

ORDINANCE NO. 3802

AN ORDINANCE CREATING CHAPTER 17 OF THE CITY'S CODIFIED ORDINANCES FOR THE PURPOSE OF REGULATING AND ENSURING THE SAFETY OF RESIDENTIAL RENTAL PROPERTY IN THE CITY OF OSAWATOMIE, KANSAS AND TO BE TITLED "HEALTHY RENTAL HOMES."

WHEREAS, City staff have been directed to create an Ordinance for all rental homes within the City of Osawatomie, Kansas; and

WHEREAS, it is deemed necessary to amend the Osawatomie City Code to address the licensing and regulation of residential rental dwellings within the city; and

WHEREAS, The Governing Body finds that a licensing and external inspection program is a rational means by which the city can safeguard its interests in protecting the life, safety, general welfare and health of persons occupying non-owner-occupied dwellings and in preserving the value of land and buildings throughout the city; and

WHEREAS, The Committee of Landlords agreed changes needed to be made to provide healthy rental homes in the City of Osawatomie and worked with city staff to create The Statement of Compliance for this program;

HEALTHY RENTAL HOMES

Chapter XVII

ARTICLE 1. - GENERAL

• **17-101. - Purpose and intent of article.**

(a) The purpose of the healthy home's inspection program is to protect the public health, safety and welfare in residential rental property units through establishment of minimum health and safety standards. This article:

(1) Establishes minimum standards that may include:

- a. Basic utilities and facilities;
- b. Ventilation and heating;
- c. Safety from fire; and
- d. Safe and sanitary maintenance of all rental properties;

(2) Provides for the registration and permitting for certain rental properties; and

(3) Provides for administration and enforcement.

(b) It is not the intention of the city to intrude upon contractual relationships between tenant and landlords. The city does not intend to intervene as an advocate of either party, nor to act as an arbiter, nor to hear complaints by landlord or tenant that do not clearly relate to the provisions of this article or other city ordinances.

- **17-102 - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Designee of the Director of Community Development means any person acting on behalf of the Director.

Direct family member means one's child, grandchild, mother, father, sibling, mother-in-law, father-in-law, grandparent, or the step equivalent of each of those.

Director means the Director of Community Development.

Hazardous area means areas of structures or buildings posing a degree of hazard greater than normal to the general occupancy of a building or structure, such as areas used for the storage or use of combustibles or flammable, toxic, noxious or corrosive materials, or heat-producing appliances.

Health hazard violation means a violation when in noncompliance, is more likely than other violations to contribute to injury, illness, or environmental health hazards.

Non-health hazard violation means a violation that poses a lesser threat to health and safety, but negatively affects health, and if left unaddressed, could become a health hazard violation.

Offer to rent means to extend an offer to enter into a written or oral agreement with a prospective tenant under which the prospective tenant shall occupy rental property as the tenant's residence.

Occupancy requirement means personally live in the property as their home, Occupancy also refers to the number of people permitted in a home at one time based on the building's floor space and function.

Owner means any person not a tenant who, acting alone or jointly or severally with others:

- (1) Has legal title to any building or structure with or without accompanying actual possession thereof;
- (2) Has charge, care or control of any building or structure or part thereof as agent or personal representative of the person having legal title to the building or structure of part thereof; or
- (3) Is an agent or designee of a person listed in subsections (1) or (2) herein.

Permit means a permit issued by the director for making an offer to rent to a prospective tenant or owning, operating or managing rental property. The terms "permit" and "rental permit" are used interchangeably, also includes but not limited to Rental Registration or Statement of Compliance.

Permit holder means a person who is responsible for the operation of the rental property, such as the owner or the owner's agent, and who possesses a valid permit to operate a rental property.

Person means an association, corporation, individual, firm, partnership, other legal entity, government agency.

Re-inspection means an inspection conducted by the director to ensure corrective action is taken by fee permit holder subsequent to a previous inspection where noncompliance or violations of this article were found.

Rental property means a structure which consists of one or more rental units, where none of the tenants are owners or direct family members of owners. Duplexes in which one of the rental units is owner-occupied and rental units within an owner-occupied, single-family dwelling that is in compliance with the city's zoning codes shall not be considered rental property.

