

Ordinance 09-05-10

Introduced: May 4, 2009

Adopted: June 1, 2009

AN ACT TO CREATE CHAPTER 120 IN THE TOWN OF MIDDLETOWN CODE TO PROVIDE FOR RESIDENTIAL RENTAL PROPERTY REGISTRATION, INSPECTION, AND TO ESTABLISH VIOLATIONS AND PENALTIES FOR THE SAME WITHIN THE TOWN OF MIDDLETOWN

BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MIDDLETOWN (a majority of the members elected thereto concurring therein):

Section 1. That the Town of Middletown, Delaware, Code of ordinances is hereby amended by creating a new Chapter 120 and placing therein the following:

“CHAPTER 120 RENTAL PROPERTIES

120-1: Purpose

It is the express intention of The Town of Middletown that landlords renting residential properties within the Town of Middletown corporate limits ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of dwellings operated for lease to the public. The health, safety and welfare of the occupants of the dwellings are of the utmost importance to the Town, as are the neighborhoods in which these dwelling units are located.

120-2: Definitions

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

1. *Authorized agent* means the person or company that is available on a twenty-four-hours-a-day, seven-days-a-week basis and who has been registered with the Town of Middletown Licensing and Inspections Department as being authorized to accept service for any landlord of any inquiry, notice, complaint or violation regarding the health, safety and/ or condition of a rental unit. In the event that a landlord is a non-resident individual or foreign artificial entity, then a registered agent may serve as the authorized agent but only so long as that person or company is available in the State of Delaware, or within a fifty (50) mile radius of the incorporated Town of Middletown on a twenty-four-hours-a-day, seven-days-a-week basis to address any inquiry, notice, complaint or violation regarding the health, safety and/ or condition of the rental unit.

2. *Commercial or Industrial Property* means any premises used for commercial or industrial purposes.
3. *Department* means the Licensing and Inspection Department of the Town of Middletown and all designated employees, or any successor department or division that may be established.
4. *Dwelling unit* means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
5. *Landlord* means owner, lessor or sub-lessor of a rental unit or a managing agent for the owner, or any person authorized to exercise any management of a rental unit, including any person who is authorized to receive any rent or any part of the rent, other than as a bona fide purchaser, and who has no obligation to deliver any portion of that rent to another. It also shall mean any person held out by the owner or the landlord as the appropriate person to accept performance or any person with whom the tenant normally deals as a landlord.
6. *Owner* means any person, agent, operator, firm or corporation having a legal or equitable interest in a property; or recorded in the official records of the State, county, or municipality as holding title to property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.
7. *Owner-Occupied Rental Unit* means a rental unit that is occupied in whole or in part by an individual whose name specifically appears on the deed for the property where the rental unit is located.
8. *Person* means an individual, corporation, partnership, or any other group acting as a unit.
9. *Premises* means a lot, plot or parcel of land, including the buildings or structures thereon.
10. *Rental property registration form* means an application provided by the Town of Middletown license and inspection department that must be completed for each rental unit that is subject to regulation pursuant to this Chapter.
11. *Rental unit* means that portion of any house, dwelling unit, dwelling place, building or structure, which is occupied, rented, or leased as the home or residence of one (1) or more persons to the exclusions of all others.
12. *Residential rental property* means the entire property on or in which any rental unit is located. By definition, every residential rental property must contain at least one rental unit.
13. *Tenant* means a person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

120-3: Requirements

A. No person shall lease, rent, occupy, or otherwise allow a rental unit within the Town of Middletown to be occupied, unless all of the following requirements have first been met.

1. The owner of the rental unit shall have registered the rental unit with the Department by completing and filing a current registration form with the Department, as provided in Section 4 of this Ordinance.

2. All past due bills, fees, and assessments incurred at the property address owed to the Town, must be paid prior to a rental inspection being scheduled.

3. Housing Code Inspection Request and Report, rental inspection, shall have been completed and passed to the satisfaction of the Department.

4. Any property owner that owns two (2) or more rental properties, located within the incorporated Town of Middletown, must obtain and retain a Town of Middletown business license.

5. Any authorized agent that has been authorized to accept service for any rental units located within the incorporated Town of Middletown is required to obtain and retain a Town of Middletown business license.

