

ORDINANCE 967

AN ORDINANCE OF THE CITY OF DAKOTA CITY, NEBRASKA TO ADOPT AND CODIFY A RESIDENTIAL RENTAL PROPERTY LICENSING AND INSPECTION PROGRAM; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAKOTA CITY, NEBRASKA.

That the residential rental property inspection program set forth below is hereby adopted, enacted, and codified as Article V of Chapter 8 of the Dakota City Municipal Code.

Article V. RENTAL INSPECTION PROGRAM.

Sections hereto shall be known and may be cited as the Rental Inspection Program and indexed as follows:

- 8-115 Establishment of Rental Inspection Program
- 8-116 Findings, Purpose, and Intent of Rental Inspection Program
- 8-117 Scope
- 8-118 Definitions
- 8-119 Rental license
- 8-120 Rental License Application Requirements
- 8-121 Inspections
- 8-122 Inspection Access
- 8-123 Local Agent Required
- 8-124 Violations, Offenses, Remedies and Special Rules
- 8-125 Appeals

Section 8-115. ESTABLISHMENT OF RENTAL INSPECTION PROGRAM.

A rental inspection program is hereby established for the City of Dakota City, Nebraska pursuant to authority granted by Nebraska law, as adopted or amended from time to time, including, but not limited to, Neb. Rev. Stat. Section 17-505.

Section 8-116 FINDINGS, PURPOSE, AND INTENT OF THE RENTAL INSPECTION PROGRAM.

The Mayor and City Council make the following findings:

(1) As housing ages, there is an increasing need for regular monitoring and action to maintain it and keep the City's neighborhoods in good, safe, and sanitary condition and repair.

(2) A significant portion of the original housing and neighborhoods of the City have transitioned from owner-occupied homes to rental dwellings making consistent monitoring and necessary maintenance more difficult.

(3) Transition to rental properties can be a significant factor contributing to the risk of deteriorating conditions of original housing and neighborhoods of the City.

(4) In cases of both single family and multi-unit residential housing, failure to properly maintain rental property can (i) place tenants at risk; (ii) have an adverse effect on neighborhoods, the City, and the public as a whole; and (iii) be a significant contributing factor to the decline of entire neighborhoods.

(5) There is a substantial power disparity between tenants and property owners, particularly where the tenant does not have a familial relationship with the property owner, and tenants can face property owner resistance to needed maintenance or repairs, and tenants might be reluctant to report deficiencies to property owners, property managers, or property owner's agents.

(6) A program that requires regular maintenance and repair of rental dwellings to keep them in safe, sanitary, and properly maintained condition is good for tenants and for neighborhoods in which such rental properties are located, and is in the public interests of all residents of the City. Additionally, livable housing and well-kept neighborhoods also sustain the City's property tax base.

(7) Several communities in the Sioux City, Iowa metropolitan area have implemented rental housing inspection programs. Enactment of such public policies within the area has permitted a disparity to exist in the condition of rental dwellings within the corporate limits of Dakota City, Nebraska.

Based on the foregoing, the Mayor and City Council have determined that it is desirable, appropriate, in the public interest, and therefore necessary to implement a rental inspection program to maintain safe housing for tenants and safe and livable neighborhoods for Dakota City's residents.

The purpose of this Rental Inspection Program is to provide for the inspection and licensing of rental dwellings, to promote compliance with the currently adopted version of the International Property Maintenance Code (IPMC) and other applicable laws, and to require property owners of rental dwellings, including single-family rental dwellings, to obtain licenses for the occupancy of rental dwellings. The intent of this rental inspection program includes:

- (1) Promoting the health, safety, and welfare of the persons living in and near rental dwellings;
- (2) Addressing the coercive relationship between landlords and tenants and the inability of non-familial tenants to obtain maintenance and repair of rental dwellings without fear of reprisal;
- (4) Preserving existing housing supply and neighborhoods;
- (5) Helping to maintain property values and the City's tax base;
- (6) Preventing or eliminating substandard and deteriorating rental dwellings; and
- (7) Maintaining a living environment that contributes to the health, safety, and welfare of individual and family living.