Rental unit means a rental property or part of a rental property used as a home, residence, or sleeping unit by a single person or household unit, or any grounds, or other facilities or area promised for the use of a tenant and includes, but without limitation, apartment units, boarding houses, rooming houses, mobile home spaces, and single and two-family dwellings.

Resident Agent means a person that performs duties related to managing rental properties and finding successful tenants to fill vacancies in rental properties.

Revoke means put an end to the validity or operation of

Statement of Compliance means A statement or report signed by a qualified party affirming that, at the time of assessment, the defined rental home, met the requirements stated by the Owner.

Suspension means temporarily prevent from continuing or being in force or effect.

Tenant means:

- (1) A person, not the legal owner, occupying a building or portion thereof as a rental unit; or
- (2) For purposes of this article, a purchaser under a contract for deed, rent-to-own agreement, or comparable executory agreement, where the purchaser resides in the premises and is not the legal owner of record, unless any such instrument or affidavit of equitable interest which specifically identifies the instrument is properly executed and filed of record with the recorder of deeds for the applicable county and a file stamped copy thereof, along with a copy of the referenced instrument, is provided to the director.

Utilities means all services necessary for a property to have lawful heat, lighting, wastewater, and potable hot and cold water, in accordance with habitability standards.

- **ARTICLE 2. - APPLICATION AND PERMITTING PROCESS**
- **17-203 - Rental permit required.**

(a) A person may not offer for rent a rental unit without a valid rental permit issued by the director for the rental property of which the rental unit is a part. All owners now or hereafter owning, operating or managing a residential rental property, shall obtain a rental permit for each rental property upon transfer of occupancy and/or utilities. Such permit shall be obtained from the Director of Community development or designee. The director shall issue the permit only after the applicant has submitted the application in its entirety with required documentation.

(b) Provisions of this article do not apply to housing units that are only rented for a single period of less than 30 consecutive days.

(c) Rental permits are non-transferable with any changes in ownership or management

- **17-204 - Conditions on rental permits.**

The director is authorized and directed to endorse on the rental permit such conditions and requirements which in their best judgment and discretion are necessary for the protection of the health and safety of the persons utilizing such property and which carry out the scope, purpose and intent of this article. Such conditions and requirements shall conform as closely as possible to the rules and regulations promulgated by the director, but shall not be so strictly construed as to operate hardship upon any applicant. **If any POOR conditions are indicated on the Statement of Compliance a permit may not be issued until the conditions are corrected, or a date of repair and completion is agreed upon by the landlord and the director.**

- **17-205 - Duties of permit holder.**

Upon receipt of a permit issued by the director, in order to retain the permit, the permit holder shall:

(a) Comply with all provisions of this article and the rules and regulations promulgated by the director, as such provisions, rules and regulations may be amended from time to time, and also each and every condition and requirement endorsed upon such permit or any renewal thereof issued, as such conditions and requirements may be amended by the director;

(b) Immediately correct any life-threatening violation which may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, gross insanitary occurrence or condition, or other circumstance that may endanger health and safety;

(c) Allow representatives of the director access to the rental property for inspections

(d) Comply with directives of the director including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the director in regard to the permit holder's rental property

(e) Accept notices issued and served by the director according to law;

(f) Be subject to the regulatory, civil, injunctive, and criminal remedies authorized in law for failure to comply with this article or a directive of the director, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and

(g) Within 60 days following:

a. Issuance of a permit or permit renewal by the director; and

b. The commencement of a new tenancy, either:

1. Furnish a full copy of the permit to each tenant subject to the permit; or

2. For the full remaining term of the permit period post a full copy of the permit at the rental property in a conspicuous location reasonably calculated to come to the attention of each tenant subject to the permit.

- **17-206 - Qualifications and responsibilities of applicant.**

To qualify for a permit, the applicant shall:

- (a) Be an owner of the rental property, or owner's agent who is responsible for the operation of the rental property;
- (b) Comply with the requirements of this article;
- (c) Agree to allow designees of the director access to the rental property for the purpose of inspections made pursuant to this article;
- (d) Pay the applicable permit fees at the time the application is submitted; and
- (e) Submit a statement of compliance report that fulfills the requirements of the director.

