

**AN ORDINANCE TO AMEND CHAPTER 34 OF THE WILMINGTON CITY
CODE TO AUTHORIZE A VOLUNTARY RENT ESCROW PROGRAM**

#0139

Sponsor:

**Council
Member
McCoy**

WHEREAS, the State of Delaware Landlord-Tenant Code permits tenants to withhold rent when certain conditions exist; and

WHEREAS, egregious housing violations, such as lack of heat, water, hot water, or electricity, require immediate attention and enforcement; and

WHEREAS, City Council finds it necessary to assist tenants with locating a separate or neutral place into which tenants may deposit their withheld rent; and

WHEREAS, a city-authorized rent escrow program provides a structured and transparent process to protect tenants and landlords.

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

SECTION 1. 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 three 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 may be 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; and
- (7) Include a statement about the City's voluntary rent escrow program. Such statement shall also be included on placards posted pursuant to section 34-115.

SECTION 2. Chapter 34 of the City Code is hereby amended by deleting Sections 34-151 through 34-195 in their entirety.

SECTION 3. Chapter 34 of the City Code is hereby amended by adding a new Section 34-151 to read as follows:

Section 34-151. – Voluntary Rent Escrow Program.

- (a) Purpose. This section authorizes the City to establish a voluntary rent escrow program for residential tenants who decide to withhold rent payments pursuant to Title 25, § 5308 of the Delaware Code when a landlord fails to provide hot water, heat, water or electricity after proper notification. This ordinance is not intended to supersede or replace the rent withholding requirements of 25 Del. C. § 5308. Further, tenants are not required to use the City's rent escrow program to exercise the remedies available to them pursuant to 25 Del. C. § 5308.
- (b) Rent Escrow Program Authorized. The City, through the Department of Licenses and Inspections, may itself or by agreement with a third-party establish and manage a rent escrow program. As part of the program, the City

may itself or by agreement with a third-party provide a rent escrow account to hold rent withheld by a tenant pursuant to 25 Del. C. § 5308 when a landlord fails to provide hot water, heat, water or electricity after proper notice.

1. For purposes of this section, a “rent escrow account” is a separate bank account opened and held by the tenant, or an account opened and held by the City or a third party on behalf of the tenant into which rent payments are deposited by the tenant. The rent escrow account is intended to show that a tenant was ready, willing and able to pay the rent, but is withholding the rent until the landlord makes the required repairs, and to serve as evidence of funds in landlord-tenant actions.

(c) *Eligibility.* To be eligible to participate in the City’s rent escrow program, a tenant must:

1. Be a tenant currently occupying a residential rental property located within the incorporated limits of the City of Wilmington; and
2. Have sent their landlord the written notice(s) required by 25 Del. C. § 5308; and
3. Have given the landlord at least forty-eight (48) hours to provide hot water, heat, water, or electricity as required by 25 Del. C. § 5308; and
4. Have obtained an inspection from the Department of Licenses and Inspections to confirm that the rental property lacks hot water, heat, water or electricity.

(d) *Tenant Obligations.* To participate in the City’s rent escrow program, a tenant must:

1. Provide a copy of their most recent, fully executed lease; and
2. Provide copies of all written notices given to the landlord as required by 25 Del. C. § 5308; and
3. Complete any documents required by the City to determine whether the tenant meets the eligibility requirements set forth in subsection (c) above; and
4. If the rent escrow account being utilized is an account other than a bank account opened and held by the tenant, bring the withheld funds to be deposited in a rent escrow account.
 - a. The funds must be in the form of cash, certified check or money order.
 - b. The inspection required by subsection (c)4. above must be obtained prior to the initial deposit of funds.
5. Continue to put their withheld rent into an escrow account by the lease agreement’s monthly due date until:

- a. A court adjudicates the matter and issues an order regarding the disposition of the escrowed funds; or
 - b. The landlord and tenant submit a joint affidavit certifying that the escrowed funds may be released, and identifying the party to whom the funds should be released; or
 - c. The tenant provides written proof that they terminated the rental agreement; or
 - d. The Department of Licenses and Inspections confirms through an inspection that the hot water, heat, water or electricity has been restored to the property.
6. The amount of money to be deposited into a rent escrow account cannot exceed the per diem rent permitted to be withheld pursuant to 25 Del. C. § 5308.
 7. If a tenant fails to make the required monthly deposit of withheld rent during the period when hot water, heat, water and electricity is not supplied, all funds deposited by the tenant into a rent escrow account opened and held by the City or a third party contracted by the City will be released to the tenant.
- (e) Release of Funds Held in the Rent Escrow Account. If the rent escrow account being utilized is an account opened and held by the City or a third party contracted by the City, the City or third party will release the funds deposited by a tenant into the rent escrow account upon receiving:
1. A court order regarding the disposition of the escrowed funds and identifying the party to whom the funds should be released; or
 2. A joint affidavit submitted by the landlord and tenant certifying that the escrowed funds may be released, and identifying the party to whom the funds should be released; or
 3. Written proof that the tenant terminated the rental agreement in which case the funds will be released to the tenant.

SECTION 4. This Ordinance shall become effective one hundred and twenty (120) days after its date of passage by City Council and approval by the Mayor.

First Reading.....November 6, 2025

Second Reading...

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 rent escrow program for residential tenants living in the City of Wilmington and provides 1) the eligibility requirements for participation in the program; 2) the tenant's obligations when participating in the program; and 3) the manner in which funds held in an account opened by the City or third-party contracted by the City will be released. This Ordinance also requires the Department of Licenses and Inspections to include a statement regarding the availability of the program on all violation notices and placards posted on properties condemned as unfit for human habitation.

FISCAL IMPACT: This Ordinance authorizes two potential approaches for implementing a voluntary rent escrow program. Option #1 authorizes the City to establish and administer the program, while Option #2 allows for contracting with a third party to do so.

Option #1 – Administered by the City:

Implementation of a City-administered voluntary rent escrow program is projected to increase General Fund expenditures by approximately \$206,000.

The Department of Licenses and Inspections will require the addition of a Clerk II position to manage tenant intake. The total cost (salary and benefits) for this position is estimated at just over \$74,600. The Department will also require Salesforce software enhancements estimated at \$75,000. In addition, all violation notices and placards posted on properties

deemed unfit for human habitation will need to be updated to include information about the escrow program, at an estimated cost of \$4,200. Lastly, the Department will require marketing funds of approximately \$2,000 to promote the program.

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

Additional costs cannot be precisely quantified at this time. The Treasurer's Office would utilize M&T Bank's Escrow Online product, which charges \$32 per month for each tenant escrow account. This fee could either be deducted from the tenant's escrow 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 assume increased exposure to legal liabilities and the potential costs of related legal proceedings, which cannot be precisely quantified at this time.

Option #2 – Third-Party Contract:

Implementation of a City-administered voluntary rent escrow program is projected to increase General Fund expenditures by approximately \$104,200

At this time, it is uncertain whether a qualified third party interested in administering a voluntary rent escrow program for the City could be secured. Therefore, cost estimates cannot be determined until completion of the Request for Proposals (RFP) process. The City would cap the third-party costs at \$100,000.

As with Option #1, violation notices and placards posted on properties deemed unfit for human habitation would need to be revised by the Department of Licenses and Inspections to include information about the escrow program, at an estimated cost of \$4,200

In addition, as with Option #1, the City would assume increased exposure to legal liabilities and the potential costs of related legal proceedings, which cannot be precisely quantified at this time.