

ORDINANCE NO. 30666

AN ORDINANCE AMENDING CODE SECTIONS REGARDING THE RESIDENTIAL RENTAL CERTIFICATE OF OCCUPANCY AND INSPECTION PROGRAM TO CLARIFY THE PROGRAM'S APPLICATION.

WHEREAS, the City of Fairbury has passed and approved ordinances creating, codifying, and amending the City of Fairbury Residential Rental Certificate of Occupancy and Inspection Program (the "Program");

WHEREAS, the City of Fairbury finds it expedient to make certain amendments to the Program as provided herein;

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FAIRBURY, JEFFERSON COUNTY, NEBRASKA AS FOLLOWS:

Section 1: That City Code § 150.11 is amended as follows:

150.11 Definitions. For purposes of this Section, the following definitions shall apply:

"Rental Unit" shall mean any residential dwelling within the City's jurisdiction, regardless of location therein, that is, whether by written agreement or otherwise, rented or leased or to be rented or leased to tenants, or is otherwise occupied or to be occupied for consideration by a person or persons other than the owner of record of such dwelling, for residential purposes on a non-transient basis, when one or more tenants or such persons reside or are to reside on the property or rents or leases or are to rent or lease the property for thirty consecutive days or longer.

"Owner" shall mean any Person who is the owner of record in whole or in part, of one or more Rental Units.

"Person" shall mean any individual or entity.

"Code Enforcement Authority" shall mean the City of Fairbury Board of Health or the code enforcement officer of the City of Fairbury.

"Certificate of Occupancy" shall mean a permit issued by the City, pursuant to this Ordinance and any regulations promulgated by the Code Enforcement Authority, that permits under this Section an Owner to rent or lease a Rental Unit.

150.12 Rules of Construction. This Section shall be liberally construed and applied to promote its underlying purpose, which is to encourage the maintenance and improvement of the quality of rental housing in the City.

150.13 Compliance. No Person shall offer the use of a Rental Unit to any Person unless in accordance with the provisions of this Section.

150.14 Scope. This Section shall apply to all Rental Units, but shall not apply to the following:

(i) facilities administered by the Fairbury Housing Authority;

(ii) transient occupancy in hotel, motel or other similar lodgings that are held out to the public as such public accommodations;

(iii) persons who reside in a single-family dwelling unit but who wish to lease to individuals or a family while they are absent from the city for short periods of time, not to

exceed one year, and who intend to return to their single-family dwelling unit at the expiration of the lease period;

(iv) persons who occupy the premises and rent to no more than two occupants; *provided that* this exception does not apply to the renting of basements, attics, or garages which are used as habitable spaces

150.15 Certificate of Occupancy; Requirement. On and after April 1, 2015, no Person may use real estate for the purpose of erecting or affording to any Person the use of a Rental Unit thereon without having first obtained a Certificate of Occupancy from the office of the Code Enforcement Authority pursuant to this Section.

150.16 Certificate of Occupancy; Form. The form of the Certificate of Occupancy shall be as determined by regulations promulgated by the Code Enforcement Authority.

150.17 Certificate of Occupancy; Application. Any Owner wishing to rent or lease or afford to any Person the use of a Rental Unit must apply for a Certificate of Occupancy for such Rental Unit with the office of the Code Enforcement Authority. The application shall be in a form as determined by the Code Enforcement Authority, and shall require the following information:

- (1) Name of Owner;
- (2) Address of Owner;
- (3) Street address of Owner;
- (4) Street address of Rental Unit(s);
- (5) Brief description of type and number of Rental Unit(s);
- (6) Name and address of Owner's agent, if any, authorized to receive notification of complaints, damages, emergencies, substandard conditions or other communications, including service of process. The address of any agent so designated shall be within this State. Any Owner who does not reside in the state of Nebraska shall be required to designate a resident agent.
- (7) Certificate of Occupancy fees as established by the Code Enforcement Authority. Such fees are compensation for necessary paperwork and work to inspect Rental Units.

