

ORDINANCE NO. 2023-07

AN ORDINANCE AMENDING ARTICLE OF THE CODIFIED ORDINANCES OF THE TOWN OF NUTTER FORT RELATING TO LANDLORD REGISTRATION

WHEREAS, the Town of Nutter Fort adopted an Ordinance regarding Landlord Registration on March 10, 2010, which is codified at Article 777; and

WHEREAS, the Town of Nutter Fort Town Council has determined that rental dwellings in the Town must meet minimum health and safety standards set forth in the State Building Code; and

WHEREAS, these standards related to the condition, maintenance and occupancy of rental dwellings and are intended to ensure that rental housing is safe, sanitary and suitable; and

WHEREAS, the Town of Nutter Fort Town Council is of the opinion that the Town of Nutter Fort should adopt a Rental Registration Program that regulates the same town wide; and

WHEREAS, the Town of Nutter Fort Town Council, recognizing the significance of this undertaking with regard to personnel and procedures, resolves that the Rental Registration Program Ordinance, as approved, shall become effective upon passage and will be implemented fully on or after January 1, 2024.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF NUTTER FORT THAT:

SECTION 1: REPEAL: ARTICLE 777 be and is hereby repealed in its entirety.

SECTION 2: RE-ENACTMENT: ARTICLE 777 be and is hereby re-enacted as follows:

ARTICLE 777: RENTAL DWELLING UNITS

§ 777.01 PURPOSE.

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

§ 777.02 SCOPE.

This article applies to all rental dwelling units within the Town. This article 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 article shall not apply to hotels, motels, dormitories, lodging and boarding houses and other transient residential occupancies. Buildings housing businesses 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.

§ 777.03 DEFINITIONS.

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

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.

CODE OFFICIAL. The officer or other designated authority charged with the administration and enforcement of the Building Code of the Town, or a duly authorized representative.

FAMILY. An individual; two or more persons related to each other by blood, marriage or legal adoption, including foster children; or, in the alternative, not more than three unrelated persons.

OCCUPANT. Any person living, sleeping, cooking or eating in or having actual possession of a dwelling unit.

OWNER. Any person who alone, jointly or as tenant in common with others, has legal or equitable title to any dwelling unit with or without accompanying actual possession thereof. For the purposes of this article, OWNER includes an agent of the owner empowered by the owner to act on the conditions or under the circumstances in question.

RENT. Payment of money, goods, labor, service or otherwise for use of a dwelling.

RENTAL DWELLING. Any house, building, mobile home, duplex, condo, townhouse, apartment, or portion thereof intended to be occupied as the place of habitation of human beings, either permanently or transiently for which the owner or operator receives rent from an occupant to permit the occupant to stay in the rental dwelling for one night or more. The term RENTAL DWELLING shall exclude state-licensed health and custodial facilities. The term RENTAL DWELLING shall include the following:

(1) APARTMENT. A room or group of rooms intended to be occupied for living, sleeping, cooking and eating.

(2) APARTMENT HOUSE. A residential building designed or used for three or more dwelling units.

(3) CONDOMINIUM, TOWNHOUSE. A single-dwelling unit in a multi-unit dwelling or structure which is separately owned and which may be combined with an undivided interest in the common areas and facilities of the property.

(4) DWELLING (ONE FAMILY). Any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this code, for not more than one family, or a congregate residence for six or less persons.

(5) DWELLING, DUPLEX (TWO FAMILY). A building designed or arranged as two dwelling units, to be occupied by two families living independently.

(6) DWELLING, MULTIPLE UNIT. A building or portion thereof designed for occupancy by three or more families living independently in which they may or may not share common entrance and/or other spaces. Individual dwelling units may be owned as condominiums or offered for rent.

(7) GUEST ROOM. Any sleeping area located inside of a hotel and/or motel for guests to sleep in.

(8) MOBILE HOME. Any vehicle or structure constructed in such a manner as to permit occupancy thereof as sleeping and eating quarters or for the conduct of any business, trade or use for storage or conveyance of tools, equipment or machinery, and so designed that it is or may be mounted on wheels and used as a conveyance on roads or streets, customarily propelled or drawn by motor power other than its own. MOBILE HOME also includes Type II and Type III manufactured homes as defined herein.

(9) TENANT. An occupant of a rental dwelling unit who has signed a lease or made a verbal contract exceeding a seven-consecutive day commitment.

§ 777.04 ILLEGAL CONDITIONS; CITATION AUTHORITY.

(A) 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 valid certificate of use and occupancy has been issued for such dwelling unit by the Code Official indicating that inspection found the premises to be in substantial compliance with the State Building Code.

(B) Any Code Official charged with the enforcement of this article may issue a citation for an illegal condition found in violation of the provisions of this section if the violation is committed in the Code Official's presence and there is reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the person being cited shall appear within a designated time. If the person being cited fails to appear in response to the citation or if there are reasonable grounds to believe that the person being cited will not appear, a complaint may be made by summons and complaint and/or a warrant shall issue.

§ 777.05 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 owner, agent or operator, and any other person to be notified in case of emergency or non-conforming condition requiring notification; and

(5) Any other uses within the building.

(B) For each dwelling unit:

- (1) The story on which the unit is located;
- (2) Maximum occupancy;
- (3) Number of off-street parking spaces available; and
- (4) Dwelling unit identification number.

§ 777.06 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 § 777.05.

