments on appeal related to 1) the violation notice; 2) the adequacy of any repairs undertaken in response to the notice; and 3) the assessment of the civil fine. This Ordinance also provides that civil fines will be due 30 days from the date of assessment in order to provide a person sufficient time to file his or her appeal. Lastly, this Ordinance makes clear that while an appeal is pending, further enforcement action, payment of the civil fine and the assessment of any additional civil fines related to the notice under appeal are stayed.

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