- **17-207 - Denial of application for permit; notice.**

If an application for a permit or permit renewal to operate is denied, the director shall provide the applicant with a notice that includes:

- (a) The specific reasons and Code or regulation citations, if any, for the permit denial;
- (b) The actions, if any, that the applicant must take to qualify for a permit; and
- (c) Advisement of the applicant's right of appeal and the process and time frames for appeal.

- **17-208 - Fees.**

(a) Rental property annual permit. All permits are annual permits and shall be valid from January 1 through December 31. The initial or renewal application for a permit shall be submitted on or before December 31 for the following year.

(b) *Inspection fee.* No fee shall be assessed for an initial inspection of a rental unit, a re-inspection fee of \$100 shall be assessed at the time of the inspection for every additional unit requiring re-inspection. The re-inspection fee shall be due no later than 30 days after the approved inspection. An invoice for all re-inspections will be sent to the address provided on the permit application.

(c) *Reinstatement fees.* For properties that have had a permit suspended following action taken by a provision of this article, a \$300.00 reinstatement fee shall be assessed.

(d) *Renewals.* Suspended permits shall not be renewed until all conditions that warranted the suspension are abated. Revoked permits cannot be renewed and require a new permit application.

(e) *Refunds.* There shall be no refund of any fee paid pursuant to this section.

ARTICLE 3. - INSPECTION AND ENFORCEMENT

- **17-309 - Inspections.**

(a) The director shall cause inspections to be made of all rental properties regulated under this article, in response to complaints if the director determines an inspection is warranted, to ensure that the holder of the rental permit issued under this article is complying with its provisions, the rules and regulations promulgated by the director, as they may be amended from time to time, and the conditions and

requirements set forth in the rental permit issued for the particular rental property for which the permit was issued or renewed.

(b) In addition to complaint-based inspections, the director shall determine a percentage of random annual routine inspections to be completed based on the total number of permitted rental properties.

(c) The director also may require non-complaint-based future inspections based on past performance, such as numerous or repeat violations of this article or the regulations issued thereunder.

(d) Except for an inspection made in response to a complaint by a tenant occupying the inspected rental unit, an inspection of an occupied rental unit shall be made only in exigent or emergency situations.

(e) This article does not authorize the director or their designee, after conducting an inspection, to report, refer, issue citation, or otherwise disclose to a third party any matter, circumstance or violation disclosed during the inspection which is not explicitly proscribed in this article or the regulations issued thereunder.

- **17-310- Authority to prescribe additional rules and regulations.**

(a) *Scope of authority.* The director shall formulate rules and regulations for implementing the provisions of this ordinance to include inspection process, method and guidelines. Such rules may be modified or superseded by other rules and regulations filed by the director from time to time.

(b) *Scope of regulations.* The director shall have power and authority to make provisions in such rules and regulations for health, sanitation and adequate rental housing standards as such rules and regulations may pertain to each and every person required to be a holder of a permit under this article; and such provisions, conditions or requirements shall be subject to modification, deletions, additions or other change or alteration as to any person required to be a holder of a permit as the director may find and determine at any time.

- **17-311 - Disclosure to tenants.**

Before entering into a contract to rent a residential property the owner shall furnish to each tenant:

(a) For every utility provider used to service a dwelling unit, the phone number that a prospective tenant may use to obtain a summary or statement of past utility usage. Upon request, the owner shall provide their consent and any facilitation necessary for the tenant to access the utility history.

(b) A written description of all notices of deficiencies and citations issued to the owner of the property of which the rental unit is a part during the prior 24 months and of any other deficiencies prohibited under these chapters existing at the time of the notice of which the landlord is aware.

- **17-312 - Refusal; notification of right to access; final request for access.**

(a) *Refusal.* If after the director presents credentials and provides notice, a person denies access to the director, the director shall inform the person that:

(1) Pursuant to this article, if the rental property is unoccupied, the permit holder is required to allow access to the director, as access is a condition of the acceptance and retention of a rental property permit to operate;

(2) If access is denied, an inspection order issued by the appropriate authority allowing access, may be obtained according to law; and

(3) The director is making a final request for access.

(b) *Refusal; reporting.* In the event a person still denies access, the director shall provide details of the denial of access on an inspection report form.

