

Ordinance No. 7412 - Committee Substitute

Introduced in Council:

February 1, 2010

Introduced by:

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Adopted by Council:

April 5, 2010

Referred to:

Rules and Ordinances and  
Finance Committees

Bill No. 7412 : A Bill to enact Chapter 18, Article XXVIII.  
Residential Rental Properties, of the Code of the City of  
Charleston for the purpose of creating registration and  
inspection procedures applicable to property owners who provide  
residential rental properties.

WHEREAS, the City Council of Charleston is aware of a  
growing concern in the community with the general decline in the  
physical condition of privately owned residential rental units;  
and

WHEREAS many residential rental units are the  
responsibility of lenders, trustees and property owners that are  
located out of the area or out of state; and

WHEREAS, there is a greater incidence of problems with the  
maintenance and upkeep of residential properties which are not  
owner occupied as compared to those that are owner occupied; and

WHEREAS the City has an obligation to preserve the health  
safety and welfare of residents and the community and to the  
extent possible protect neighborhoods from declining property  
values, aesthetic decay and loss of character;

**Now, Therefore, Be it Ordained by the Council of the City of**  
**Charleston, West Virginia:**

That the Council for the City of Charleston hereby enacts Chapter 18, Article XXVIII. Residential Rental Properties, of the Code of the City of Charleston for the purpose of creating registration and inspection procedures applicable to property owners who provide residential rental properties, to read as follows:

## **CHAPTER 18 - BUSINESSES**

### **ARTICLE XXVIII. RESIDENTIAL RENTAL PROPERTIES**

#### **DIVISION I - RESIDENTIAL RENTAL LICENSE**

##### **Sec. 18-1170. Purpose and Scope.**

It is the purpose of the City of Charleston's Residential Rental Properties Ordinance to assure that rental housing in the City is maintained in a good, safe, and sanitary condition, to ensure that all Rental Units meet all applicable building, fire, health, safety and zoning codes, and to provide an efficient system for compelling both absentee and local landlords to correct violations and maintain, in proper condition, rental property within the City.

This Article applies to any Rental Unit located within the City.

This Section shall be construed liberally in order to achieve the purposes and intent enunciated herein.

The provisions of this Article shall be in addition to, and not in lieu of, methods or processes otherwise contained in any ordinance or law of the City, County or State.

Any and all Building Commission officials shall have authority to enforce the provisions of this Section and shall be referred to herein as code enforcement officers.

##### **Sec. 18-1171. Exceptions.**

This article specifically excludes the following:

- (a) Transient occupancy in a hotel, motel, inn, bed and breakfast, or other similar lodging facility;

- (b) Group homes, community living arrangements, or foster homes;
- (c) Hospitals, nursing homes, congregate care facilities, assisted living facilities, extended medical care facilities, or other similar facilities;
- (d) Homeless shelters;
- (e) Public housing, owned by a governmental agency, and any housing owned or controlled by the Charleston-Kanawha Housing Authority;
- (f) On-campus residential facilities owned, operated or managed by the University of Charleston or other accredited college or university.
- (g) Single family dwellings that a relative of the Owner occupies and no net income is earned by the Owner.
- (h) Residential facilities owned, operated or managed by or for the benefit of a hospital, or by or for the benefit of any affiliate or supporting organization of a hospital, providing housing exclusively for students, trainees, interns or residents in medical, nursing, medical technologist or other allied health care fields.

**Sec. 18-1172. Definitions.**

As used in this Article, the following terms and words shall have the following meanings, unless the context clearly indicates that a different meaning is intended.

(a) "Rental Unit" means a room or group of rooms within any structure, building, house, mobile home, or any portion thereof, arranged or designed to be occupied for residential sleeping, living, cooking, and sanitation purposes by one or more persons, which is leased or rented from the Owner of such units, or the Owner's designated agent, to any Tenant, whether by day, week, month, year, or any other term. The word Rental Unit shall not include any of the exceptions contained in Section 18-1171 herein.

(b) "Owner" or "Landlord" means one or more Person(s), in whom is vested all or part of the legal title to a Rental Unit, or all or part of the beneficial ownership and a right to present use and enjoyment of the Rental Unit, including a mortgagee in

possession, who rents or leases such Rental Unit, either personally or through a designated agent, to any Tenant.