Section 8-117 SCOPE.

The rental inspection program shall apply on and after the effective date to any rental property and/or rental dwelling within the corporate limits of the City of Dakota City, Nebraska, and its extraterritorial zoning jurisdiction, with the following exceptions:

- (1) Group care facilities;
- (2) Motels and hotels;
- (3) State licensed hospital, hospice, community-care facility, intermediate-care facility, or nursing home;
- (4) Residential dwellings occupied by a parent, child, grandparent, or grandchild of the owner of the property; and
- (5) Mobile homes owned by the occupant

Section 8-118 DEFINITIONS.

Unless otherwise provided herein either expressly or by the context, the following terms shall have the corresponding meanings when used in this Article:

"CODE OFFICIAL" means the Administrator of the City of Dakota City or his/her designee.

"EFFECTIVE DATE" means the date upon which the Rental Inspection Program shall become effective. Said effective date shall be March 1, 2021.

"IMMINENT DANGER" means in the opinion of the Code Official, there is one or more violations that could cause death or serious physical harm to the health, safety, or security of the persons residing in or around a rental dwelling and is further defined in the IPMC.

"IPMC" means the International Property Maintenance Code, published by the International Code Council (ICC), as from time to time adopted, amended, or superseded by the City of Dakota City.

"LANDLORD" means the owner, lessor, or sub lessor of the rental dwelling or rental property and also means a property manager of the premises.

"LEASE" means to permit, provide or, offer possession and/or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is not the legal property owner of record thereof, pursuant to a rental agreement, or pursuant to an unrecorded agreement of contract irrespective of whether the property owner receives payment for the use, possession, or occupation.

"MAJOR CODE VIOLATION" means any defect that poses a significant risk of danger, harm or damage to the life, health, safety or welfare of the tenant, passersby, occupants or visitors of the rental dwelling or other property, the environment or general public as set forth in the IPMC or provided by other applicable law.

"MINOR CODE VIOLATION" means any defect other than that of a major code violation described above. However, the Code Official may determine that multiple minor code violations cumulatively constitute a major code violation and therefore the violations and rental property or rental dwelling will be categorized accordingly.

"PERSON" means any individual, corporation, partnership, limited liability company, trust or any other entity or association.

"PRIMARY INSPECTION" means an initial interior and/or exterior inspection performed by the City Administrator or his/her designee upon submission of an application for a rental license or renewal thereof to determine compliance with the IPMC and any other applicable requirements.

"PROPERTY MANAGER" means the individual responsible for the daily operations and management of the rental dwelling. A property manager shall be deemed to be the property owner's agent for purposes of this Article unless the property owner otherwise advises the City in writing.

"PROPERTY OWNER" means any individual, corporation, partnership, limited liability company, trust or any other entity or association holding legal title, as recorded in the office of the Register of Deeds of Dakota County, Nebraska, of a rental dwelling or rental property, or otherwise having control of the rental dwelling or rental property as guardian, conservator, receiver, trustee, executor, administrator or other similar representative capacity of any such person or his or her estate, to the extent proof of such control is presented to the satisfaction of the Code Official. However, the term "property owner" does not include any person whose only interest in a rental dwelling is as a tenant pursuant to a rental agreement.

"PROPERTY OWNER'S AGENT" means the individual(s) designated and authorized by a property owner to act on behalf of and bind the property owner in all matters arising out of or under this Article.

"RENTAL AGREEMENT" means any and all agreements, whether written or oral, between a landlord and tenant embodying the terms and conditions concerning the use and occupancy of a rental dwelling and/or rental property, including but not limited to rental agreements as defined by the Uniform Residential Landlord and Tenant Act and the Mobile Home Landlord and Tenant Act.

