

ORDINANCE NO. 1705

AN ORDINANCE OF THE CITY OF FAIRWAY, KANSAS, REVISING AND REPEALING ARTICLE IV ENTITLED "RENTAL UNIT AND NON-ONWER-OCCUPIED DWELLING REGISTRATIONS AND INSPECTIONS" OF CHAPTER 7 ENTITLED "LICENSES, TAXATION AND MISCELLANEOUS REGULATIONS" OF THE CODE OF THE CITY OF FAIRWAY, KANSAS.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FAIRWAY, KANSAS:

SECTION 1. That Article 4 of Chapter 7 of the Code of the City of Fairway is hereby revised to read as follows:

ARTICLE IV. - RENTAL UNIT, SHORT TERM RENTAL UNIT AND NON-OWNER-OCCUPIED DWELLING LICENSE AND INSPECTIONS

Sec. 7-100 – Purpose

The purpose of this article is to protect the public health, safety and general welfare of the people of the City with regard to rental housing, including:

- (a) Protecting the character and stability of residential areas;
- (b) Correcting and preventing housing conditions that adversely affect or are likely to adversely affect the life, safety, general welfare and health, including the physical, mental and social well-being of persons occupying dwellings;
- (c) Providing minimum standards for the maintenance of existing residential buildings, thus preventing slums and blight;
- (d) Preserving the value of land and buildings throughout the City.

Section 7-101 – Definitions

- (a) *Owner* shall mean any person, partnership, firm or corporation who, alone, jointly or severally with others is the title holder on record of any property upon which a dwelling is located. For purposes of the article, owner shall include the titleholder, any employee or agent of the titleholder, a trustee serving for the benefit of any titleholder, a conservator of the estate of any titleholder, or an executor or administrator of the estate of any deceased titleholder.
- (b) *Property* shall mean the lot, tract, or parcel of real estate upon which a dwelling is located.
- (c) *Single family dwelling* is any dwelling located on property which has been zoned as Single Family Residence District pursuant to the zoning laws of the City. Occupancy allows 1 (one) family.
- (d) *Family* (Sec. 15-798. - Defined terms.) Any number of people occupying a single dwelling unit living together as a single housekeeping unit, related by blood, marriage, formal adoption, in a legal foster family relationship, or other recognized housekeeping unit entitled by law to the benefits of single-family residential surroundings, plus not more than two (2) additional people not so related.

- (e) *Dwelling* is any building or portion thereof, which is designed or used for residential dwelling purposes.
- (f) *Short-term rental* property means any dwelling, dwelling unit, rooming unit, room or portion of any dwelling unit, rooming unit or room rented or leased for valuable consideration for periods of time less than 30 days. The unit must be located within the principal building and may not be located within an accessory structure.
- (g) *Owner Occupied Dwelling* shall mean a dwelling where the owner of record makes it their primary residence as the person's place of habitation and to which, whenever the person is absent, the person has the intention of returning. When a person eats at one place and sleeps at another, the place where the person sleeps shall be considered an owner-occupied dwelling.
- (h) *Non-owner Occupied Dwelling* shall be where the property owner of record does not reside at the property, allowing an occupant to make their residence at the property in exchange for no valuable consideration. Non-owner occupied dwellings must meet the registration standards and inspections.
- (i) *Rental Property* shall mean Dwelling units, including single-family dwellings and dwelling units in multiple-family dwellings where the property owner engages in the business of renting or leasing said dwelling for valuable consideration for periods of time in excess of 30 days.
- (j) *Duplex* is a dwelling designed for or occupied exclusively by two families.
- (k) *Multi-family dwelling* is a dwelling or portion thereof designed for or occupied by three or more families, but which may have joint services or facilities for more than one family.

Sec. 7-102. - License required.

No person shall allow to be occupied, rent to another for occupancy or offer to rent to another for occupancy, any dwelling unit unless the owner has first obtained a license or provisional license under the terms of this article.

Sec. 7-103. - Applicability and exceptions.

