

AN ORDINANCE TO AMEND CHAPTER 4 OF THE CITY CODE TO IMPOSE CIVIL FINES ON OWNERS OF VACANT PROPERTIES

#0249

Sponsor:

Council
Member
Cabrera

WHEREAS, the purpose of this legislation is to improve neighborhoods in the city 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 vacant properties; and

WHEREAS, City Council believes subjecting owners of vacant 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 vacant properties that fail to comply with the requirements of Chapter 4; 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 4 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 the stricken language and adding the underlined language to read as follows:

Section 4-27 Amendments

Section 114.4.1 Violations and penalties.

- (a) Except as otherwise provided by subsection (b) of this section, Any person who violates a provision of this Code or fails to comply with any of the requirements thereof, or who erects, constructs, alters or repairs any service equipment or appliance for which a permit is required either without first having obtained that permit, or in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this chapter shall be guilty of a misdemeanor, punishable by a fine of not less than \$250.00 and not more than \$1,000.00 or by imprisonment not exceeding six months, or both such fine and imprisonment, for the first conviction. A corporation may be fined by the court an amount not exceeding \$5,000.00. Each day week that a violation continues shall be deemed a separate offense. 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, and not more than \$5,000.00; for the third conviction \$1,000.00, which shall not be suspended; for the fourth conviction \$1,500.00; and 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) 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.~~
- (b) With respect to vacant buildings or structures only, any person owning a vacant building or structure 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. The terms "vacant" and "civil fine" shall have the meanings ascribed to them in subsection 202 of section 4-27 of this chapter.

- (c) ~~Issuance of warnings. 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 such 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. 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.~~
- (d) Continuing violations. After conviction and sentencing for violation of any such order of the commissioner of licenses and inspections based upon and issued pursuant to the provisions of this chapter or any provision of any rule or regulation promulgated by the department of licenses and inspections for the enforcement or implementation of this chapter, if such person shall continue in violation of such order, then such person shall be liable for further prosecution, conviction, sentencing, and punishment upon such same order, without any necessity of the commissioner of licenses and inspections issuing a new order until there is full compliance with such order.
- (e) Separate offenses. Each ~~day's~~ week's failure to comply with any order of the commissioner of licenses and inspections based upon and issued pursuant to the provisions of this chapter or the provisions of any rule or regulation promulgated by the department of licenses and inspections for the enforcement and implementation of this chapter, and each day'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.

Section 114.4.2 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 property 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. 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 assigned 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; and 2) such other address(es) that have been designated for the receipt of property tax bills for such property, or if the notice 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 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 to the board of license and inspection review. The appeal shall be in writing. 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 vacant buildings or structures, 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 vacant buildings or structures 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 renders 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 subsection 114.4.1.

Section 116.3.1 Notice of unsafe structure and hearing. If an unsafe condition is found in the building or structure, the building official shall give written notice, by either mail or service or other form of delivery, to the owner, agent or person in control of the structure, describing the structure deemed unsafe and stating the required repairs or improvements to be made to render the structure safe and secure, or requiring the unsafe structure or portion thereof to be demolished within a specified time. ~~If the owner, agent or person in control cannot be found, a copy of the notice shall be posted in a conspicuous place on the premises and such a procedure shall be deemed the equivalent of personal service. Any notice herein required shall, if mailed, be deemed to be effective upon mailing. Such notice shall conform to the requirements of subsection 114.4.2 above with regard to contents, service and appeals.~~

~~Such notice shall provide that the person so notified may appeal the violation notice to the board of licenses and inspections review. The appeal shall be in writing and filed within ten days after the receipt of the violation notice. Any appeal to the board of licenses and inspections review shall be accompanied with a nonrefundable fee in the amount required by this chapter at the time of filing. The board of licenses and inspections review shall hear and decide appeals in accordance with its duly prescribed and promulgated rules, regulations and procedures.~~

Section 116.7. Vacant building.