"RENTAL DWELLING" means one or more rooms for lease in an enclosed structure arranged, designed, and intended for use as a residence or living quarters, for shelter, cooking, eating, sanitation and/or sleeping by one or more persons who are not the property owner and contained within a rental property as defined herein. In the case of a building containing multiple rental dwellings, each separately identifiable unit for lease shall constitute a rental dwelling separate from all other rental dwellings, including all accessory buildings, common areas, facilities, structures, fixtures, equipment, appurtenances and improvements of, to or servicing any such rental dwelling, and premises on, in, or over which any such rental dwelling, buildings, common areas, facilities, structures, fixtures, equipment, appurtenances or improvements are located.

"RE-INSPECTION" means any inspection performed by the Code Official not including the primary inspection, the purpose of which is, including but not limited to, determine if a previously noted violations have been corrected.

"RENTAL LICENSE" means a license issued to the property owner by the City of Dakota City, authorizing the occupancy of a rental dwelling by a tenant.

"RENTAL PROPERTY" means an enclosed structure with one or more rental dwellings leased for occupancy.

"TENANT" means a person, other than the parent, child, grandparent, or grandchild of the owner of the property, entitled under a rental agreement to possess and occupy a rental dwelling to the exclusion of others.

"TRANSFER" means property owner sells, gives, or disposes of a rental dwelling to any other person, or a rental dwelling is, in any other manner, voluntarily or involuntarily transferred or conveyed to any other person.

Other terms used in this Article and not expressly defined herein, but defined in the IPMC, shall have the meaning as set forth therein, unless otherwise provided by the context.

Section 8-119 RENTAL LICENSE.

(A) Rental License Required.

(1) General Rule. On and after the effective date, no person shall lease, continue to lease, or in any manner permit the occupancy of a rental dwelling to any other person unless a rental license is in effect for such rental dwelling. The following are the requirements to obtain a rental license:

- (a) Satisfaction of all application-related requirements for a rental license;
- (b) Payment of all applicable application fee and inspection fees and other amounts;
- (c) Satisfaction of all inspection-related requirements; and
- (d) Ongoing compliance with all requirements of this Article.

(2) Duration of License. Rental license shall expire annually on February 28th except as provided herein.

(B) Special Rules.

(1) Multiple Unit Rental Properties. A rental license shall be required for each rental dwelling covered by a separate lease. However, the Code Official may for administrative convenience include all rental dwellings of a multi-unit building in a single license; though by doing so, the Code Official shall not be prohibited from dealing with each rental dwelling of the building as separately licensed.

(2) Licensing Term Prolonged Pending Inspection upon Application for Renewal. The term of a rental license shall be extended, and the property owner shall be permitted to continue operation of the rental dwelling beyond February 28th of any year that an inspection is required, conditional upon:

- (a) The property owner has made timely application, satisfying all application requirement;
- (b) The property owner is awaiting a primary inspection or re-inspection;
- (c) The Code Official is provided access to the rental dwelling for inspection either by voluntary consent or pursuant to a warrant or other court order in accordance with applicable law and the cost of obtaining such orders, shall be assessed to the property owner; and
- (d) There is no finding of a major code violation with respect to the rental dwelling as of February 28 or at any time during the period the license term is extended.

Extension of a license term shall cease no later than the Code Official's inspection and grant or denial of renewal of the rental license.

(C) Ongoing Compliance Required. To maintain a rental license in effect, ongoing compliance with this Article, the IPMC, and other laws, rules and regulations is required during the duration of the rental license. Any deficiency or failure to comply shall be subject to such actions, orders, rights and remedies of the Code Official including but not limited to suspension or revocation of a rental license, charges, citations, fines, penalties and/or orders to vacate the premises, all of which shall be carried out in accordance with applicable law.

(D) Transfers of Rental Dwellings. In the event a property owner transfers ownership of a rental dwelling by contract or deed and the subject property remains a rental dwelling, the current rental license may be continued by the new property owner for its remaining term, conditional upon the new property owner filing a properly completed rental license application with the City within 30 days of said transfer to allow the City to update its records regarding the new property owner of such rental dwelling. No additional fees are necessary for continuing a license for the remaining license period. The new property owner shall take all actions as and when required to renew the license and maintain it in effect, including paying all fees and other amounts specified in this Article.