- (a) The provisions of this article shall apply to all "Rental" and Short-term Rental properties within the City of Fairway. Licensing and inspection fees apply.
- (b) Short-term Rentals are allowed no more than 2 persons per each bedroom being rented plus one additional person per dwelling unit, not to exceed 8 guests, in the dwelling unit at any given time. Occupants need not be restricted to a single family.
- (c) Short-term Rentals may not be rented or offered for use as reception space, party space, meeting space, or for other similar events open to non-resident guests.
- (d) No exterior evidence that the property is being used as a short-term rental shall be allowed, including signs.
- (e) The provisions of this article shall apply to "Non-Owner Occupied": Only inspection fees apply.
- (f) The provisions of this article shall not apply to bed and breakfast, hotels, motels, jails, licensed nursing homes, licensed board and care homes and hospitals.
- (g) The provisions of this article shall not apply to a bona fide sale of a residential rental dwelling to the resident/occupant by a contract for deed or similar instrument; provided that any such instrument or an affidavit of equitable interest which specifically identifies the instrument is properly executed and filed of record with the Register of Deeds of the County, and a file-stamped copy of said instrument is provided to the City Clerk's office.

Sec. 7-104. - Scope of license.

- (a) One license shall be issued for each building containing one (1) or more dwelling units and shall be deemed to cover all dwelling units under single ownership in each building.
- (b) The City shall have the authority to exercise its license powers under this article, including the power to issue, deny, revoke and suspend licenses, with respect to an entire building or only a portion of a building.

Sec. 7-105. - Declaration of owner-occupied dwelling units as residence not for rent.

The City Clerk's office shall annually obtain a situs report from the County Clerk's office. Individuals authorized to execute the duties of the City Clerk's office in this article shall be the City Administrator/City Clerk or his designee. For each lot or parcel of ground that the tax bill is sent to a different address than is listed for that lot or parcel of ground, the City Clerk's office shall send a request for declaration to the property owner on a form furnished by the City Clerk's office. The City Clerk's office shall also send a request for declaration form to the property owner of any property located within the City that the City Clerk's office reasonably believes may be subject to a license under this article. The request for declaration form shall indicate the property owner's name, mailing address and the address of the property that is the subject of the request for declaration, and shall request that the property owner declare whether the property listed on the request for declaration form is occupied by the property owner as their residence and not offered as a rental, short-term rental, or non-owner occupied. Failure to return the request for declaration form to the City within thirty (30) days from issuance shall subject the property owner to a penalty fee of one hundred dollars (\$100.00) to cover the additional administrative costs necessary to investigate whether or not the property is owner occupied.

Sec. 7-106. - Application for license.

The owner of existing rental, short-term rental or non-owner-occupied dwellings shall make a written application to the City Clerk's office for a license and a permit authorizing the rental or short-term rental, non-owner-occupancy of residential dwellings. In addition, the owner of each dwelling constructed or converted to rental, short term rental, or non-owner-occupied usage after the effective date of the ordinance from which this article is derived shall make written application to the City Clerk's office for a license as provided in this section prior to initial occupancy. An application shall be made on a form furnished by the City Clerk's office for this purpose and shall set forth the following information:

- (1) Name, residence address, e-mail address and telephone number of the owner of the dwelling. If the owner is a partnership, the name of the partnership, and the name and residence address of the managing partner. If the owner is a corporation, the name and address of the corporation, and the name and residence address of the chief operating officer. In cases where the owner of a dwelling resides outside of the County, the owner shall designate an agent/contact person who shall reside in the County.
- (2) If the owner has appointed an agent authorized to accept service of process and to receive and give receipt for notices, the name, residence address e-mail address and telephone number of such agent.
- (3) Every applicant, whether an individual, partnership or corporation, shall identify in the application, by name, residence address, e-mail address and telephone number, a natural person who is actively involved in, and responsible for, the maintenance and management of the premises. A post office box is not acceptable as an address for such person. The individual designated in this subsection may also be the owner of the dwelling or an agent identified in Subsection (2) of this section.
- (4) Applicant shall declare preferred manner of communications, email or first-class mail.