6. Rental Units must comply with and continue to comply with all ordinances and codes of The Town of Middletown, including but not limited to: Chapter 120 Residential Rental Property code; Chapter 119 Property Maintenance Code as adopted by the Town of Middletown; The Delaware State Housing Code; Town of Middletown Zoning Code, and all other applicable codes of the Town of Middletown.

120-4: Registration

A. It shall be unlawful for any person to lease, rent, occupy, or otherwise allow a rental unit within the Town to be occupied without first registering the rental unit with the Department, designating a responsible authorized agent, paying all fees associated with the property, and having a passed Housing Code Inspection Request and Report on file.

1. Registration Forms. Registration shall be made upon forms furnished by the Department and shall require all of the following information.: The street address of the rental unit(s), and parcel number; The number and classification of rental units within the rental property; The name of property owner, mailing address, business name, business address, T.O.M business License # (if applicable), date of birth, telephone number, mobile telephone number, facsimile number of all property owners of the rental unit(s); Name of authorized agent, mailing address, business name, business address, T.O.M business license #, date of birth, business telephone number, emergency twenty –four-hours-a-day, seven –days-a-week contact phone number, and facsimile number of the responsible authorized agent designated by the owner; The name of authorized individual to make repairs or services for the authorized agent, mailing address, business name, business address, T.O.M business license #, date of birth, business telephone number, mobile telephone number, and facsimile number of the person authorized to make or order repairs or services for the property, if in violation of Town codes or ordinances or State codes, if the person is other than the owner or the authorized agent;

B. Accurate and Complete Information.

All information provided on the registration form shall be accurate and complete. No person shall provide inaccurate information for the registration of a rental unit, or fail to provide the information required for such registration. The registration form shall be signed by both the property owner(s) and the designated responsible authorized agent. 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. Where more than one person has an ownership interest, the required information shall be provided for each such owner.

C. Change in Registration Information or Transfer of Property.

Except for a change in the registered authorized agent, the property owner of a rental unit registered with the Town shall re-register within thirty (30) calendar days after any change occurs in the registration information. If the property is transferred to a new owner, the new property owner of a registered rental unit shall re-register the rental unit within thirty (30) calendar days following the transfer of the property. Property owners shall notify the Department of any change in the designation of the registered authorized agent, including a change in name, address, telephone number, mobile telephone number or facsimile number of the designated registered authorized agent within five (5) business days of the change. If a transfer of ownership occurs and there is a current passed Housing Code Inspection Request and Report on file, and there have been no change of tenants or alteration to the property then the new owner will only be required to fill out a new registration form and pay any fees or assessments that are owed to the town, and /or registration fee if required. If owner does not comply with this section, Administrative penalties will be followed in accordance with Section 120-9.

D. Registration Term and Renewals.

Registration of a rental unit shall be effective for three (3) years. Registrations shall expire three (3) years from the date of approval of application. The property owner shall re-register each rental unit with the Department, thirty (30) calendar days prior to the expiration of the registration of the rental unit. If within those three (3) years any changes to the building, occupancy use, or ownership the property must be re-registered at that time. If owner does not comply with this section, Administrative penalties will be followed in accordance with Section 120-9.

E. Responsible Authorized Agent.

The designated responsible authorized agent shall be responsible for all of the following:

1. Operating the registered rental unit in compliance with all applicable Town ordinances and codes; and State codes;
- (2 Providing access to the rental unit for the purpose of making any and all inspections necessary to ensure compliance with the applicable Town ordinances and codes; and State codes;
3. Maintaining a list of the names and number of occupants of each rental unit for which he or she is responsible; and
4. Accepting all legal notices or services of process with respect to the rental unit.

120-5: Inspections

Rental units shall be inspected and shall comply with the standards and provisions of the ordinances and codes adopted by the Town of Middletown.

A. Except as provided in subsection 5(a)(3), all rental units are required to be inspected by the Department, at the change of each tenant/ lessee.

1. All rental inspections must comply with the Town of Middletown's rental policy code and all other Town ordinances, procedures and rental inspection check list.