(c) "Person" means any natural individual, firm, partnership, association, joint stock company, joint venture, limited liability company, limited partnership, public or private corporation or receiver, or any other legal entity, executor, personal representative, government, governmental subdivision or agency, estate, trust, trustee, conservator or other representative appointed by order of any court.

(d) "Responsible Local Agent" means the Owner, or a natural person designated by the Owner as the agent responsible for operating a Rental Unit in compliance with the ordinances adopted by the City. In many instances, the Responsible Local Agent may be the Owner if no other responsible party exists.

(e) "Tenant" means any individual who has, in exchange for monetary or other valuable consideration, the temporary use and occupancy of real property owned by another Person in subordination to that other Person's title and with that other Person's consent; for example, a person who rents or leases a Rental Unit from an Owner.

(f) "Hotel" means a business establishment under single management which provides sleeping accommodations for transients with or without meals, having an annual turnover of room occupancy exceeding three hundred percent (300%) in which the rooms are not directly accessible from an outdoor area.

(g) "Motel" means a business establishment under single management which provides sleeping accommodations for transients with or without meals, having an annual turnover of room occupancy exceeding three hundred percent (300%) in which the rooms are directly accessible from an outdoor area.

(h) "On-campus residential facility" means a building owned or controlled by an educational institution and/or other institution of higher learning, or spaces within buildings owned or controlled by an educational institution and/or other institution of higher learning, where housing is provided exclusively for students.

(i) "City" means the City of Charleston.

**Sec. 18-1173. Residential Rental License Required.**

On July 1, 2010, and thereafter, it shall be unlawful for any Owner to lease or rent a Rental Unit located within the City without possession of a valid Residential Rental License for that Rental Unit, authorized by the City and complying with all provisions of this article.

**Sec. 18-1174. Application Requirements for Residential Rental License.**

(a) The Residential Rental License provided for in this Article shall be in the form of a certificate issued by the City Collector to any Owner making proper application on forms to be prescribed and furnished by the City Collector.

(b) An application for a Residential Rental License may be denied if the Owner has:

1) delinquent Business and Occupation taxes related to income derived by Owner from Rental Units located within the City; or

2) delinquent fire or refuse fees related to the Rental Unit for which the Owner is applying for a Residential Rental License; or

3) fines due and owing the City arising from building, planning or zoning violations related to the Rental Unit for which the Owner is applying for a License.

(c) An application for a Residential Rental License shall be denied if the City has reason to believe following a reasonable and appropriate inquiry, that one or more of the Rental Units is unfit for human occupancy or is located in an unsafe structure.

(d) Applications for a Residential Rental License shall be filed with the City Collector's office, and shall include the following:

(1) The street address of the Rental Unit(s);

(2) The number and types of Rental Unit(s);

(3) The square footage of each Rental Unit;

(4) Name, residence address, telephone number, and e-mail address (if applicable), mobile telephone number, and facsimile number of all Owners of the Rental Unit(s);

(5) Name, residence address, telephone number, and e-mail address (if applicable), mobile telephone number, and facsimile number of the Responsible Local Agent designated by the Owner, for each Rental Unit.

(6) The maximum number of Tenants permitted for each Rental Unit;

(7) The name, address, telephone number, and e-mail address (if applicable), mobile telephone number, and facsimile number of the person(s) authorized to collect rent from the Tenants if other than Owner or Responsible Local Agent;

(8) The name, address, telephone number, and e-mail address (if applicable), mobile telephone number, and facsimile number of the person authorized to make or order repairs or services for the Rental Unit, if in violation of City or State codes, if the person is other than the Owner or the Responsible Local Agent;

(9) The name, address and telephone number of the bank or other financial institution, if any, who holds a lien on the Rental Unit(s) or the land on which the Rental Unit(s) is located;

(10) The name, address and telephone number of the person designated to accept all legal notices or services of process with respect to the Rental Unit(s).

(e) The issuance of a Residential Rental License by the City for any Rental Unit shall not constitute a finding by the City that the Rental Unit is in compliance with any or all requirements imposed by City, State, or Federal law or regulation.