- (5) Applicant shall declare if the property is a rental, short-term rental, or non-owner occupied.
- (6) Street address of the dwelling.
- (7) Number of dwelling units within each building; including correct street addresses for each individual unit.

Sec. 7-107. - Provisional licenses.

- (a) The owner of a rental, short-term rental or non-owner-occupied dwelling who has submitted an application and paid the license fee required by this article shall be considered operational under a provisional license. A provisional license shall authorize the occupancy of dwelling units pending issuance of a license.
- (b) A provisional license indicates only that the owner has submitted an application for a license and paid the required fee, and that the license shall be issued or denied after the building and all dwelling units have been inspected for compliance with the minimum standards set forth in this article. A provisional license is not a determination that the building complies with the minimum standards required by this article.

Sec. 7-108. - Expiration, renewal.

The license period shall run from July 1st to June 30th of the following year. All licenses and provisional licenses issued under this article shall expire on June 30 of each year, subject to renewal year to year in the manner provided in this article. The City Clerk's office will send a notice of renewal and application for renewal to each registrant on or before March 31 of each year. The purpose of the notice and application is to obtain information sufficient to verify the accuracy of the registrant's information currently on file and to request the consent of the tenant or occupant of each dwelling unit to facilitate the inspections required as a condition to license renewal. No license or license shall be granted without payment of the required license fees.

(Prior Code, § 7-1107; Ord. No. 1309)

Sec. 7-109. - License nontransferable.

A license or provisional license issued under this article is nontransferable. A new license application shall be required for each change of ownership of a rental, short-term rental or non-owner-occupied dwelling.

Sec. 7-110. - License and inspection fees.

- (a) The original and annual license fees for a rental, short-term rental or dwelling license or provisional license shall be set by resolution adopted by the City Council and as set forth in the fee schedule as adopted by ordinance. The license fees are estimated and intended to satisfy the regulatory costs of this article. If the actual cost of administration of this regulatory program exceeds the fee charged, the City may bill the registrant or applicant for the excess costs that can be specifically identified to the license. A change in ownership shall require a new license application and payment of the license fee. An increase in the number of registered dwelling units during the license year shall require an amended license application and payment of an additional license fee to cover the additional units.
- (b) Inspection fees as set forth in the fee schedule as adopted by ordinance will be assessed for each inspection of a rental, short term or non-occupied dwelling unit in a calendar year which is necessary due to a determination that the dwelling unit does not meet the standards or requirements of Section 7-111.

- (c) The original license fee shall be due and payable at the time an application for a rental, short-term rental license is made. If the original license occurs after January 1st of the current licensing period the licensing fee shall be prorated to 50% of the rental license fee as set forth in the fee schedule as adopted by ordinance. The original prorated license will expire on June 30th of the current year. The annual license fee imposed by this section is due and payable on June 15 of each year.
- (d) Any person failing to pay a license fee, inspection fee or other cost of administration required under this section within thirty (30) days after it becomes due shall pay a penalty of ten percent (10%) of the amount for each thirty (30) days' delinquency. The penalty will be assessed on the fifteenth of each month delinquent. If any fee, cost or penalty associated with the provisions of this article remain unpaid after ninety (90) days after it becomes due, the fee, cost and/or penalty shall be assessed and charged against the lot or parcel of ground on which the dwelling unit is located. If the fee, cost and/or penalty is to be assessed, the City Administrator/City Clerk, at the time of certifying City taxes, shall certify the fee, cost and/or penalty, and the County Clerk shall extend the same on the tax roll of the County against the lot or parcel of ground, and it shall be collected by the County Treasurer and paid to the City in the same manner as City taxes are collected and paid. Assessments made under this section shall be a lien on the property and the lien shall be superior to all liens except general tax liens.
- (e) All fees required by this article shall be nonrefundable.

