

ORDINANCE NO. 560

AN ORDINANCE DEALING WITH RESIDENTIAL RENTAL PROPERTIES IN THE CITY OF WHEATON

Findings.

1. There have been several concerns concerning the condition of residences that may be rented out to third parties.
2. The existing Ordinance does not contain a provision which deals with regulating residential rental properties.
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to regulate residential rental properties within the City of Wheaton.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS FOLLOWS:

1. That Wheaton City Ordinance 560 is hereby enacted to read as follows:

“560. RESIDENTIAL RENTAL PROPERTY REGISTRATION AND LICENSING.

Section 1: PURPOSE. The City recognizes a need for an organized inspection program of residential rental units within the City in order to establish and enforce minimum standards for rental units to meet City and State safety, health, fire, and zoning codes within the City and to provide a more efficient system to ensure that rental property is properly maintained. The City recognizes that the most efficient system to provide for rental inspections is the creation of a program requiring the registration and license of all residential rental units within the City so that orderly inspections can be undertaken.

Section 2: DEFINITIONS.

- (A) **RESIDENTIAL RENTAL PROPERTY** means any building, structure, room, enclosure, or mobile home including the real property upon which it is located and which surrounds it, which is rented or offered for rent as living quarters.
- (B) **RENTAL** means the leasing of a rental unit to a non-owner for a fixed or non-fixed period of time. This does not include property which is being transferred to a non-owner pursuant to a written agreement that is recorded at the Traverse County Recorder’s Office, such as a lease to buy, contract for deed, installment sale, purchase, or other similar arrangement whereby nonpayment of a periodic payment means the occupants may be evicted with the necessity of either a statutory mortgage foreclosure procedure, a statutory termination of contract for deed, or other similar statutory repossession procedure.
- (C) **PERSON** includes natural persons as well as business entities, whether one or more.
- (D) **ENFORCEMENT OFFICER** means any person designated by the City to perform inspections and determine compliance with the applicable rules, standards, statutes and ordinances.

Section 3: REGISTRATION AND LICENSE REQUIREMENTS. It is unlawful for any person to hereafter occupy, allow to be occupied, advertise for occupancy, solicit occupants of, or let to another

person for occupancy any residential rental property within the City for which an application for license has not been properly made and filed with the City of Wheaton and for which there is not an effective license. Initial application and renewal shall be made upon forms furnished by the City for such purpose and shall specifically require the following minimum information:

- (A) Name, address and phone number of the property owner and, if the owner is not a natural person, the name, address and phone number of a designated agent for the owner.
- (B) The name, phone number, and address of any person authorized to make or order made repairs or services for the property, if in violation of City or State Codes, if the person is different from the owner.
- (C) The street address of the rental property.
- (D) The number and types of units within the rental property (dwelling units or sleeping rooms).

A rental property owner and/or the designated agent must notify the City in writing within 15 calendar days after any change in the above information.

Section 4: FEES AND PENALTIES. There shall be a license fee for the initial license, and a renewal fee every two years thereafter. The fee shall be based upon the number of units in the case of multiple unit dwellings. There shall also be a license transfer fee and a license reinstatement fee. All fees shall be as established by annual resolution of the City Council. Administrative penalties for failure to comply with any portion of these rules, standards, statutes, and ordinances will be established by resolution of the Council.

Section 5: MANNER OF REGISTRATION, LICENSING AND RENEWAL.

- (A) Initial application for license of property which is not licensed as residential rental property on the effective date of this Section, or for licensed residential rental property when there is a change in type of occupancy, shall be made by personally filing an application for license with the City of Wheaton before the property is used as residential rental property or before use as a new type of occupancy.
- (B) If there is a change in the type of occupancy from the type stated on the registration statement, a new registration statement and license will be required.

Section 6: METHOD AND MANNER OF CERTIFICATION.