Section 8-120. RENTAL LICENSE APPLICATION REQUIREMENTS.

(A) General Rule. Application for a rental license shall be filed with the City of Dakota City and be accompanied by all applicable licensing and inspection fees as described herein and/or established by the master fee ordinance from time to time.

(B) License Application Deadline.

(1) General Rule. Except as otherwise provided herein, an application for a rental license and applicable fees shall be filed and paid by February 28th, annually.

(2) Special Rule. For a rental property completed or converted to a rental dwelling after the effective date, a property owner shall, within 30 days after the completion of or conversion to a rental dwelling and prior to occupancy, submit an application for a rental license, including payment of all applicable fees. Subsequent applications and fees shall be filed and paid by February 28th, annually.

(3) If a rental license is not obtained or renewed by February 28 for any rental property/rental dwelling the property owner shall be required to pay a penalty fee of \$10.00 per day, with the maximum penalty of \$300.00 per rental dwelling. Such penalty fee is in addition to any fine imposed pursuant to this Article.

(C) Required License Application Information. Application for a rental license shall be made in such manner as determined from time to time by the Code Official and shall include the following information:

- (1) Property owner's name, street address, telephone number, and e-mail address
- (2) Property manager's name, street address, telephone number, and e-mail address
- (3) If applicable, property owner's agent's name, street address, telephone number, and e-mail address. Unless otherwise specified by the property owner in writing, the property manager shall be deemed to be the property owner's agent.
- (4) If applicable, Registered Agent's name, street address, telephone number, and e-mail address;
- (5) Physical address of the rental dwelling;
- (6) Number of rental dwellings in each building within the rental property;
- (7) Specific occupancy number of each rental dwelling;
- (8) Signed statement of property owner and/or property manager indicating that the property owner and/or property manager are aware of, and agree to abide by, the occupancy requirements of Dakota City Dakota City Municipal Code and the IPMC and further acknowledge the legal ramifications for knowingly violating said occupancy codes;
- (9) Signed statement of property owner and/or property manager indicating that the property owner and/or property manager are aware and understand the Nebraska Uniform Residential Landlord and Tenant Act (R.S.S. 76-1401 to 76-1449) and/or the Nebraska Mobile Home Landlord and Tenant Act (R.S.S. 76-1450 to 76-14,111);
- (10) Signed statement of property owner and/or property manager indicating that the property owner and/or property manager have provided the occupants of the rental dwelling, and will provide each successive occupant during the rental license period, a copy of the Nebraska Residential Landlord and Tenant Act Brochure and/or the Nebraska Mobile Home Landlord and Tenant Act (R.S.S. 76-1450 to 76-14,111);
- (11) The name(s) of all occupants of the rental dwelling, relationship to the tenant, and tenant's phone number;
- (12) Signed statement of property owner and/or property manager indicating that the property owner and/or property manager has treated the rental property for pests, and the rental property is pest free and compliant with the IPMC; and
- (13) Such other information as the Code Official from time to time determines necessary in accordance with the purpose and intent of this Article.

(D) License Fees. Rental license fees shall be \$50.00.

Section 8-121. INSPECTIONS.

(A) Upon receipt of a properly completed rental license application, including payment of all applicable fees and other amounts, the Code Official shall schedule a primary inspection of the rental dwelling as soon as is practicable after review of the license application. At least 10 days advance written notice of the inspection shall be provided to the property owner in accordance with applicable law. Property owner shall provide Tenant with adequate notice of the inspection. If the owner of a rental dwelling refuses to consent to an inspection, no license shall be issued and the Code Official may, at his/her discretion, proceed to obtain a warrant for the inspection in accordance with applicable law, including, but not limited to, Neb. Rev. Stat. Section 29-830 et seq., and the cost of such shall be assessed to the property owner.