2. If the first inspection is in compliance with the Town's rental policy code and all other Town ordinances, policies and codes, this will be satisfactory for a passed Housing Code Inspection Request and Report.

3. If inspection is not satisfactory, there will be one (1) re-inspection allowed at no charge for compliance. All further re-inspections will be charged as a new inspection fee.

B. If a complaint is filed with the Town and upon determination of the Department that inspection the rental unit is needed and the inspection is conducted, and is found to be in violation of the Town's rental property code; property maintenance code or any other Town ordinance(s) or codes, or State codes, therefore making the unit not compliant. There will be an inspection fee assessed, to the owner or authorized agent of the rental unit.

C. The following rental units shall be exempt from inspections:

1. New rental units that have been issued a certificate of occupancy from the Licensing and Inspections Department for new constructed building(s) or a new renovated building(s) shall be exempt from the rental inspection for six (6) months from date of issuance. All rental units must comply with the Town of Middletown Rental Property Code and all policy and procedures.

2. Rental inspections are good for six (6) months from date of passed inspection; this is that the rental unit has not been occupied or altered within this time.

3. Nothing in this subsection shall preclude the inspection of said rental units pursuant to subsections 5(b) and/or 5(d) below.

D. Basis for Inspections. Inspections may be made to obtain and maintain compliance with the standards of this Ordinance based upon one of the following:

1. A complaint received by the Department, the Town of Middletown Police Department, the Town of Middletown Fire Chief, or a State Agency, indicating that there is a violation of the standards or the provisions of any ordinance(s) or code(s) adopted by the Town of Middletown or any state code(s) or state law;

2. An observation by the Department, the Middletown Police Department, the Town of Middletown Fire Chief, or a State Agency, of a violation of the standards or the provisions of any ordinance(s) or code(s) adopted by the Town of Middletown or any state code(s) or state law;

3. A report or observation of a rental unit that is unoccupied and unsecured or a dwelling that has been damaged in any way, or is considered to be unsafe;

4. The registration, re-registration or certification of a rental unit as required by this Ordinance;

5. The need to determine compliance with a notice, violation, and or an order issued by the Town;

6. An emergency observed or reasonably believed to exist;

7. Requirements of law where a rental unit is to be demolished by the Town or where ownership is to be transferred to the Town.

E. Inspection Procedures.

1. Once the Department has determined that a rental unit is in compliance with all of the ordinances and codes adopted by the Town and state law, a passed Housing Code Inspection Request and Report shall be issued. The inspection shall then be valid for the period of time which that tenant is in the premises. A new rental inspection is required at each change of tenants/lessee.

2. If, upon completion of an inspection, the premises are found to be in violation of one or more provisions of applicable Town ordinances, codes, and or State codes, the Department shall provide the owner and/or authorized agent with verbal and/or written notice of such violation(s). The Department shall set a re-inspection date by which time such violation(s) must be corrected. If at re-inspection such violation(s) have been corrected, the inspection shall be satisfied and a passed Housing Code Inspection Request and Report shall be issued. If such violation(s) have not been corrected within that period, the Department shall not issue a passed Housing Code Inspection Request and Report and may revoke the rental registration, and or business license, and may take any action necessary to enforce compliance with applicable Town ordinances and codes and State codes. Administrative penalties will be followed in accordance with Section 120-9.

3. Where a re-inspection must be made to ensure conformity with this Ordinance or before a passed Housing Code Inspection Request and Report is issued for those rental units that have been issued violation(s), the first re-inspection shall be included in the original fee. The Town will charge a separate inspection fee for every inspection after, if the violation(s) have not been corrected.

4. If a rental inspection is scheduled and the owner or authorized agent fails to appear, this will count as the first inspection, and the re-inspection will be the first included re-inspection. Any other inspections that are to be made to pass the rental inspection shall be a separate fee, and must be paid in full before scheduling another inspection.