- (A) Upon receipt of an initial application, the City of Wheaton shall forward a copy to the enforcement officer, who shall then, at the next time he is scheduled to perform inspections in the City, perform an inspection of the property to determine whether such property complies with the provisions of applicable rules, standards, statutes and ordinances. A temporary license shall be issued by the City Administrator upon the receipt of a properly completed application.
- (B) The enforcement officer shall then conduct an inspection and make a report thereon. No permanent license shall be issued if the premises and building do not fully comply with all the provisions of the applicable rules, standards, statutes and ordinances which pertain to such dwelling units.

- (C) After being certified, each property which has had an occupant in the preceding two years shall be inspected every two years thereafter in order to maintain its certification. An inspection shall also be conducted in the event a property goes more than three months without being connected to a major utility service (water/sewer or electricity). The City Council may elect to postpone a scheduled inspection for a particular property only upon a showing of good cause, and for a period not exceeding twelve (12) months. A postponement may only be given once every ten (10) years for a particular property.

Section 7: METHOD OF RENEWAL.

- (A) Registration shall be required annually and be issued prior to the annual renewal date. The City shall be required annually to mail registration renewal forms to the property owner or designated local manager thirty (30) days prior to expiration and such renewal forms may be returned by mail, or in person to the City of Wheaton.
- (B) The City shall not register a rental unit unless the owner has paid all property taxes assessed to the property and the property is not delinquent in any other obligations to the City of Wheaton.

Section 8: METHOD OF CORRECTION. Whenever an enforcement officer determines that any residential rental property fails to meet the requirements set forth in the applicable rules, standards, statutes or ordinances, the City shall issue a correction notice setting forth the violations and ordering the occupant, owner and/or owner's designated agent to correct such violations. This notice and order shall:

- (A) Be in written form;
- (B) Describe the location and nature of the violation;
- (C) Establish a reasonable time for the correction of any violation;
- (D) Be served upon the owner, the owner's designated agent and/or the occupant as the case may require. Such notice shall be deemed to be properly served if a copy thereof is:
 - (1) Served upon the owner, designated agent and/or occupant personally; or
 - (2) Sent by certified mail, return receipt requested.

Failure to correct violations within the time period stated in the correction order shall result in an administrative penalty to be set by Council resolution, as well as other sanctions provided by law or this ordinance, which may include a fine of \$100 per day up for up to 20 days, with any unpaid fine. If the correction order relates to actions or omissions of the occupant, and the occupant fails to make the necessary correction, the licensee may be required to remedy the condition by whatever means necessary. No adverse action shall be taken against a licensee for failure to remedy a condition during the pendency of a bona fide eviction proceeding being pursued diligently by the licensee.

Section 9: TRANSFER OF PROPERTY. To transfer the license from one property owner to another, the licensee shall give written notice, including the name and address of the transferee, to the City of Wheaton of the proposed transfer, within thirty-days (30) after such transfer. The transferee must make application with the City and pay the required fee for a transfer of the license within thirty-days (30)

after the transfer of property. Failure to make application within the specified time limit shall result in automatic forfeiture of the license. Relicensing of any property for which the license has been forfeited shall require application for a new license. Issuance of any license when there is a transfer of property shall require the property to be in compliance with all requirements of the applicable rules, codes, statutes and ordinances. The fee for license transfer shall be set by Council resolution.

Section 10: LICENSE SUSPENSION AND REVOCATION.

- (A) Any license may be revoked or suspended at any time during the life of said license for grounds including, but not limited to the following:
 - (1) False or misleading information given or provided in connection with the license application or renewal;
 - (2) Failure to pay any fee herein provided for;
 - (3) Failure to comply with 120.16, below;
 - (4) Failure to correct violations in the time period prescribed; or
 - (5) Violations committed or permitted by the licensed owner and/or the owner's designated agent, of any rules, codes, statutes and ordinances relating to, pertaining to, or governing the license and the premises.
- (B) A suspended license shall be reinstated when the circumstances leading to the suspension have been remedied and a reinstatement fee as set by Council resolution has been paid.

