



CITY OF DELAWARE CITY  
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Delaware City, Delaware 19706  
302-834-4573

**CITY OF DELAWARE CITY  
DELAWARE CITY, DELAWARE  
Substitute Amendment No. 1 to Ordinance No. 15 -0420-02**

**ORDINANCE TO AMEND CITY CODE SECTION 52-2 TO  
CORRECT SCRIVENER ERRORS, AMEND CERTAIN APPEAL PROCEDURES AND  
TO AMEND PROVISIONS RELATING TO CONTINUING VIOLATIONS**

**WHEREAS**, pursuant to Article V, Section 5-02(A) of The City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, § 2-1 of the Charter, the Mayor and the Council of The City of Delaware City ("City Council") possess the authority to adopt, amend, modify, or repeal The City of Delaware City Code ("Code");

**WHEREAS**, on March 4, 2015, in accordance with Ordinance 14-1215-03, as amended, the Code was amended by Mayor and City Council to include a new Chapter 52 entitled "Property Maintenance";

**WHEREAS**, the Mayor and City Council desire to amend Code Section 52-2 for purpose of correcting a scrivener error inadvertently made in the drafting of the Code and amending certain appeal procedures and provisions relating to continuing violations contained therein;

**WHEREAS**, at Section 52-2-U the Code adopts certain provisions with respect to "Enforcement" including Section 106.3.1.2.4 with respect to "Appeals". Sections 106.3.1.2.4.1 and 106.3.1.2.4.2 currently provide that the owner of an aggrieved property may appeal a ticket

by requesting a hearing before the City Manager or by submitting a written appeal to the Code Official;

**WHEREAS**, Mayor and City Council desire to amend the appeal process contemplated by Section 52-2-U, Sections 106.3.1.2.4.1 and 106.3.1.2.4.2 to eliminate the right to an appeal hearing before the City Manager and to require written appeals to be made to the City Manager instead of the Code Official;

**WHEREAS**, at Section 52-2-U “Enforcement”, the Code currently references “City of Delaware” in the text of Section 106.3.1.5.2 instead of “City of Delaware City,” and Mayor and City Council desire to amend Section 52-2-U of the Code to correct this inaccuracy;

**WHEREAS**, Section 52-2 currently provides that a violation of Chapter 52 that continues beyond the appeal period may be issued a ticket for each day that the violation continues and will be subject to a separate penalty for each ticket issued thereafter for the continuing violation;

**WHEREAS**, the Mayor and City Council desire to amend certain provisions in Chapter 52-2 relating to violations that continue after the applicable appeal period and for the fee(s) imposed with respect to such continuing violation(s) of such Chapter;

**WHEREAS**, under Article V, Section 5-02(B) of the Charter, the Amendment was introduced at a regular meeting, duly read in full or in abstract, and prominently posted for seven (7) days in The City of Delaware City.

**NOW, THEREFORE**, making the finding that the accuracy of the Code and the other amendments contemplated herein are necessary to enhance the health, safety, and welfare of the City of Delaware City, the Mayor and the City Council of The City of Delaware City hereby ordain and adopt the following Code changes and revisions:

**Section 1** -- Amend Section 52-U of the Code, entitled "Enforcement" by deleting Section 106.3.1.2.4.1 in its entirety and replacing it with the following text:

Section 106.3.1.2.4.1, Intentionally Omitted.

**Section 2** -- Amend Section 52-U at Section 106.3.1.2.4.2 of the Code as follows (deletions indicated by strikethrough and changes in bold):

Section 106.3.1.2.4.2, Submit a detailed written explanation. ~~In lieu of personally appearing before an administrative hearing officer as provided for in Section 106.3.1.2.4.1 above,~~ **The** recipient of the ticket, ~~at their sole discretion,~~ may, within ten (10) calendar days of the date of the citation, file a detailed written explanation of the grounds for the appeal to the ~~Code Official~~ **City Manager**. ~~The Code Official~~ **City Manager** shall issue a written decision affirming, modifying, reversing, revoking or vacating the civil penalty within ten (10) calendar days of receipt of the written explanation of the grounds for the appeal.