The primary inspection will be conducted to determine if the rental dwelling satisfies all applicable requirements of the IPMC and other building-related codes and ordinances adopted or amended from time to time by the City of Dakota City. The property owner, the property owner's agent or property manager shall be present at the time of inspection and shall coordinate for the access for inspections of each unit. The Code Official shall be authorized to take such actions as the Code Official determines necessary or appropriate to implement, administer and carry out the inspection requirements of this Article, including, but not limited to, scheduling inspections for the efficient use of City resources.

Rental properties which contain four (4) or more rental units per structure shall have all common and public areas inspected and shall have a minimum of 4 rental units or 1/3 of all rental units inspected annually, whichever number of inspections is larger, with all rental units to be inspected within 3 years. The property owner, the property owner's agent or the property manager shall select the units to be inspected but the same units shall not be inspected during subsequent inspections.

(1) Newly Constructed Rental Dwellings. Provided the required application and fees and other amounts are filed and paid as required, a certificate of occupancy issued by the Code Official for any rental dwelling completed after the effective date of this Article shall also satisfy the initial inspection requirement for a rental license. If filing of the application or payment of the fee is delayed, the rental dwelling shall be subject to such application, licensing, inspection, and fee requirements as applicable to any other rental dwelling before a rental license is issued.

(B) All rental dwellings required to be licensed shall be classified by the Code Official based on primary inspections (with the exception of properties described in Class N, below) and subject to subsequent inspections as follows:

Class A - Rental dwelling with minor code violation, or no code violations; a primary inspection three (3) years thereafter. If a minor code violation noted in a primary inspection

exists upon primary inspection three (3) years later, re-inspection shall be required to confirm that all outstanding violations have been corrected before a rental license is issued.

Class B - Rental dwelling with major code violations, re-inspection shall be required before rental license is issued; a primary inspection one (1) year thereafter; and, if no major code violations noted during the one-year primary inspection, inspected thereafter as a Class A rental property.

Class N - Rental dwelling newly constructed, with construction completed after the effective date; inspected (3) years thereafter.

All inspections shall be subject to and carried out in accordance with the requirements set forth in this Article.

(C) When the primary inspection of a rental dwelling reveals any violation(s), a notice shall be provided to the property owner. The notice shall contain a timeframe, as set by the Code Official, in which to correct the violations, said timeframe being based upon the number and severity of the violations. Correction of minor code violations noted shall be deemed to be a condition of the rental license that is issued or renewed immediately following the primary inspection during which the violations were noted. Major code violations shall be corrected to the satisfaction of the Code Official before any license is issued or renewed.

(D) A re-inspection of any major code violation will be conducted by the Code Official at the end of the timeframe set to correct the violations and before a rental license is issued or renewed. If the Code Official finds that any such major code violation has not been corrected, the rental license shall be denied until such major code violation(s) are corrected as determined by subsequent re-inspection(s). A major code violation occurring after a rental license has been issued, or renewed, shall be subject to such enforcement action as determined necessary or advisable in accordance with applicable law, up to and including revocation of the rental license, order vacating the premises, and assessment of fines and penalties.

(E) Inspection Fees. Primary inspections shall be conducted at no additional charge. Re-inspections shall be conducted at no additional charge if violations have been corrected. If any violation has not been corrected, additional inspection fees shall be charged according to the following schedule, which fee shall be due and payable before a license for said property is issued or renewed:

(1) First re-inspection: \$75.00

(2) All subsequent re-inspections: \$100.00 per subsequent re-inspection

(3) In the event a property owner, property owner's agent or property manager fails to appear for a scheduled primary inspection/re-inspection appointment, and fails to provide

at least 24-hour notice, requiring the rescheduling of such inspection, the owner will be charged a re-inspection fee of \$75.00

Property owners shall be issued written statements for re-inspection charges and shall be required to pay such charges within thirty (30) days. If payment of such fees is not received, the rental license shall be revoked or denied.

(F) Additional re-inspections may be conducted as the Code Official determines necessary, including but not limited to on a complaint-basis.

(G) Primary inspections and re-inspections provided for herein shall be in addition and supplemental to any other inspection or access authorized under applicable law.