Sec. 7-111. - Inspections.

- (a) *Purpose* . Inspections are necessary under this article to protect the public health, safety and general welfare of the visitors to and citizens of the City in rental, short-term rental and non-owner-occupied dwellings by maintaining the character and stability of residential areas; enabling the City to prevent and correct housing conditions that adversely affect or are likely to adversely affect the life, safety, general welfare and health of persons occupying these dwellings; providing an additional mechanism for the City to enforce minimum standards for the maintenance of existing residential buildings; and by preserving the value of land and buildings throughout the City.
- (b) *Frequency* . Inspections will be required as a prerequisite to the original issuance of a license under this article, and then on an annual basis, unless a one (1) year waiver of inspection is granted as provided for in Subsection (c) of this section, as a prerequisite to the renewal of a license, as provided in Section 7-106. The Code Official shall conduct inspections for license renewal upon receipt of the application. All references to the Code Official in this article shall mean the Code Official or his designee.
- (c) *Waiver of inspection* . Beginning with the 2014-2015 rental licensing period, if a property passes the annual inspection on the first inspection without a warning letter and a license is issued, that property is eligible for a one (1) year waiver of inspection for the following rental licensing period. No property is eligible for a waiver of inspection for longer than one (1) year. This section does not constitute a waiver of the business license required for rental properties under Section 7-28(4). The one (1) year waiver of inspection is forfeited if at any time the property is found to be in violation of the City's property maintenance code.
- (d) *Scope* . Inspections for the original issuance and renewal of license are limited to the exterior of all provisionally licensed and licensed dwellings to verify that these dwellings satisfy the minimum standards established in the property maintenance code, adopted as amended, in Chapter 6, Article III of this Code. Nothing in this section shall be construed to prohibit an interior inspection by the Code Official of any dwelling unit when requested by the tenant or occupant of the dwelling unit or to prohibit the Code Official from conducting any inspections otherwise authorized by law.
- (e) *Manner* . Inspections of the dwelling units shall be conducted by the Code Official in the manner prescribed in the City's property maintenance code.

Sec. 7-112-. - Issuance of license.

When, upon completion of an inspection of the dwelling unit(s), the Code Official, in his discretion, finds that the minimum standards for licensing have been met, a license may be issued. No licenses shall be issued until all past due fees and penalties are paid in full.

Sec. 7-113. - License standards.

The following minimum standards and conditions shall be met in order to hold a rental or non-owner-occupied dwelling license under this article. Failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation or suspension of a license.

- (1) The registrant or applicant shall have paid the required license fee.
- (2) Rental or non-owner-occupied dwelling units shall not exceed the maximum number of dwelling units permitted by this Code.
- (3) No rental or non-owner-occupied dwelling or dwelling unit shall be over-occupied or illegally occupied in violation of this Code.
- (4) The rental or non-owner-occupied dwelling shall not have been used or converted to rooming units in violation of this Code.
- (5) The rental or non-owner-occupied dwelling shall not be under condemnation as hazardous or unfit for human habitation under this Code or a State statute.
- (6) The owner shall not suffer or allow weeds, vegetation, junk, debris, or rubbish to accumulate repeatedly on the exterior of the premises so as to create a nuisance condition under Chapter 6, Article II of this Code.
- (7) The rental or non-owner-occupied dwelling or any dwelling unit therein shall not be maintained in a manner that would constitute a violation of Chapter 6, Article II of this Code.
- (8) The rental or non-owner-occupied dwelling shall not have delinquent real estate taxes due and owing. For purposes of this article, a license is considered delinquent in the payment of real estate taxes when any taxes owed have gone unpaid for a period of thirty (30) days.

Sec. 7-114. - Determination of noncompliance; notice.

