

ORDINANCE 171

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF A RENTAL REGISTRATION PROGRAM WITHIN THE CITY OF ELKINS AND THE PROCEDURES, FEES AND PENALTES RELATING THERETO, AND AMENDING ELKINS CITY CODE, CHAPTER 5, BUILDINGS, ARTICLE II, BUILDING CODE.

WHEREAS, it is the intent of the City of Elkins to provide safe, sanitary and suitable rental housing for its citizens and to secure and preserve the integrity and character of the residential areas within its corporate limits;

WHEREAS, pursuant to the provisions of West Virginia Code 8 8-12-13, the City of Elkins has duly adopted the lawfully enacted International Building Code in its entirety and all of those particular codes adopted thereunder;

WHEREAS, a particular portion of the International Building Code known as the "Property Maintenance Code" governs and establishes minimum conditions and standards to protect the public health, safety and welfare in all existing structures;

WHEREAS, the City of Elkins in order to enforce those certain regulations of the Property Maintenance Code relating to safe, sanitary and suitable rental housing and to secure and preserve the integrity and character of the residential areas has deemed it necessary to establish a program for the registration and inspection of all rental dwelling units within the City of Elkins;

WHEREAS, City Ordinance 140, provided for the adoption of the International Building Codes and Statutes of West Virginia Building Code Sections 5.31 through 5.37.

NOW, THEREFORE, be it ordained and enacted by the Common Council of the City of Elkins:

That Chapter 5, Article II, of the Elkins City Code be amended to add Section 5-8.5, *et seq.*, establishing a rental registration program.

GENERAL PROVISIONS

Section 5-8.5: Purpose

The purpose of this ordinance is to promote health and safety standards for rental housing and to secure and preserve the integrity and character of residential districts within the City of Elkins. These standards relate to the condition, maintenance and occupancy of rental dwelling units and are intended to insure that rental housing is safe, sanitary, and suitable in accordance with applicable provisions of the International Building Code and other regulations as adopted by the City of Elkins.

Section 5-8.6: Scope

This ordinance applies to all rental dwelling units within the City of Elkins. This ordinance shall not apply to owner occupied dwellings wherein roomers or boarders are maintained in common living areas in accordance with other applicable codes and

ordinances. This ordinance shall not apply to hotels, motels, dormitories, lodging and boarding houses and other transient residential occupancies. Buildings housing business or commercial uses in addition to rental dwelling units shall be subject to the provisions of the State Building Code which apply to such mixed uses.

Where a Certificate of Use and Occupancy has been issued, in accordance with the International Building Code for any building that has been erected, altered or converted to a residential use, said dwelling shall not be subject to reinspection for the purpose of this ordinance for rental registration for three (3) years following the date of issuance.

Section 5-8.7: Definitions

For the purpose of this ordinance, the terms listed below shall be assigned the following definitions:

a. Certificate of Use and Occupancy - the certificate issued by the Code Official which permits the use of a building and which certifies compliance with the provisions of law for the use and occupancy of the building in its several parts together with any special stipulations or conditions.

b. Code Official - the officer or other designated authority charged with the administration and enforcement of the building code of the City of Elkins, or a duly authorized, licensed, bonded and certified representative appointed by the Code Official to temporarily serve in that role.

c. Dwelling Unit - a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

d. Owner Occupied - occupied by the actual property owner or by any person or persons related thereto by blood, marriage or adoption and where no remuneration is received.

e. Rental Dwelling Unit - any dwelling unit which is offered in whole or part for residential purposes and for which remuneration is received.

ENFORCEMENT

Section 5-8.8: Illegal Conditions

An owner or operator shall not rent or offer for rent any dwelling unit for use in whole or in part for human habitation unless a written application for a Certificate of Use and Occupancy has been filed for said dwelling unit or a valid Certificate of Use and Occupancy has been issued for said dwelling unit by the Code Official indicating that inspection found the premises to be in substantial compliance with the International Building Code.