Section 8-122. INSPECTION ACCESS.

(A) If a tenant or other person lawfully in control of a rental property or a rental dwelling fails or refuses to consent to access and entry to such rental property or rental dwelling under its/his/her control for any inspection, the Code Official may apply for a warrant or other appropriate court order authorizing such inspection in accordance with applicable law, including but not limited to, Neb. Rev. Stat. Section 29-830 et seq. All fees and penalties shall be suspended under this subsection until an inspection is completed.

(B) Obstruction by a property owner, property manager, property owner's agent, tenant, or other person of any inspection authorized by a legally enforceable warrant or other court order, shall be grounds for denial or revocation of the rental license, in addition to any other rights or remedies of the City under applicable law.

(C) Access requirements this section shall be in addition and supplemental to any other access authorized under applicable law.

Section 8-123. LOCAL AGENT REQUIRED.

The property owner of any rental property or rental dwelling shall be available to the tenant, to respond to an emergency, on a twenty-four (24) hour basis. This requirement may be met by (1) maintaining an operating business or residence within sixty (60) miles of the property at which the property owner or property owner's agent is regularly present, or (2) by use of a property manager or property owner's agent which resides within Dakota County or an adjoining county, who can be contacted on a twenty-four (24) hour basis. If the property owner's agent is used, the property owner shall provide the City with the name, address, and telephone number of such property owner's agent, including amending such information as said property owner's agent may change from time to time. Additionally, a post office box, mailing address, or toll-free number shall not be deemed sufficient to meet the provisions of this section.

Section 8-124. VIOLATIONS, OFFENSES, REMEDIES AND SPECIAL RULES.

(A) Failure to obtain a rental license, failure to comply with any requirement of this section, and failed re-inspections shall constitute a violation of this chapter. In addition to such other remedies and sanctions contained within this chapter or imposed by law, any person who violates the provisions of this chapter shall, upon conviction, be punished as provided in section 1-9.

(B) Other Rights, Rules, and Penalties.

(1) Rights and Remedies. All rights and remedies provided herein shall be non-exclusive and cumulative of all other rights and remedies available at law or in equity.

(2) No Refunds. No license or application fee or any other amount paid to the City under this Article shall be refunded.

(3) Notice. Property owners and other interested persons shall be provided notice of actions or determinations of the Code Official, including actions or determinations to grant, deny, suspend, or revoke a rental license or renewal thereof.

Section 8-125. APPEALS.

(A) Appeals Process.

1. Appeal to the City Council. If a property owner believes they are aggrieved by the action(s) taken by the Code Official in regard to the rental inspection program, the property owner may appeal such action(s) to the City Council by mailing a written request mailed or delivered to City Hall, Attn: Rental Inspection Appeal, 1511 Broadway Street, Dakota City, Nebraska 68731. Such appeal shall be placed on the agenda of the next regularly scheduled meeting of the City Council, but no sooner than five (5) days after receipt of said appeal. The City Council shall hear, consider, and render its decision after hearing such appeal as is reasonably possible. All fees and penalties shall be suspended until such time as the appeals decision is rendered. An appeal must be received, in writing, within twenty (20) days from the Code Official's action. Notice of City Council's decision and recommendations shall be provided to the Code Official and each party of record. All decisions shall be kept in accordance with state regulations and such decisions shall be a matter of public record. The property owner shall have the right to appear and to be represented by counsel retained by property owner at property owner's sole expense.

2. Appeal to the District Court. Any property owner believed to be aggrieved by the decision of the City Council may appeal such decision to the district court as provided in Nebraska Revised Statutes. All fees and penalties shall be suspended until such time as the appeals decision is rendered.

II. REPEAL OF CONFLICTING PROVISIONS. Any conflicting provision of any previously enacted ordinance is hereby repealed.

III. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council of the City of Dakota City hereby declare that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

IV. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED this 5th day of November, 2020.

JERRY YACEVICH, MAYOR

ATTEST:

JASON ALLEN, CITY CLERK

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