- (a) If the Code Official determines that a building or dwelling unit fails to meet the licensing standards, he shall mail a notice to the owner or the owner's agent. The notice shall specify the reasons why the building or unit fails to meet the licensing standards and shall include a copy of the inspection report if applicable. The notice shall also indicate that the license holder or applicant has ten (10) days to correct the defects, after which the Code Official will request that the City Clerk's office deny, refuse to renew, revoke, or suspend the license or provisional license.
- (b) The time period set forth in Subsection (a) of this section shall not renew nor be extended by the sale or transfer of any interest in the property or dwelling unless specifically authorized by the Code Official.

Sec. 7-115. - Denial; nonrenewal; revocation; suspension.

- (a) If after any period for compliance under Section 7-112 has expired, the Code Official determines that the dwelling still fails to comply with the standards, the City Clerk's office shall mail the owner a notice of denial, nonrenewal, revocation, or suspension of the license or provisional license. The notice shall:
 - (1) State that the Code Official has determined that the building fails to comply with the licensing standards for rental or non-owner-occupied dwellings, as set forth in Section 7-111;

- (2) State the specific reasons why the dwelling fails to meet licensing standards, including copies of applicable inspection reports;
 - (3) State that the City Clerk's office will deny, refuse to renew, revoke, or suspend the license or provisional license unless the owner appeals the determination within fifteen (15) days after receipt of the notice, in the manner provided in Section 7-114;
 - (4) State that after denial, nonrenewal, revocation or suspension, the dwelling or the affected dwelling units therein must be vacated, and shall not be reoccupied until a license is issued after approval by the Code Official;
 - (5) Describe how an appeal may be filed under Section 7-114.
- (b) The Code Official shall cause a notice to tenants to be prominently posted on the building. The notice shall indicate that the rental or non-owner-occupied dwelling license for the building has been denied, revoked, or suspended, whichever is applicable; that the action will become final on a specific date unless the building owner appeals and requests a hearing; that tenants may be required to vacate the building when the action becomes final.

Sec. 7-116. - Appeals procedure.

- (a) Any person wishing to appeal the determination of denial, nonrenewal, revocation, or suspension of a license or provisional license shall file a written notice of appeal with the City Clerk's office within fifteen (15) days after receipt of the notice of denial, nonrenewal, revocation, or suspension. The notice shall contain a statement of the grounds for the appeal.
- (b) The appeal will be heard by the City Council. The City Council may promulgate its own rules and procedures for the appeals procedure consistent with this Code and this article.
- (c) At the hearing, the City Council shall hear all relevant evidence and argument. The City Council may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.
- (d) The City Council shall render its decision in writing within fifteen (15) days after the close of the hearing. The decision shall determine whether the building, or dwelling units therein, meets the licensing standards, and shall specify the factual basis for the determination.
- (e) The City Council may affirm, modify or reverse the action of the City Clerk's office.
- (f) The final decision of the City Council shall be mailed to the license holder or applicant.
- (g) A notice to tenants of the final decision shall be mailed to each occupant and prominently posted on the building. The notice shall indicate the date upon which tenants must vacate the building, if required to do so, and shall clearly indicate which dwelling units are affected.

Sec. 7-117. - Vacation of affected dwelling units.

When an application for rental or non-owner-occupied dwelling license has been denied, or a license been revoked, suspended, or not renewed, the Code Official shall order the dwelling or the affected dwelling units therein vacated, giving tenants a reasonable time to arrange new housing and to move their possessions.

Sec. 7-118. - Operation of rental or non-owner-occupied dwelling unit without a license a misdemeanor.

Any person who violates, fails to comply with a provision of this article, or fails to comply with the requirements of this article shall be prosecuted in the Municipal Court of the City. A person who is convicted of any violation of this article is guilty of a misdemeanor, punishable as provided in Section 8-209, provided that a person who is convicted for allowing to be occupied, renting to another or offering to rent to another any rental or non-owner-occupied dwelling unit, without a license, as required in Section 7-100, or who violates the provisions of Section 7-118, shall be subject to a fine of not less than two

hundred and fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Sec. 7-119. - Remedies in this article not exclusive.