#### **Sec. 18-1175. Responsible Local Agent.**

The Owner and/or designated Responsible Local Agent shall be responsible for all of the following:

(a) operating the licensed Rental Unit in compliance with all applicable City, County or State laws related to building, fire, health, safety, or zoning; and

(b) providing access to the Rental Unit(s) for the purpose of permitting any and all City inspections necessary to ensure compliance with applicable City Ordinances related to building,

fire, health, safety or zoning, including using all commercially reasonable efforts to obtain permission from Tenants for access; and

(c) maintaining a list of the names and number of occupants of each Rental Unit for which he or she is responsible.

**Sec. 18-1176. Accurate and Complete Information.**

All information provided on the license application form for the Residential Rental License shall be accurate and complete. No person shall provide inaccurate information for the license of a Rental Unit, or fail to provide the information required for a Residential Rental License. The Residential Rental License application form shall be signed by both the Owner(s) and the designated Responsible Local Agent, if applicable. Where the Owner is not a natural person, the Owner information shall be that of the president, general manager or other chief executive of the organization who is duly authorized to execute the application. Where more than one person has an ownership interest, the required information shall be provided for each such Owner.

**Sec. 18-1177. Residential Rental License Term and Renewals.**

The effective date for a Residential Rental License shall be from July 1 through June 30 of each year. The Owner shall apply for renewal each year prior to the expiration of the Residential Rental License by completing a renewal application on forms to be prescribed and furnished by the City Collector.

**Sec. 18-1178. Change in Registration Information or Transfer of Property.**

Owners shall notify the City Collector of any change in the designation of the Responsible Local Agent, including a change in name, address, e-mail address, telephone number, mobile telephone number or facsimile number of the designated Responsible Local Agent within (5) business days of the change. Within thirty (30) days of any change of ownership of a Rental Unit, the new Owner shall apply for a Residential Rental License for that Rental Unit.

**Sec. 18-1179. Revocation of Residential Rental License.**

After adequate inquiry and verification of the reasons therefor, the City Collector, upon reasonable written notice to the licensee, may revoke any Residential Rental License issued by him pursuant to the provisions of this Code for any reason which would have been grounds for denial of such license when first issued, for violation of any term or condition of such license, or for violation of any applicable provision of State law, this Code or other ordinance related to building, fire, health, safety or zoning. Any person having an interest in any Residential Rental License so revoked and who disputes such revocation may request that the City Collector further investigate the grounds for revocation and reconsider his action. If the City Collector accedes to such request, he may temporarily suspend or reinstate the Residential Rental License pending his final decision. If the City Collector refuses to accede to such request or if, upon reconsideration, he affirms his revocation of the Residential Rental License, his decision shall be final, subject to such judicial review as may be provided by law.

## **DIVISION II. INSPECTIONS OF RENTAL PROPERTY**

### **Sec. 18-1180. Periodic Inspections.**

In addition to all other inspections permitted herein or otherwise permitted by law, each Rental Unit shall be subject to periodic inspection to determine compliance with the provisions of this Article and all other applicable City, County or State laws related to building, fire, health, safety, or zoning; provided that said periodic inspections shall be conducted no more than once in any 24 month period for each Rental Unit.

### **Sec. 18-1181. Other Bases for Inspections.**

Inspections may also be made by code enforcement officers based upon, but not limited to, one or more of the following:

(a) A colorable complaint received by the City, or any law enforcement agency, indicating that there is a violation of applicable City, County or State law laws related to building, fire, health, safety, or zoning.

(b) An observation by any planning or zoning official, fire or law enforcement officer, or any code enforcement officer of a violation of applicable City, County or State laws related to building, fire, health, safety, or zoning.



(c) A credible report or observation of an unsecured or unoccupied Rental Unit that is damaged by fire;

(d) The need to determine compliance with a notice of violation issued by the City related to the Rental Unit;

(e) A request for an inspection by the Owner or Tenant;

(f) When the Building Commissioner, Fire Chief or their respective designee(s) has a reasonable belief that a condition exists related to the Rental Unit which poses imminent danger to the Tenant or the public.