The application shall be signed by the Owner. Whenever ownership of a Rental Unit changes, the existing Certificate of Occupancy shall expire upon such change of ownership, and the new Owner shall complete a new application and must be issued a new Certificate of Occupancy. Notification of the Owner or Owner's agent at the address shown on the application shall constitute sufficient notice pursuant to any provision of this Section. It is a violation of this Section for an Owner to rent or lease or afford to any Person the use of a Rental Unit for which a Certificate of Occupancy has not been issued or for which a Certificate of Occupancy is not currently valid in accordance with this Section.

150.17.1 Duration. The first Certificate of Occupancy issued to an Owner for a Rental Unit shall be a One Year Certificate valid for 12 months following the date of issuance. The Certificate of Occupancy issued to such Owner for such Rental Unit following expiration of a One Year Certificate shall be a Two Year Certificate valid for 24 months following the date of issuance. The Certificate of Occupancy issued to such Owner for such Rental Unit following expiration of a Two Year Certificate shall be a Three Year Certificate valid for 36 months

following the date of issuance. Each subsequent Certificate of Occupancy issued to an Owner for a Rental Unit following expiration of a Three Year Certificate therefor shall be a Three Year Certificate. Should a Rental Unit at any time be the subject of a Special Inspection, any subsequent Certificate of Occupancy issued therefor by the Code Enforcement Authority may be the next duration-advancing Certificate of Occupancy as provided in this subsection, any lower-duration Certificate of Occupancy, or the same-duration Certificate of Occupancy in the discretion of the Code Enforcement Authority.

150.18 Certificate of Occupancy: General Inspection. In addition to the other requirements of this Section and any regulations promulgated by the Code Enforcement Authority not in conflict with this Section, it shall be a requirement to obtain a Certificate of Occupancy to pass an inspection of the Rental Unit carried out by the office of the Code Enforcement Authority (a "General Inspection"), or to provide proof to the Code Enforcement Authority of an Alternate Inspection as provided herein. Such General Inspection shall require the Rental Unit to meet the inspection check list promulgated by the Code Enforcement Authority and any other applicable local and state property maintenance provisions included as part of the inspection by the Code Enforcement Authority. Each General Inspection shall apply to the Certificate of Occupancy issued for the Rental Unit inspected, and a new General Inspection or approved Alternate Inspection shall be required for the issuance of a new Certificate of Occupancy following the expiration for any reason of a prior Certificate of Occupancy. Owners shall be notified in writing of any reason for failure of a General Inspection and disapproval of a Certificate of Occupancy. For Rental Units that do not pass the General Inspection, Owners may request one re-inspection for no additional fee following correction of the issues identified by the Code Enforcement Authority or designated inspector. There shall be no limit to the number of re-inspections authorized per Rental Unit, but there shall be an additional fee as established by the Code Enforcement Authority per re-inspection after the initial re-inspection.

150.19 Alternate Inspection. In lieu of a General Inspection, it shall be a requirement to obtain a Certificate of Occupancy to provide the Code Enforcement Authority proof of the Rental Unit passing an inspection, within the past 6 months prior to applying for a Certificate of Occupancy, conducted by or at the requirement of another governmental entity possessing authority to conduct or require property inspections, that meets the minimum inspection requirements of the Code Enforcement Authority and that is approved by the Code Enforcement Authority, as determined by regulations promulgated by the Code Enforcement Authority consistent with this Section ("Alternate Inspection"). Each approved Alternate Inspection shall apply to the Certificate of Occupancy issued for the Rental Unit inspected, and a new approved Alternate Inspection or General Inspection shall be required for the issuance of a new Certificate of Occupancy following the expiration for any reason of a prior Certificate of Occupancy. Owners shall be notified in writing of any reason for disapproval of an Alternate Inspection and disapproval of a Certificate of Occupancy. For Rental Units that do not receive approval for an Alternate Inspection, Owners may request a General Inspection as provided herein.