(c) *Inspection order to gain access.* If denied access to a rental property for an authorized purpose, the director may:

(1) apply for a court order or warrant to gain access; and/or

(2) suspend the permit, unless access was refused solely by the tenant.

- **17-313 - Health-hazard violations; opportunity to correct.**

During an inspection, if the director discovers that a permit holder has failed to comply with this article or the rules and regulations established by the director, and the violation is a health-hazard violation,

a. The Director shall:

(1) Inform the permit holder, agent, or employee in writing that a violation exists;

(2) Allow the permit holder an opportunity to correct the violation within a reasonable period of time, as determined by the director or designee; and

(3) Re-inspect the rental property, if the director or designee deems it necessary, to determine if the violation still exists.

b. And if the violation is deemed life-threatening, the Director or designee shall:

(1) Inform the permit holder, agent, or employee in writing that a violation exists;

(2) Allow the permit holder to immediately correct cited violations and eliminate the existing life-threatening violation; or

(3) Suspend the permit and/or immediately lock, secure or close the area of violation;

(4) Require the property to be vacated, if determined necessary by the director; and

(5) Re-inspect the rental property, if the director deems it necessary, to determine if the violation still exists;

(c) In lieu of permit suspension after considering the nature of the potential hazard involved and the complexity of the corrective action needed, the director may specify a longer time frame for the permit holder to correct health hazardous or life-threatening violations.

- **17-314 - Failure to abate violation; occupied properties.**

If permit holder fails to correct cited violations after three re-inspections, the director may:

(a) Issue a permit suspension;

- (b) Require the property to be vacated; and/or
- (c) Institute ordinance violation proceedings through municipal court consistent with this article.

- **17-315 - Refusal to sign acknowledgment of violations.**

The director shall inform the owner or agent who declines to sign an acknowledgement of receipt of inspectional findings that:

- (a) An acknowledgment of receipt is not an agreement with findings;
- (b) Refusal to sign an acknowledgement of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified;
- (c) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the director's historical record for the rental property; and
- (d) Make a final request that the permit holder or representative at the inspection sign an acknowledgement receipt of inspection findings.

- **17-316 - Notice of suspension; with prior warning.**

Pursuant to this article and with prior warning, the director may suspend a permit for reasons such as:

- (a) Nonpayment of re inspection fees;
- (b) Denial of access to the director or designee;
- (c) Life-threatening violations;
- (d) Violations still in existence at a third re-inspection; or
- (e) The director determines that a permit holder or representative at the inspection is in violation of the City Code of Ordinances.

- **17-317 - Notice of suspension; without prior warning.**

The director may suspend a permit by providing written notice to the permit holder or representative at the time of inspection, without prior warning, notice of hearing, or a hearing, if and when:

- (a) The director determines through inspection or other means as specified in this article, that a life-threatening violation exists;
- (b) The director determines that permit holder or representative at the inspection is ignoring or refusing to correct a health-hazard violation that can be quickly remediated;
- (c) The director determines that permit holder or representative at the inspection is in violation of the City Code of Ordinances;
- (d) The permit holder or representative interferes with the director in the performance of their duties.

- **17-318 - Term of suspension; reinstatement of permit.**

A suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the director through re-inspection or other means as appropriate. The director may initiate any one, or a combination of, compliance methods that include, but are not limited to:

- (a) Holding a regulatory conference with the permit holder; and/or
- (b) Placing the rental property on probation to allow for a reinstatement of permit with corrective action plan;
- **17-319 - Time frame for reinstatement.**

After receiving a written request from the permit holder stating that the conditions cited in the suspension order no longer exist, the director shall conduct a reinstatement inspection of the rental property for which the permit was suspended within three business days, not including city-observed holidays.