#### **Sec. 18-1182. Inspection Procedures.**

Code enforcement officers shall be authorized to enter into a Rental Unit at reasonable times to inspect the same, provided that permission to enter the Rental Unit is obtained from the Owner or Responsible Local Agent, and the Tenant. If the Rental Unit is rented during the time of inspection, code enforcement officers shall obtain Tenant's consent for the inspection in writing and on a form which clearly informs the Tenant of their right to refuse to submit the Rental Unit for inspection. The Owner(s) or their Responsible Local Agent shall make commercially reasonable efforts to notify Tenants of planned inspections of their Rental Units. Owner shall also be solely responsible for complying with State law regarding entrance into leased property. If an Owner, Tenant, or other person in charge of a Rental Unit refuses to permit unrestricted access and entry to the Rental Unit, or any part thereof, for an inspection authorized by this section, a code enforcement officer may, upon a showing that probable cause (as the term is defined in *Camara v. Municipal Court*, 387 U.S. 523 (1967)) exists for the inspection of the Rental Unit, petition and obtain an order to inspect and/or a search warrant from a court of competent jurisdiction.

#### **Sec. 18-1183. Notice of Violation; Corrective Action; Re-inspection.**

(a) Whenever a code enforcement officer determines that any Rental Unit is in violation of applicable City or State laws related to building, fire, health, safety or zoning, the code enforcement officer shall provide written notice of the violation to the Owner or Responsible Local Agent and shall

specify a reasonable time period in which the violation must be corrected.

(b) Failure to correct violations within the time period specified by the code enforcement officer may result in an immediate revocation of the Residential Rental License for that Rental Unit and may further subject the Owner to the penalties set forth in Section 18-1186 of this Article, and any other penalties permitted under this Code. No Residential Rental License shall be revoked for failure to remedy a condition so long as the Owner or Responsible Local Agent is, in the discretion of the code enforcement officer, acting with due diligence and taking bona fide steps to correct the violation, including, but not limited to, pursuing remedies under a lease agreement with a Tenant.

(c) Code enforcement officers may, in their discretion, perform one or more re-inspections of a Rental Unit in which violations have occurred for the purpose of verifying corrective action. If, in the discretion of the code enforcement officer, required repairs can reasonably be made at the time of inspection, no re-inspection will be required and no re-inspection fee will be charged.

#### **Sec. 18-1184. Re-Inspection Fee**

The fee for the first re-inspection shall be fifty (\$50.00) dollars per Rental Unit inspected. The fee for the second and all subsequent re-inspections shall be One Hundred (\$100.00) dollars per Rental Unit inspected. All fees shall be paid to the City Collector's Office. If, in the discretion of the code enforcement officer, the need for re-inspection has been a result of intentional damage by the Tenant, the code enforcement officer may waive any re-inspection fee.

#### **Sec. 18-1185. Penalties.**

Any Owner who leases or rents a Rental Unit within the City without possession of a valid Residential Rental License for that Rental Unit, or who otherwise fails to comply with the requirements of this Article shall be subject to a fine of not less than Five Hundred (\$500.00) dollars per Rental Unit. Each month the violation exists shall constitute a separate violation.

464       The imposition of a penalty does not prevent suspension or  
465       revocation of a license, permit or franchise, or other  
466       administrative sanctions.

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468       Violations of this Article that are continuous with respect  
469       to time are a public nuisance and may be abated by injunctive or  
470       other equitable relief. The imposition of a penalty does not  
471       prevent injunctive relief.

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473       Violations of this Article shall be adjudicated through the  
474       Municipal Court of Charleston, West Virginia.

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476       **Sec. 18-1186. Severability.**

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478       The sections, subsection, paragraphs, sentences, clauses  
479       and phrases of this Article and all provisions adopted by  
480       reference in this Article are severable so that if any section,  
481       subsection, paragraph, sentence, clause and phrase of this  
482       Article or any provision adopted by reference in this Article is  
483       declared unconstitutional or invalid by a valid judgment of a  
484       court of competent jurisdiction, such judgment shall not affect  
485       the validity of any other section, subsection, paragraph,  
486       sentence, clause and phrase of this Article or of any provision  
487       adopted by reference in this Article, it being the intent of  
488       council that it would have enacted this Article and all  
489       provisions adopted by reference in this Article without such  
490       invalid or unconstitutional provisions.