150.20 Special Inspection. A special inspection may be done at the discretion of the Code Enforcement Authority, upon the written, signed request of any resident of the City, any governmental agency, or the Rental Unit's tenant, the tenant's legal representative, the Owner, or the Owner's agent (a "Special Inspection"). A Special Inspection shall be confined to the defects complained of, if any, by the person requesting the inspection unless the Code Enforcement Authority determines that the condition of the Rental Unit or premises has deteriorated since the last General Inspection to such an extent that a complete inspection is required to effectuate the purposes of this Section, in which case a complete new inspection of the entire Rental Unit and

premises may be performed. If a complete General Inspection is performed, a new Certificate of Occupancy shall be issued upon passage of the General Inspection, with a duration as provided by the Code Enforcement Authority pursuant to Section 150.17.1.

- 150.21 Inspection; Entry to Premises. Unless waived by the Owner or tenant, the following procedure shall be used to obtain entry to Rental Units for the purpose of any inspection. The Owner shall be contacted and a date shall be established for inspection. The Owner shall then furnish to the Code Enforcement Authority or designated inspector a current list of tenants in each affected Rental Unit. The Code Enforcement Authority or designated inspector shall then send a letter and a postage-paid self-addressed postcard by regular first class mail to each tenant so reported by the Owner. If there is evidence that the tenant received the letter, but no other response is received from the tenant, consent to enter will be presumed. An official record shall be maintained of all notices. The Owner shall be responsible for granting access for inspection upon presentation of a copy of the official record of notices and responses. If either the tenant or the Owner refuses entry for inspection after proper notification, the Code Enforcement Authority or designated inspector shall not inspect without first obtaining an inspection warrant from a court of competent jurisdiction.
- 150.22 Retaliatory Eviction Prohibited. It shall be a violation of this Section for any Owner or Owner's agent to bring or threaten to bring an action for possession of the Rental Unit for the purpose of retaliating against a tenant for requesting a special inspection as provided for in this section.
- 150.23 Violation. In addition to any penalty that may be imposed pursuant to § 10.99 of this Code for any violation of the Code, the Code Enforcement Authority may:
- (A) Declare a Rental Unit to be unsafe pursuant to the Property Maintenance Code, or take other action pursuant to that Code.
 - (B) Issue an emergency order where immediate action is required to protect the health and safety of the public or of the occupants of the Rental Unit.
 - (C) Seek any of the additional remedies which provide for an appropriate action or proceeding at law or in equity against the person responsible for the violation for the purpose of ordering the person to:
 - (1) Restrain, correct or remove the violation or refrain from any further execution of work causing a violation;
 - (2) Restrain or correct the erection, installation, or alteration of such structure;
 - (3) Require the removal of work in violation, or part thereof erected, construed, installed or altered in violation of, or not in compliance with, the provisions of this Code, or in violation of a plan or specification under which an approval, permit or certificate was issued.
- 150.24 Appeals. Appeals of decisions of the Code Enforcement Authority pursuant to this Section may be had to the City Council, in the same manner as appeals of nuisance declarations pursuant to this Code.
- 150.25 Civil Enforcement. Any violation of this Section is hereby declared to be a nuisance under this Code, and as such may be abated in a manner as nuisances are now or may hereafter be abated pursuant to

this Code, or may be enjoined and abated by a suit in equity, in the manner provided by law.

Section 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3: That this ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

PASSED AND APPROVED THIS 20th DAY OF June, 2017.

CITY OF FAIRBURY,
JEFFERSON COUNTY,
NEBRASKA

BY: Homer L. Ward
Homer L. Ward, Mayor

ATTEST:

Carissa Lufkin
Carissa Lufkin, City Clerk

4819-3030-6112, v. 1