- **17-320 - Revocation.**

- (a) After notifying the permit holder of an opportunity for a hearing, the director may revoke a permit if:
 - (1) Serious and repeated violation(s) of any requirement of the article or regulations have occurred;
 - (2) A suspension has been in effect longer than 90 days;
 - (3) There has been an assault upon or repeated interference with a representative of the director in the performance of their duty; or
 - (4) Permit holder fails to comply with a permit suspension order.
- (b) Any person whose rental property permit has been revoked by the director, after a period of six months, may make written application for a new permit and the director may request a conference to determine whether a new permit will be issued;

- **17-321- Vacation of property.**

- (a) In the event the director orders a property or areas of violation to be vacated, locked or secured, the director shall:
 - (1) Clearly post a copy of the notice at a public entrance to the rental property or area(s) of violation; and
 - (2) Send a copy of the notice by first class mail to the permit holder;
- (b) No person, other than the director, shall remove a notice posted by the director.

- **17-322 - Appeals; permit suspension or revocation,**

Appeal request. A permit holder whose permit has been suspended or revoked, or whose property has been ordered vacated, may appeal the director's decision within 30 calendar days following the notice to vacate or of suspension or revocation of a permit to the Appeal Board. If a request for an appeal is not filed by the permit holder within the 30-day period, the action or order is final.

- **17-323 - Severability.**

In the event any section, paragraph, sentence, clause, phrase or portions of this article are declared invalid for any reason, the remainder of this article shall remain in full force and effect.

- **17-324 - Violations generally; penalty; failure to obtain permit or renew.**

(a) Any person violating any provision of this article, the rules and regulations of the director, or the conditions and requirements contained in the permit, as any or all of such provisions, rules, regulations, conditions or requirements may be amended, shall be deemed guilty of an ordinance violation, and upon conviction thereof shall be punished. Such violations apply to actions or inactions taken by the owner, permit holder, their agents, designees or employees.

(b) Failure of any person to obtain a permit or keep the permit in force and effect by proper renewal thereof, where a permit is required, shall constitute a violation of this article.

- **17-325 - Authorities; penalties.**

(a) Notwithstanding any other enforcement actions pursuant to this article, the director may seek to enforce the provisions of this article by instituting proceedings against the permit holder or other persons who violate its provisions.

(b) Any person convicted of a violation of any provision of this chapter shall be punished for that violation by a fine of not more than \$1,000.00, or by imprisonment of not more than 180 days, or by both such fine and imprisonment. Each day on which a violation occurs is a separate violation.

- **17-326 - Notices; how served.**

A notice issued in accordance with this article shall be considered to be properly served if it is served by one of the following methods:

(a) The notice is personally served by the director, a law enforcement officer, or a person authorized to serve a civil process to the permit holder or the tenant.

(b) For notice to the owner, notice shall be deemed sufficient if sent by first class mail to the owner at the address specified in the last permit application filed under this article. If the owner lacks a required permit under this article, notice is deemed sufficient if sent by first class mail to the person listed on applicable county records for purposes of paying property taxes on the subject rental property, to an officer of a corporation, to a person in charge of owner's local business office, or to a registered agent or any other agent authorized by appointment or required by law to receive service of process; or

(c) For notice to the tenant, notice shall be deemed sufficient if sent by first class mail to the tenant, whether by name or by the term "occupant."

- **17-327 - Effective date; transition period.**

This article shall become effective February 1, 2022.

- **17-328 - Rental housing appeal board.**

(a) There is hereby established a rental housing appeal board with the following powers and duties:

(1) to hear appeals of orders and actions of the director taken in enforcement of this article.

(2) to conduct hearings required for duties, to cause all hearings to be suitably recorded, and to render its decision in writing.

(3) to advise the director on the processes undertaken by the healthy rental home's inspection program including, but not limited to, regulations, and code revisions.

(b) The board members shall be the City Manager, the Fire Chief, and the Director of Community Development or their designee.

(c) The board shall conduct business as promptly and efficiently as is possible without compromising any rights of the parties.

- **17-329 - Costs of emergency housing and relocation assistance.**

In the event the director orders a suspension of a permit for a property or properties in violation to be vacated, locked or secured, the owner shall provide emergency housing and relocation assistance to the tenants, to include

(a) The relocation of the tenant to appropriate accommodations for a term not exceeding three months; and

(b) The moving and storage of personal property for a term not exceeding three months;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

Section 1. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after February 1, 2022 after one publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, a majority being in favor thereof, this 9th day of December, 2021.

APPROVED AND SIGNED by the Mayor.

L. Mark Govea
Mayor

(SEAL)

ATTEST:

Tammy Seamands
City Clerk