5. If there is a complaint filed on property with the Department, and the Department determines there is an inspection of the property needed, and the inspection of the property is conducted, the owner or authorized agent will be billed an inspection fee for this inspection. The owner and or authorized agent will be notified either verbally or written of issues and or violations pertaining to the rental property that have been found. In the event that the complaint is of an emergency nature, as determined by the Department, the Town of Middletown Police Department, the Town of Middletown Fire Chief or a State Agency it will require immediate compliance with all applicable Town ordinances, codes, and State codes. If the complaint is not of an emergency nature, the Department shall set a re-inspection date by which such violation(s) must be corrected. If a violation is not corrected by the property owner/authorized agent as required by this Ordinance, the Department may revoke the rental registration, and or business license and may take any action necessary to enforce compliance with applicable Town ordinances, codes and State codes. Administrative penalties will be followed in accordance with Section 120-9.

6. Where a re-inspection must be made due to a complaint to ensure conformity with this Ordinance and all Town codes or state codes for those rental units that have been issued a violation(s), the first re-inspection shall be included in the original fee. The

Town will charge a separate inspection fee for every inspection after if the violation(s) have not been corrected.

7. If an inspection is initiated by a complaint and no violation is found to exist, no inspection fee will be assessed against the owner of the inspected rental unit in compliance.

F. Transfer of Ownership Inspections

1. When there is a transfer of ownership of any rental unit(s), including an owner-occupied rental unit, and a current rental registration, and a passed Housing Code Inspection Request and Report exists for the unit(s), and there have been no change of tenants or lessee, then the Department shall waive the rental inspection. The new owner shall comply with the requirements of Section 4(c) of this Ordinance by re-registering the rental unit(s) within thirty (30) calendar days following the transfer of the property. If owner does not comply with this section, Administrative penalties will be followed in accordance with section 120-9.

2. When there is a transfer of ownership of any rental unit, including an owner-occupied rental unit, and a current passed Housing Code Inspection Request and Report does not exist for the unit, then the Department shall conduct an inspection within twenty (20) calendar days following the notification of the transfer of ownership as required by Section 4(c). The owner/ authorized agent is responsible for scheduling this inspection. If a violation(s) of this ordinance or any other Town ordinance, code or State code or law are found, a failed Housing Code Inspection Request and Report will be given and the Department shall set up a re-inspection date that the violations must be corrected by. Administrative penalties will be followed in accordance with section 120-9.

3. If ownership of any rental unit is transferred contrary to subsection (d) (1) of this section, or if the owner fails to re-register a rental unit as required by section 4(c) of this Ordinance, the rental unit registration, and the passed Housing Code Inspection Request and Report shall be deemed to expire within thirty (30) days of the transfer unless appropriate steps are taken to obtain a rental unit registration and required rental inspections. If owner does not comply with this section, Administrative penalties will be followed in accordance with section 120-9.

4. Within thirty (30) calendar days of the transfer of ownership of a rental unit, the new owner shall notify all residents of said unit(s) which undergoes a transfer of ownership while the individuals are residing in that unit, including a owner-occupied rental unit, of the transfer of ownership.

120-6: Fees.

A. Mayor and Council of the Town of Middletown shall establish by resolution an appropriate fee for registration and inspections.

B. If the first inspection is in compliance with the Town's Rental Property Code and all other Town ordinances, codes, and State codes, this will be satisfactory for the issuance of the passed Housing Code Inspection Request and Report. The fee for a rental inspection shall be \$50.

C. Where a re-inspection must be made to ensure conformity with this rental property code before a passed rental inspection is issued, the first re-inspection shall be included with the original rental inspection fee. For those rental units that do not comply after the first re-inspection, the Town will charge a separate inspection fee for every inspection thereafter when the violation has not been corrected.

D. Where an inspection must be made due to a complaint filed with the Department, to ensure conformity with this rental property code and all adopted Town ordinances, codes, and State codes for those rental units, the owner / or authorized agent will be billed an inspection fee(s) for the inspection(s).

E. If an inspection is initiated by a complaint and no violation is found to exist, no inspection fee will be assessed against the owner of the inspected rental unit in compliance.

F. If a rental inspection is scheduled and the owner or authorized agent fails to appear, this will count as the first inspection, and the re-inspection will be the first included re-inspection. Any other inspections that are to be made to pass the rental inspection shall be a separate fee, and must be paid in full before scheduling another inspection.

120-8: Maintenance of records.