(B) Annual Renewal application. An application for renewal of the existing certificate of use and occupancy shall be filed by March 15 of each year. An application for renewal of a certificate of use and occupancy for a new structure (a structure where no certificate has ever been granted) shall be filed one (1) year from the date of original inspection of the new structure. Upon receiving an application for renewal of the certificate of use and occupancy, the Code Official shall inspect the dwelling and shall reissue a certificate of use and occupancy within ten

days following inspection if said unit is found to be in substantial compliance with the State Building Code.

§ 777.07 FEES AND CONDITIONS.

(A) Each property owner shall be charged a compliance inspection fee of \$20 per inspection per unit, not to exceed \$500 per calendar year for owners with multiple rental units.

(B) Property owners missing scheduled inspections, and failing to provide 24-hour notice shall be charged an additional \$10 fee.

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

(D) Court appearance fees of \$ 15 per hour or portion thereof shall be charged to the requesting party when scheduling is at least 24 hours in advance and \$30 per hour or portion thereof when appearances are scheduled within 24 hours of a hearing.

(E) Real estate pre-sale inspection fees of \$50 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.

(F) Preparation and issuance of a duplicate certificate of use and occupancy shall require a \$10 service charge.

(G) Re-inspection fees of \$30 per unit shall be charged to the property owner for each inspection of property requiring more than two inspections for compliance.

(H) Application fees of \$50 shall be charged for Board of Appeals hearings.

§ 777.08 INSPECTIONS.

Subject to § 777.081 below, the owner 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 Official shall be accompanied by the owner or an agent of the owner during inspection.

§ 777.081 RIGHT OF TENANT TO PRECOMPLIANCE REVIEW.

If a tenant does not consent to inspection of a rental dwelling unit which that tenant occupies, the inspecting Code Official shall provide written notice to that tenant that:

(A) The Code Official will apply for an administrative warrant before the Town of Nutter Fort Municipal Court (“Municipal Court”) at the Municipal Court’s next scheduled hearing date, or, if impractical, the next available hearing date;

(B) The tenant has the right to appear at that hearing and contest the issuance of the administrative warrant; and

(C) Failure to appear at that hearing may result in the issuance of an administrative warrant permitting the Code Official to inspect the property in question.

(D) The written notice shall specify the time and date of the next Municipal Court session, and the purpose of the inspection.

(E) The tenant shall sign the notice and return the same to the Code Official prior to the Municipal Court's next scheduled hearing date.

(F) Failure to sign and return the notice prior to the hearing date, or failure to appear at the hearing, shall constitute a waiver of the tenant's right to contest the issuance of the aforementioned administrative warrant.

§ 777.09 EXEMPTIONS.

All single, duplex and multi-family rental units and structures, including boarding and/or rooming houses as defined in the Town Zoning Ordinance, located within the Town shall comply with the requirements of this article except as specifically exempted below:

(A) All residential rental units and/or complexes owned and inspected by the Federal Housing and Urban Development Department (HUD) or the Federal Housing Administration (FHA). Proof of inspection and compliance must be provided.

(B) Hotels, motels, and bed and breakfast establishments as classified in the West Virginia Building Code, as amended.

§ 777.10 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 article, the Code Official shall issue a certificate of use and occupancy within ten days.

(B) After the effective date of this section, either upon an initial application or a renewal application, a certificate of use and occupancy shall be issued for the dwelling unit after the Code Official finds the unit in substantial compliance with this article.

(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 Town's Office during regular business hours.

(E) 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.

§ 777.11 NOTICE OF VIOLATION.

(A) When, in the course of the inspection required under this article, 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 but 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 reason(s) for which it was issued;
- (2) A correction order specifying repairs to be made;
- (3) A reasonable time in which repairs are to be completed; and
- (4) A statement of the owner's right of appeal.

(C) The owner shall, within the time period specified in the notice of violation, correct all deficiencies cited in violation of the State Building Code and Town 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.

(D) 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 shall:

- (1) Be in writing;
- (2) Be served to the owner or owner's agent;
- (3) Contain a description of the property sufficient for identification;
- (4) State the reasons therefor;
- (5) Include a copy of any relevant notice(s) of violation; and
- (6) Include notification of the owner's right of appeal.

(E) Nothing in this article 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.

(F) 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 § 777.99.

§ 777.12 RIGHT OF APPEAL.

(A) Any property owner or agent shall have the right to appeal to the Board of Appeals from a decision of the Code Official where it is alleged that the intent of this article or the codes referenced herein have been incorrectly interpreted, the provisions of this article do not fully apply, or an equivalent remedy to any violation may be employed. Such appeal shall be in writing stating the reasons therefore and shall be submitted to the Code Official within 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 Town Planning and Zoning Code is cited in a notice of violation, appeal shall be to the Board of Zoning Appeals.

§ 777.13 APPLICABILITY OF OTHER LAWS.

This article 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, by the West Virginia Code, or any other applicable laws.

§ 777.14 WAIVERABILITY.

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

§ 777.15 APPLICABILITY OF OTHER CODES AND ORDINANCES.

This article is in addition to all housing requirements of other Town ordinances and the laws of the State, as the case may be.

§ 777.99 PENALTY.

Violation of this article shall constitute a misdemeanor punishable by a fine of not less than \$100 nor more than \$500. 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 from responsibility for full compliance with all other applicable codes and ordinances, including any and all separate fines and penalties imposed thereunder.

Passed by Council of the Town of Nutter Fort on FIRST READING on this 24th day of October, 2023.

Passed by Council of the Town of Nutter Fort on SECOND READING on this 12th day of December, 2023.

MAYOR

ATTEST:

TOWN RECORDER