

**AN ORDINANCE TO AMEND CHAPTERS 3 and 13 OF THE WILMINGTON CITY CODE TO MODIFY THE APPELLATE PROCEDURE FOR CIVIL PENALTIES RELATING TO THE REMOVAL OF FECAL MATTER, HEALTH AND SANITATION, AND THE STORAGE AND DISPOSAL OF GARBAGE AND RUBBISH.**

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#3652

Sponsor:

Council  
Member  
Shabazz

Co-Sponsors

Council  
President  
Griffiths

Council  
Members  
Potter  
Congo  
Robinson  
Kelley  
Ignudo  
Martelli  
Brown  
Walsh  
Wright

WHEREAS, City Council desires to modify the appellate procedure applicable to the civil penalties imposed pursuant to several specific City Code provisions to remove the requirement for payment of the civil penalty at the time of filing the appeal; to require a nonrefundable filing fee to defray the administrative costs associated with the appeal; and to codify the Department of Licenses and Inspections practice of staying enforcement action during the pendency of an appeal.

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** Chapter 3 of the City Code is hereby amended by deleting the stricken language and adding the underlined language:

Sec. 3-12. - Accumulation of dog, cat, pigeon or other animal or domestic bird fecal matter.

- (a) Every person owning, possessing, harboring, tolerating or having the care, charge, control or custody of one or more dogs, cats, pigeons or other animals or domestic birds shall take all reasonable measures to prevent accumulation of fecal matter of the same in the area in which such animals or birds are customarily kept or customarily are allowed to stay or remain. No such person shall allow animal or bird fecal matter to accumulate so as to create obnoxious or offensive odors.
- (b) This section shall be enforced solely by the department of licenses and inspections and the department of public works, whose authorized agents and employees shall have the power to issue citations for non-compliance herewith. A civil penalty shall be imposed for failure to comply with any provision of this section.
- (c) The owner of a property who allows fecal matter to accumulate or fails to remove an accumulation of animal fecal matter on his or her property, regardless of whether the owner actually resides in the property, shall be subject to and liable for a civil penalty in the amount of \$50.00. This civil penalty shall be doubled if not paid within 30 calendar days from the date of the citation. Pursuant to title 25, chapter 29 of the Delaware Code, any civil penalty imposed under this section shall give rise to a lien. Any unpaid amount of

such civil penalty shall be added to the city property tax billing for the property which was the subject of the citation. Each 24-hour period that the condition giving rise to the initial citation continues will be subject to a separate citation and an additional civil penalty in the amount of \$50.00.

- (d) Any citation issued for failure to comply with this section shall be mailed to the owner of the property that is the subject of the citation.
- (e) Appeals— The owner of a property aggrieved by any civil penalty imposed pursuant to this chapter may appeal to the commissioner of licenses and inspections by sending a detailed written explanation of the grounds for the appeal, along with ~~payment in full of the civil penalty~~ a mandatory non-refundable administrative filing fee of \$15.00, to the commissioner of licenses and inspections within 21 business days of the date of the citation. ~~The commissioner of licenses and inspections shall forward the payment of the civil penalty to the department of finance, which will credit such payment. The commissioner of licenses and inspections or his or her designee shall issue a written decision affirming, modifying, reversing, revoking or vacating the civil penalty within 45 calendar days of receipt of the written explanation of the grounds for the appeal. Such decision shall be final. In the event the civil penalty is reversed, revoked, vacated or decreased in amount, the appellant shall be reimbursed for payment of the portion of the civil penalty vacated or decreased. Each citation received must be appealed separately.~~ Any appeal to the commissioner of licenses and inspections shall act as a stay of the citation and civil penalty until a final decision on the appeal has been rendered. If during the pendency of the appeal additional citations are issued and civil penalties imposed regarding the same matter under appeal, the civil penalty shall be voided.
- (f) Proof of state of mind not required for strict liability—It is unnecessary to prove the violator's state of mind with regard to the failure to comply with this section, as the legislative purpose is to impose strict liability for such non-compliance.

**SECTION 2.** Chapter 13 of the City Code is hereby amended by deleting the stricken language and adding the underlined language:

Sec. 13-3. - Appeals.

The owner of a property aggrieved by any civil penalty imposed pursuant to this chapter may appeal to the commissioner of licenses and inspections by sending a detailed written explanation of the grounds for the appeal, along with ~~payment in full of the civil penalty~~ a mandatory non-refundable administrative filing fee of \$15.00, to the commissioner of licenses and inspections within 21 business days of the date of the citation. ~~The commissioner of licenses and inspections shall forward the payment of the civil penalty to the department of finance, which will credit such~~

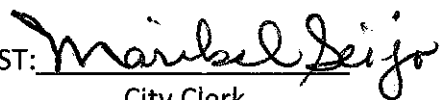
~~payment.~~ The commissioner of licenses and inspections or his or her designee shall issue a written decision affirming, modifying, reversing, revoking or vacating the civil penalty within 45 calendar days of receipt of the written explanation of the grounds for the appeal. Such decision shall be final. ~~In the event the civil penalty is reversed, revoked, vacated or decreased in amount, the appellant shall be reimbursed for payment of the portion of the civil penalty vacated or decreased.~~ Each citation received must be appealed separately. Any appeal to the commissioner of licenses and inspections shall act as a stay of the citation and civil penalty until a final decision on the appeal has been rendered. If during the pendency of the appeal additional citations are issued and civil penalties imposed regarding the same matter under appeal, the civil penalty shall be voided.

**SECTION 3.** Effective date. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

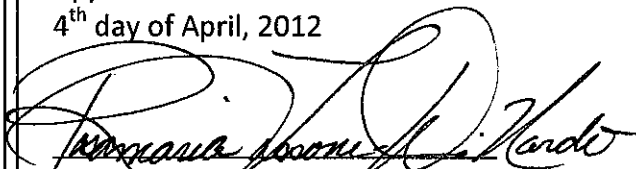
First Reading . . . April 5, 2012  
Second Reading . . April 5, 2012  
Third Reading . . . April 19, 2012

Passed by City Council,  
April 19, 2012

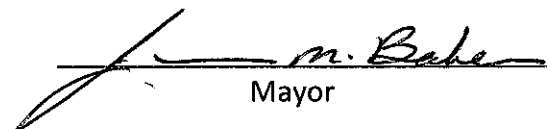
  
President of City Council 4/20/12

ATTEST:   
City Clerk

Approved as to form this  
4<sup>th</sup> day of April, 2012

  
First Assistant City Solicitor

Approved this <sup>19</sup>20 day of APRIL, 2012

  
Mayor

**SYNOPSIS:** This ordinance amends Chapters 3 and 13 of the City Code to modify the appellate procedure applicable to civil penalties imposed for failure to comply with the City Code provisions relating to the removal of fecal matter, health and sanitation and the storage and disposal of garbage and rubbish. Under the modified procedure, a property owner will not be required to pay the civil penalty at the time he or she files an appeal. The ordinance amends the appellate procedure to require a mandatory, nonrefundable administrative filing fee in the amount of \$15.00 to defray the costs associated with the appeal. Additionally, the ordinance codifies the practice of the Department of Licenses and Inspections to stay further enforcement action during the pendency of the appeal.