Section 5-8.9: Application for Certificate of Use and Occupancy

Application for a Certificate of Use and Occupancy shall be submitted in writing, on forms provided, to the Code Official and shall contain at least the following information:

- a. For the dwelling:
 1. The address(es) of the dwelling units
 2. The zoning district of the dwelling
 3. The number of units in the dwelling
 4. The names, addresses, and telephone numbers of the owners, agent or operator, and any other person to be notified in case of emergency or nonconforming condition requiring notification.
 5. Any other uses within the building.
- b. For each dwelling unit:
 1. The story on which the unit is
 2. Maximum occupancy
 3. Number of off-street parking
 4. Dwelling unit identification number

Section 5-8.10: Filing Deadlines

a. Initial Application: Application for a Certificate of use and Occupancy for a rental dwelling unit where none has previously been issued shall be in accordance with Article 11, Section 2 of this ordinance.

b. Renewal Application: An application for renewal of the existing Certificate of Use and Occupancy shall be filed at least thirty (30) days before the expiration date of the existing certificate of Use and Occupancy. Upon receiving an application for renewal of the Certificate and Use and Occupancy, the Code Official shall inspect the dwelling and shall reissue a Certificate of Use and Occupancy within ten (10) days following inspection if said unit is found to be in substantial compliance with the State Building Code.

Section 5-8.11: Fees and Conditions

a. Each property owner shall be charged a compliance inspection fee of thirty dollars (\$30.00) per inspection per unit. If the property is a multi-unit building, there shall be a maximum fee of \$150.00 charged for the compliance inspection for that building, regardless of the number of units.

b. Property owners missing scheduled inspections, and failing to provide twenty four hours notice shall be charged an additional ten dollar (\$10.00) fee.

c. All inspections shall be scheduled during regular business hours, unless otherwise approved by the Code Official.

d. Real estate pre-sale inspection fees of thirty dollars (\$30.00) per man-hour with a one hour minimum charge shall be assessed where an inspection is requested to determine if a rental property is in compliance with the State Building Code.

e. Preparation and issuance of a duplicate Certificate of Use and Occupancy shall require a one dollar (\$1.00) service charge.

f. Re-inspection fees of ten dollars (\$10.00) per unit shall be charged to the property owner for each inspection of property requiring more than two (2) inspections for compliance.

Section 5-8.12: Inspections

a. The Code Official shall inspect within six (6) years of the effective date of this Ordinance all rental dwelling units constructed prior to adoption of this chapter. The owner or authorized representative or agent, for purposes of inspection under rental registration, shall provide the Code Official access to all areas of any building containing rental dwelling units and the Code shall be accompanied by the owner or an agent of the owner during inspection.

b. The Housing Authority of the City of Elkins, West Virginia, Gateway Apartments, and any Section 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) housing, is exempt from this ordinance to the extent it is responsible for its own inspections. However, the Housing Authority of the City of Elkins, West Virginia, Gateway Apartments, and any Section 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) housing must provide the Code Official with the results of inspections performed by it immediately after inspections are completed.

Section 5-8.13: Certificate of Use and Occupancy. Display, Transfer, Expiration

a. If, upon inspection, the rental dwelling unit is found to conform to the requirements of this Ordinance, the Code Official shall issue a Certificate of Use and Occupancy within ten (10) days.

b. After the effective date of this Ordinance, either upon an initial application or a renewal application, a three (3) year Certificate of Use and Occupancy shall be issued for the dwelling unit after the Code Official finds the unit in substantial compliance with this Ordinance and the State Building Code which has been adopted by the City of Elkins.

c. The Certificate of Use and Occupancy shall be transferable to subsequent owners of the respective dwelling unit(s).

d. A copy of the Certificate of Use and Occupancy shall be available for inspection at the City Code Enforcement Office during regular business hours.

e. Certificates of Use and Occupancy issued after the effective date of this Ordinance shall expire three (3) years from the date of issuance by the Code Official unless sooner revoked.

f. The owner/agent shall post a copy of the Certificate of Use and Occupancy in a conspicuous location in the interior of the premises or near the interior electrical fuse or circuit box of each dwelling unit.

Section 5-8.14: Notice of Violation

a. When in the course of the inspection required under this Ordinance, violations are discovered on the premises which do not affect the habitability or safety of a rental dwelling, such violations shall be cited in accordance with the administrative provisions of the applicable code or ordinance. Such violations shall not be construed as grounds to withhold or revoke the Certificate of Use and Occupancy.

b. Where conditions exist which affect the habitability of the dwelling hut which do not pose an imminent hazard to the occupants, a Certificate of Use and Occupancy shall be issued along with a Notice of Violation. The Notice of Violation

shall be in writing, shall be served to the owner or agent, shall contain a description of the property sufficient for identification, and shall include 1) a statement of the reasonable time for which it was issued, 2) a correction order specifying repairs to be made, 3) a reasonable time not to exceed sixty (60) days following the issuance of the Notice of Violation in which repairs are to be completed, 4) a statement of the owners right of appeal.