Section 11: MAINTENANCE OF RECORDS. All records, files, and documents pertaining to the Rental License Program shall be maintained for five years after the license expiration, in the office of the City of Wheaton and made available to the public as allowed or required by the applicable laws, rules, codes, statutes or ordinances.

Section 12: RENTAL APPEALS BOARD. The Rental Appeals Board is hereby designated to act as an advisory body. The Board shall consist of five (5) members appointed by the Council. The Board shall hear appeals arising from a correction order and make recommendations to the Council to affirm, modify or reverse, in whole or in part, such order. This Board shall also review and approve administrative policies and procedures pursuant to this ordinance, and regularly review and make such recommendations, as the Board deems reasonable and necessary to the Council as to the schedules of fees and penalties required under this Section.

Section 13: APPEAL PROCESS.

- (A) When it is alleged by any person to whom a correction order is directed that such order is based upon erroneous interpretation of the applicable rules, standards, statutes or ordinance or mistake in fact, such person may appeal the correction order to the Rental Appeals Board.
- (B) Such appeal must be in writing, must specify the grounds for the appeal, must be accompanied by any filing fee set by Council resolution, and must be filed within five (5) business days after

service of the correction order. Upon receipt of the written appeal, the City shall set a date for a hearing and give the appellant at least five (5) days prior written notice of the date, time and place of the hearing. By mutual agreement between the appellant and the City Administrator, the five (5) day notice may be waived.

- (C) The appellant shall have the right to appear and be represented by counsel. The Rental Appeals Board shall hear and consider the matter within thirty-days (30) of the filing of an appeal. The filing of an appeal shall stay all proceedings in furtherance of the action appealed from unless the enforcement officer certifies that such a stay would cause imminent peril to life, health, or property.
- (D) The Rental Appeals Board shall issue its recommendation to the Council and the appellant in writing within thirty-days (30) after the hearing. The Council shall thereafter affirm, modify or reverse the correction order upon such terms as the Council deems necessary to accomplish the purposes of this ordinance. A copy of the decision shall be mailed to the appellant.

Section 14: AUTHORITY. Nothing in this Section shall prevent the City from taking action under any applicable rule, standard, statute or ordinance for violations thereof to seek either injunctive relief or criminal prosecution for such violations as therein provided. Nothing contained in this Section shall prevent the City from seeking injunctive relief against a property owner or designated agent who fails to comply with the terms and conditions of this Section on registration and licensing including an order prohibiting the occupancy of such rental units until violations of this Section have been remedied by the property owner or designated agent.

Section 15: POSTING. Every licensee of residential rental property shall conspicuously post a receipted copy of the current license (in a frame with transparent cover) in a public corridor, hallway, or lobby of the rental property for which it is issued. For other than multiple dwellings, the licensee must post the license certificate in a frame with a transparent cover in such a manner so as to be easily viewed and readable at or near the front entrance of the building for which it was issued.

Section 16: INSPECTION ACCESS.

- (A) Property owners and their agents shall permit the enforcement officer to inspect all premises governed by this ordinance to determine if the building is operated as a rental property and/or to determine compliance with the provisions of this section, and shall fully cooperate with such inspections. The property owners or their agents shall make reasonable efforts to notify tenants of planned inspections of their rental units to the extent required by state law.
- (B) If an owner, occupant, or other person in charge of a dwelling, dwelling unit or a multiple dwelling fails or refuses to permit free access and entry to the structure or premises, or any part thereof, for an inspection authorized by this section, the enforcement officer may, pursuant to City of Golden Valley v. Wiebesick, 899 N.W.2d 152 (Minn. 2017) petition and obtain an order to inspect and/or a search warrant from a court of competent jurisdiction. Except as specifically authorized to the contrary by the court in exigent circumstances, search warrants under this section shall be executed at reasonable times and after reasonable efforts to give the owner (or other person in charge) and the occupant at least five (5) days written notice of the date and time of the inspection authorized by the warrant. Property owners shall cooperate in the execution of all administrative search warrants and court orders, including providing access and entry to

rented premises where directed to do so. An authorized representative of the property owner shall be present on the premises during inspections; however, failure of a property owner to comply with this requirement shall not deprive the City of the authority to inspect.