**Section 3** – Amend Section 52-U at Section 106.3.1.3 of the Code to change the second sentence of such section to read as follows (deletions indicated by strikethrough and changes in bold):

~~Except as provided in Section 106.3.1.2.1,~~ **if** such violations are not remedied within the time specified, the Code Official shall schedule a show cause hearing and provide the person an opportunity to defend his, her, or its conduct at a show cause hearing prior to any penalty being imposed.

**Section 4** - Amend Section 52-U at Section 106.3.1.5.2 of the Code by deleting the term "City of Delaware" and replacing it with the term "City of Delaware City" in all instances where such term appears in Section 106.3.1.5.2.

**Section 5** - Amend Section 52-U at Section 106.3.1.2.2.1 of the Code by deleting it in its entirety and replacing it with the following:

Section 106.3.1.2.2.1, "Continuing violations." A violation that is not remedied within the initial five (5) business day period provided in Section 106.3.1.2.1, shall constitute a continuing violation. The Code Official will issue a second ticket for such continuing violation(s). If the Code Official determines that the

violation(s) remain after the fifth (5<sup>th</sup>) business day following the date of the second ticket, the owner of the property on which such continuing violation(s) exists shall be subject to, and liable for, an additional civil penalty of \$50.00 as set forth on the Schedule of Municipal Fees in Section 46-147, and the Code Official shall issue a third and final ticket for such continuing violation(s). If the Code Official determines that the violation(s) remain after the fifth (5<sup>th</sup>) business day following the date of the third and final notice, the owner of the property on which such continuing violation(s) exists shall be subject to, and liable for, an additional civil penalty of \$500.00 as set forth on the Schedule of Municipal Fees in Section 46-147 and a separate fee of \$50.00 per day shall be assessed for each day thereafter that the violation continues without the necessity of the issuance of tickets for the continuing violation(s).

**Section 6** – Amended Section 52-U to include a new Section 106.3.1.2.2.2 of the Code stating as follows:

Section 106.3.1.2.2.2, “Nuisance property.” Any building, residence, premises, structure, place or lot, developed or undeveloped, where a violation has taken place and, within one year of such violation, there is more than two (2) additional violations, the property shall be deemed a nuisance property and, upon occurrence of the third violation, subject to a fine of \$500.00 as set forth on the Schedule of Municipal Fees in Section 46-147.

**Section 7. Inconsistent Ordinances and Resolutions Repealed.** All Ordinances or parts of Ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed.

**Section 8. Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions,

standing alone, are incomplete and incapable of being executed in accordance with City Council's intent.

**Section 8. Effective Date.** This Ordinance shall become effective immediately upon its adoption by City Council.

ADOPTED BY THE MAYOR AND COUNCIL, this 18th day of May, 2015.

ATTEST:

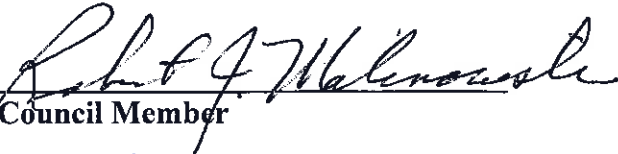
  
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City Secretary


  
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Mayor

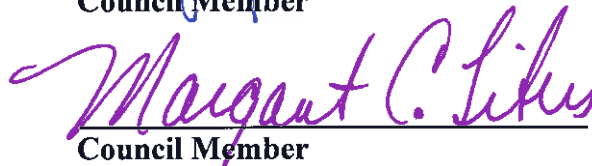
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Council Member

  
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City Solicitor

  
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Council Member

  
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First Reading on 3/20/15,

Second Reading, Public Hearing, and Final Passage on 5/18/15.