The owner shall, within the time period specified in the Notice of Violation, correct all deficiencies cited in violation of the International Building code and City of Elkins Codes. The Certificate of Use and Occupancy shall be revoked and a Notice to Vacate issued if the dwelling unit is not in compliance within the time specified in the Notice of Violation. However, the Code Official may, upon written request, extend the period for compliance where the work has been delayed despite good-faith efforts to comply and where such extension presents no immediate threat to the health or safety of the occupants of the dwelling unit or other units or properties. A Notice of Violation shall not be construed to verify substandard housing except where conditions exist which require the vacation of the dwelling or dwelling unit.

c. Where violations are found which, in the judgment of the Code Official, are sufficient to withhold or revoke the Certificate of Use and Occupancy, the Code Official shall issue a Notice to Vacate. The Notice to Vacate 1) shall be in writing, 2) shall be served to the owner or owners agent, 3) shall contain a description of the property sufficient for identification, 4) shall state the reasons therefore, 5) shall include a copy of any relevant notice of violation, and 6) shall include notification of the owners right of appeal.

d. Nothing in this Ordinance shall be construed to prevent the Code Official from ordering the immediate vacation of any dwelling or dwelling unit where violations are discovered which pose an imminent threat to the health or safety of the occupants. Appeal shall not stay an order to vacate under such conditions.

e. Occupancy of any rental dwelling unit in violation of a Notice to Vacate shall subject the owner/agent and/or the occupants to the penalties prescribed in Section II of this Ordinance.

Section 5-8.15: Right of Appeal

a. Any property owner or agent shall have the right to appeal to the Board of Zoning Appeals from a decision of the Code Official where it is alleged that the intent of this Ordinance or the Codes referenced herein have been incorrectly interpreted, the provisions of this Ordinance do not fully apply, or an equivalent remedy to any violation may be employed. Such appeal shall be submitted to the Code Official within twenty (20) days of receipt of the Notice of Violation. Except where conditions warrant immediate vacation of the dwelling, such appeal shall stay all action on the part of the Code Official in furtherance of the Notice of Violation from which the appeal was taken.

b. Where a violation of the City Building Code is cited in a Notice of Violation, appeal shall be to the Board of Zoning Appeals.

Section 5-8.16: Applicability of Other Laws

This Ordinance is not intended to abrogate any of the rights and responsibilities normally ascribed to the tenant or the landlord under the laws of West Virginia whether set out by case law or by the West Virginia Code, or any other applicable laws.

Section 5-8.17: Waiverability

The minimum requirement of this Ordinance may not be waived either intentionally or impliedly by either party to a rental agreement.

Section 5-8.18: Fines and Penalties

Violation of this Ordinance shall constitute a misdemeanor punishable by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00). Each day that a violation continues after notification of same by the Code Official shall be deemed a separate offense. The imposition of penalties prescribed herein shall not relieve the property owner of responsibility for full compliance with all other applicable codes and ordinances, including any and all separate fines and penalties imposed thereunder.

Section 5-8.19: Severability

If any provision of these regulations or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 5-8.20: Repeal

Pertinent and relating provisions of the Elkins City Code found to be inconsistent with this Ordinance shall be, and the same are, hereby repealed.

Section 5-8.21: Applicability of Other Codes and Ordinances

This Ordinance is in addition to all housing requirements of other City of Elkins Ordinances and the laws of the State of West Virginia, as the case may be.

This Ordinance shall be effective thirty (30) days from the date of its adoption.

PASSED AND APPROVED ON FIRST READING September 19, 2013.

PASSED AND APPROVED ON SECOND AND FINAL READING October 17, 2013.

CITY OF ELKINS, WEST VIRGINIA

Attest:

/s/Van T. Broughton, Mayor

/s/ Sutton R. Stokes, Clerk

October 21, 2013

October 21, 2013