

SUBSTITUTE NO. 1 TO ORD. 25-018

AN ORDINANCE TO AMEND CHAPTER 34 OF THE CITY CODE TO ALLOW RESIDENTIAL TENANTS IN CITY PROPERTIES TO DEPOSIT WITHHELD RENT IN A CITY-HELD ESCROW ACCOUNT

WHEREAS, the State of Delaware Landlord-Tenant Code allows tenants to withhold rent from landlords if certain conditions exist; and

WHEREAS, tenants who withhold rent may need a secure place to deposit it; and

WHEREAS, the City wants to protect tenants (and landlords) by providing a safe, neutral place to deposit withheld rent; and

WHEREAS, City Council deems it necessary and appropriate to amend Chapter 34 of the City Code to establish a voluntary rent escrow program.

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

SECTION 1. Chapter 34 of the City Code is hereby amended by deleting Sections 34-151 through 34-195 in their entirety.

SECTION 2. Chapter 34 of the City Code is hereby amended by adding in a new Section 34-151 to read as follows:

Sec. 34-151. – Voluntary Rent Escrow Program.

- a) There is hereby authorized a voluntary rental escrow program for residential tenants to deposit withheld rent with the City to serve as evidence of funds in landlord-tenant actions.
- b) The Department of Licenses and Inspections shall develop an affidavit consistent with this Section.
- c) Eligibility. To be eligible to use this section, a tenant must:
 - (1) Be a residential tenant currently occupying a rental property; and
 - (2) Within the limits of the City of Wilmington; and
 - (3) Have not yet received a written notice that rent is late; and

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Sponsor:

Council
Member
McCoy

- (4) Have sent their landlord a written request to make repairs; and
- (5) Given the landlord a reasonable time period, as defined in 25 Del. C. § 5307, in which to make repairs, unless:
 - a. There is a lack of hot water, heat, water, electricity, or conditions exist that materially deprives a tenant of a substantial part of the benefit of the tenant's bargain, as defined in 25 Del. C. § 5308, wherein the landlord has forty-eight (48) hours to make repairs.

d) Tenants' Obligations

- (1) Fill out an affidavit with the Department of Licenses and Inspections; and
- (2) Bring lease and all written notices provided to the Landlord; and
- (3) Bring the money to be withheld in escrow.
 - a. The amount of money withheld cannot exceed 2/3 of the monthly rent.
- (4) Completed vendor application, with W-9 and verification of personal information; and
- (5) The Tenant shall continue to put money into escrow until:
 - a. A Court adjudicates the matter; or
 - b. The Tenant has placed a maximum of 60 days of withheld rent in escrow; or
 - c. The landlord and tenant submit a joint affidavit certifying the release of funds.

e) City's Obligations

- (1) Maintain copies of the affidavit and provide them upon sufficient notice; and
- (2) Deposit the funds in an escrow account with its established local bank; and
- (3) Provide the tenant a receipt verifying the deposit; and
- (4) Sending notice to the landlord, which counts as notice to protect against retaliatory acts under 25 Del. C. 5516; and
- (5) Coordinate inspections of the rental property in accordance with the City Code; and
- (6) Refer the offending landlord to the Law Department for prosecution under Chapter 34 of the City Code.

f) Fund Release to the Tenant

- (1) The City will release the funds upon receiving:
 - a. A Court Order; or
 - b. A joint affidavit signed by the landlord and the tenant certifying the release of funds

- (2) The City will release funds via ACH Transfer, if proper vendor form is on file, or via check
- a. Tenant is responsible for correct banking information or shall physically pick up the check
 - b. The City is not responsible for misplaced funds

SECTION 3. Chapter 34 of the City Code is hereby amended by renumbering Section 34-196 as Section 34-152, and making Sections 34-153 through 34-230 reserved to read as follows:

Sec. 34-152. – **Rights of tenants and landlord not affected.**

Secs. 34-153—34-230. – **Reserved.**

SECTION 4. Section 34-151 will sunset automatically if the State of Delaware enacts superseding rental escrow legislation.

SECTION 5. This Ordinance shall become effective 30 days after an employee is assigned to manage the Escrow Accounts, and an Escrow Agreement is set up with a local financial institution.

First Reading.....April 17, 2025
Second Reading.....April 17, 2025
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2025.

Mayor

SYNOPSIS: This Ordinance amends Chapter 34 of the City Code to establish a voluntary escrow program for tenants living in City properties.

FISCAL IMPACT STATEMENT: This Ordinance is projected to increase General Fund Expenditures by at least \$301,700.

The Department of Licenses and Inspections will require additional staffing, including a Clerk II to manage tenant intake, and a Code Enforcement Officer in order to conduct additional inspections. The total cost (salaries and benefits) of these new positions will be just over \$174,700. In addition, the Department of Licenses and Inspections will require enhancements to the Salesforce software, at an estimated cost of \$75,000, as well as funds to market the escrow program, at an estimated cost of \$2,000.

The Finance Department will require a projected \$50,000 to support additional staff compensation and technology related to the collection, recordation, disbursement, accounting, and auditing of the escrow funds and process.

There are additional costs that cannot be precisely quantified at this time. The Treasurer's Office would use M&T Bank's Escrow Online product, which charges a fee of \$32 per month for each tenant escrow account created. This fee could either be deducted from the tenant's escrow account balance—making it the tenant's responsibility—or charged to a designated City account, in which case the City would bear the cost.

Finally, by adopting this escrow program, the City would increase its exposure to legal liabilities and the associated costs of possible legal proceedings.

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