The remedies provided in this article are not exclusive. They are in addition to, and do not supersede or preempt, other remedies such as condemnation, written violation orders and warnings, criminal charges for violation of substantive provisions of any City or State code relating to housing maintenance, fire safety, building codes, zoning, health, and the like. Further, the remedies in this article do not supersede or affect the legal rights and remedies of tenants provided under State law or this Code.

Sec. 7-120. - Duties of licensee.

Every holder of a rental or non-owner-occupied dwelling license or provisional license shall:

- (1) Promptly notify the City Clerk's office in writing of any change of information contained in the last license application filed.
- (2) Maintain a current license of all tenants and other persons with a lawful right of occupancy to a dwelling unit within the building. The license shall be kept current at all times. The license shall designate the person who has possession of the license. The license shall be made available for inspection by the Code Official thirty (30) days after the Code Official has caused to be filed a complaint for violations of any applicable ordinance or code relating to property.
- (3) The owner of any dwelling that is required to be licensed by this article shall, prior to the time of sale of the dwelling, notify the buyer in writing of all unabated orders or violations issued by the Code Official pertaining to the dwelling, as well as the requirement that the dwelling, upon acquisition by a new owner, must be licensed with the City Clerk's office. A copy of the notification shall be mailed to the Code Official within five (5) days of furnishing the notification to the buyer. If a corporation owns the dwelling, an officer of that corporation shall carry out the notification required by this section. If the property is owned by more than one (1) person, a notification by one (1) of the owners shall satisfy this section. For the purposes of this section, the term "time of sale" shall be construed to mean when a written purchase agreement is executed by the buyer or, in the absence of a purchase agreement, upon the execution of any document providing for the conveyance of a dwelling required to be licensed.

Sec. 7-121. - Right of entry.

Absent exigent or emergency circumstances, whenever necessary to make an inspection to enforce any of the provisions of this article, or whenever the Code Official has reasonable cause to believe that there exists in any dwelling, which is required to be registered by this article, any condition or violation that makes that building or premises unsafe, dangerous or hazardous, the Code Official may enter the building or premises at all reasonable times to inspect the same or to perform any duty imposed by this article, provided that if the building or premises is occupied, he shall first present proper credentials and request entry; and if such building or premises is unoccupied, he shall first provide notice and request entry pursuant to Section 7-120. If entry is refused, the Code Official shall have recourse to every remedy provided by law to secure entry.

Sec. 7-122. - Notices.

Whenever a notice is required to be sent to or served upon the licensee of a rental or non-owner-occupied dwelling under this article, notice shall be deemed sufficient if sent by first class mail or e-mail address, if this method of delivery is selected on the license application, to the owner or owner's designated agent at the address or e-mail address, if this method of delivery is selected in the last license application filed under Section 7-104. Notice may also be sent to the person identified as responsible for

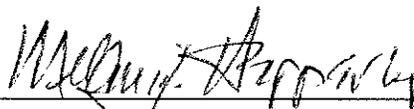
the maintenance and management of the premises. If the dwelling unit is not licensed pursuant to this article, notice is deemed sufficient if sent by first class mail to the person listed with the County, for the purposes of paying taxes on the property. Notice so mailed is sufficient whether actually received or returned.

Secs. 7-121—7-138. - Reserved.

SECTION 2. That existing Article IV of Chapter 7 of the Code of the City of Fairway, Kansas is hereby repealed.

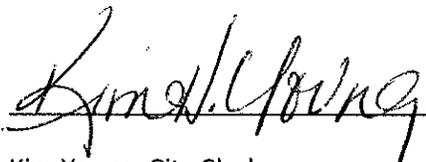
SECTION 3. That this Ordinance shall become effective upon adoption and publication of its summary in the official City newspaper.

PASSED by the City Council this 14th day of OCTOBER 2019. **APPROVED** by the Mayor.



Melanie Hepperly, Mayor

ATTEST:



Kim Young, City Clerk

APPROVED AS TO FORM:



Stephen P. Chinn, City Attorney