A. All records, files and documents pertaining to the Rental Registration and Licensing and Rental Unit Inspection Program shall be maintained by the Department and made available to the public as required by State Law.

120-9:Administrative Penalties

Notwithstanding any other section of this Chapter, any person who is found to have violated any provision of this Chapter or directive of the Town of Middletown License and Inspections Department shall be assessed administrative penalties in the following amounts:

A. Failure to properly register rental unit with the Town of Middletown License and Inspection Department:

1. First Violation: The total amount of the penalty shall be \$150, regardless of the number of rental units that have not been properly registered. Failure to register rental unit(s) within ten (10) days of receiving the \$150 penalty shall result in a \$10-per-day penalty for each unit(s) thereafter not properly registered. The per-unit penalty shall accumulate on a daily basis until such penalty is paid.

2. Any time after a property owner/authorized agent is subject to the “First Violation” provisions stated in subsection A1 above, failure to properly register, or re-register, a rental unit shall be subject to a \$150 penalty. Failure to register, or re-register, rental unit(s) within ten (10) days of receiving the \$150 penalty shall result in a \$10-per-day penalty for each unit thereafter not properly registered. The per-unit penalty shall accumulate on a daily basis until such penalty is paid.

B. Failure to timely update information required on the rental property registration Form:

1. First violation: The total amount of the penalty shall be \$150 regardless of the number of rental units that have not been properly updated. Failure to update registration of rental unit(s) within ten (10) days of receiving the \$150 penalty shall result in a \$10-per-day penalty for each unit(s) thereafter not properly updated. The per-unit penalty shall accumulate on a daily basis until such penalty is paid.

2. Any time after a property owner/ authorized agent is subject to the “First Violation” provisions stated in subsection B1 above, failure to properly update a rental unit(s) shall be subject to a \$150 penalty. Failure to update registration on a rental unit(s) within ten (10) days of receiving the \$150 penalty shall result in a \$10-per-day penalty for each unit thereafter not properly updated. The per-unit penalty shall accumulate on a daily basis until such penalty is paid.

C. Failure to obtain a passed Housing Code Inspection Request and Report.

1. First violation: The total amount of the penalty shall be \$100 for not obtaining a passed Housing Code Inspection and Request Report, regardless of the number of rental units that have not been properly inspected. Failure to obtain a passed Housing Code Inspection and Request Report of a rental unit(s) within ten (10) days of receiving the \$100 penalty shall result in a \$10-per-day penalty for each unit(s) thereafter not properly inspected. The per-unit penalty shall accumulate on a daily basis until such penalty is paid.

2. Any time after a property owner/authorized agent is subject to the “First Violation” provisions stated in subsection C1 above, failure to obtain a passed Housing Code Inspection and Request Report of a rental unit(s) within ten (10) days of receiving the \$100 penalty shall result in a \$10-per-day penalty for each unit(s) thereafter not properly inspected. The per-unit penalty shall accumulate on a daily basis until such penalty is paid.

120-10: Severability and Captions

This Ordinance and the various parts, sections, subsections, phrases and clauses thereof are hereby declared to be severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby. The Captions included at the beginning of each Section are for convenience only and shall not be considered a part of this Ordinance.

120-11: Appeals.

A. Any person aggrieved by any decision of the Town of Middletown License and Inspections Department shall have the right to appeal to the Mayor & Town Council by filing a written appeal with the Mayor & Town Council within thirty (30) days following the effective date of the action or decision complained of. The appeal shall set out a copy of the order or decision appealed from and shall include a statement of facts relied upon to avoid the order.

B. The Mayor & Town Council shall fix a time and a place for hearing the appeal and shall serve written notice upon the person requesting the appeal informing them of the hearing. The findings of the Mayor & Town Council shall be final and conclusive and shall be served upon the person who requested the appeal.

120-12: Repeal.

All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any of the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

120-13: Administrative Liability.

No official, inspector, agent, employee or member of the Town of Middletown shall render himself or herself personally liable for any damage that may occur to any person or entity as a result of any act or decision performed in the discharge of his or her duties and responsibilities pursuant to this Ordinance.

120-14:Effective Date

This ordinance shall become effective immediately upon passage by the Mayor and Council of the Town of Middletown.