- (a) Rehabilitation or demolition of vacant and boarded buildings. It shall be unlawful and a violation for which the owner of the property or the person responsible for the property shall be liable for any vacant building 116.1.4(b) to determine if an emergency demolition is required because the building is an imminent threat, as provided therein, or subsection 116.1.4(c) to determine if a nonemergency demolition is required because the building constitutes a public nuisance.
- (b) Secure open areas of building.
 - (1) Violations. It shall be unlawful for any owner, agent, or person in control of any building or structure which is vacant and open or otherwise unsafe to fail to secure and board up the open areas of any such building. If, after a reasonable time, the building or structure is not secured, but rather it remains vacant and open or otherwise unsafe, the building official or authorized agent or employee of the city may enter upon the premises, building or structure and secure or board up the open areas of such building or structure, or cause the same to be done. ~~If the building official or authorized agent or employee of the city is denied entrance to a premises,~~

~~building or structure for purposes of securing and boarding up the open areas of such building or structure, he may, upon a showing of probable cause, obtain a warrant for purposes of entering and securing and boarding up the subject building or structure.~~

(2) Costs incurred. The owner or owners of the subject building or structure shall be jointly and severally liable to the city for the full amount so expended in securing and boarding it up. The owner, agent or person in control of such building or structure shall reimburse the city for all costs incurred by the city in so securing or boarding up such building or structure. The city may maintain an action of law in debt or assumpsit against such owner or owners to recover the amount of money so expended, plus lawful interest, and costs.

~~(3) Reimbursement of city at time of sentencing of violator. When any persons are found guilty, whether by trial or by admission, of violating provisions of this section, in instances 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 securing and boarding up the open areas of any building or structure regarding which such person or persons shall be found guilty, as provided, the court having jurisdiction shall order such person or persons to make full restitution to the city for such costs in addition to and not in lieu of any fine which the court may impose.~~

Section 119.0. 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.).

(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 sections 119.1, or 119.5, or 119.6, or any combination of the same, 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 municipal 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.~~

Section 120.0. Annual registration of vacant buildings and registration fees.

~~(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 register a vacant building or to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than \$100.00 nor more than \$500.00 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100.00 is imposed, it shall not be subject to suspension or reduction for any reason.~~

CHAPTER 2 DEFINITIONS

Section 202 Definitions is amended by adding the following definitions and shall read as follows:

Section 202.0.

Civil Fine: 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.

Occupied: A building or structure shall be deemed to be occupied if one or more persons actually reside or live in the building as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or if one or more individuals, firms, corporations, partnerships, or other entities actually operates an ongoing duly licensed business, whether as owner or tenant, in the subject building or structure. For purposes of this code, evidence offered to prove that a building is 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, and cable television subscriber services; the production of a current limitation of occupancy notification application pursuant to this section by the department of licenses and inspections; a valid city business license; or the most recent, federal, state, or city income tax statements indicating that the subject property is an occupied building for residential or nonresidential purposes.

Vacant: A building or structure shall be deemed to be vacant if no person or persons actually currently resides or lives in the building as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or if none of any individuals, firms, corporations, partnerships, or other entities actually operates an ongoing duly licensed business, whether as owner or tenant, in the subject building or structure.

Mobile Unit: Mobile unit or home are not permitted unless being used for temporary facility.

SECTION 2. This Ordinance shall become effective on July 1, 2023.

First Reading.....November 17, 2022
Second Reading.....November 17, 2022
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2022.

Mayor

SYNOPSIS: This Ordinance makes the following amendments to Chapter 4 of the City Code:

- changes the enforcement of Chapter 4 with respect to vacant buildings and structures from criminal enforcement to civil enforcement with civil fines for non-compliance;

- 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;
- sets forth requirements for the content and service of violation notices;
- extends the time period in which to appeal a violation notice from 10 days to 20 calendar days; and
- provides that the appeal fee shall be refunded if the appeal is successful.

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