- (C) Failure of a property owner to obey any of the requirements of this subdivision shall subject the property owner to suspension or revocation of license, in addition to other remedies and/or penalties provided by law. Any such suspension or revocation shall continue until the inspection sought has been completed, any violations satisfactorily remedied and any outstanding fees or penalties have been paid.

Section 17: APPLICABLE LAWS. Licensees shall be subject to all applicable rules, standards, statutes and ordinances; and this Section shall not be construed or interpreted to supersede any other such applicable rules, standards, statutes or ordinances.

Section 18: TENANT IDENTIFICATION. Licensees must, as a continuing obligation of a license, maintain a current register of tenants and other persons who have a lawful right to occupancy of residential rental property and promptly notify the City Administrator with an updated register whenever there is a new tenant. Said register must contain the names, addresses, and telephone numbers of all occupants, in addition to the license plate number of all vehicles of said occupants. In its application for a license, the licensee must designate the person or persons who will have possession of the residential rental property and must promptly notify the City Administrator of any change of the identity, address, or telephone numbers of such persons. The register must be available for inspection by the City Administrator or a law enforcement officer at all times.

Section 19: TENANT REQUESTED INSPECTION. A tenant may at any time request an inspection of the rental property in which they currently reside. A fee for such inspection shall be imposed on the tenant only if the Council finds, by a preponderance of the evidence that the request was made in bad faith.

Section 20: RULES, POLICIES AND PROCEDURES. The City Council may adopt from time to time, by resolution, rules, policies and procedures for the implementation of this section. Violation of any such rule, policy or procedure by a property owner shall be considered a violation of this ordinance.

Section 21: INSPECTION STANDARDS. All rental property will be required to meet basic standards set forth herein on Appendix A in order to obtain and/or maintain a license pursuant to this ordinance.

Section 22: SEVERABILITY. If any provision of this section or amendment thereto, or the application thereof to any person, entity or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, the remainder of this section shall remain in full force and effect and the application thereof to other persons, entities or circumstances shall not be affected thereby.

Section 99: PENALTIES.

- (A) **Criminal.** A violation of any provision of this Ordinance shall be deemed a misdemeanor offense. Each day upon which such violation occurs shall be deemed to constitute a distinct and separate violation, and each day shall therefore be deemed to constitute a distinct and separate offense.

(B) Civil.

- (1) Any owner, occupant, operator, or agent of residential real property who has received an Order or notice of an alleged violation of this Ordinance and has not corrected the violation during the period of time given on the Order or notice to correct the violation, may be subject to a daily fine in the amount of \$100 for each day said violation has not been corrected thereafter, to a maximum of 20 days.
- (2) The City Administrator shall, after consultation with the enforcement officer, certify to the City Council which persons are subject to a fine and the applicable fine amount at each meeting of the City Council. No later than five (5) business days before the meeting of the City Council, the City Administrator shall cause any such persons to be notified, by sending of certified mail or by personal service, of the fine amount believed to be due for violation. The City Council shall approve and levy such fines proposed by the City Administrator as appear proper upon a determination of good cause, and notice of fines imposed shall be mailed to the persons fined.
- (3) Each and every fine or fee levied pursuant to this Ordinance is hereby made a lien upon the residential real property at issue, and all such charges are, on October 20 of each year, past due and delinquent, may be certified to the County Auditor as taxes or assessments on the real estate. Nothing in this Ordinance or other Ordinances of the City shall be held or construed as in any way stopping or interfering with the right of the City to levy taxes or assessments against any premises affected by any delinquent fine or fee.

PASSED AND ADOPTED this ____ day of _____, 2019.

WHEATON CITY COUNCIL

Leonard Zimmel, Mayor

ATTEST:

Amy Olson, City Administrator

Motion:
Seconded:
Published:
Passed: