

ORDINANCE NO. 477

**BOROUGH OF PARKESBURG
CHESTER COUNTY, PENNSYLVANIA**

AN ORDINANCE AMENDING ORDINANCE NO. 467 ENTITLED "THE PARKESBURG RENTAL SPACE ORDINANCE" TO PROVIDE DEFINITIONS FOR "MINIMAL", "MINOR" AND "MAJOR" CODE VIOLATIONS AND THEN, USING THESE DEFINITIONS, TO ESTABLISH INSPECTION RATING LEVELS FOR RENTAL UNITS, WHICH RATINGS ARE TIED TO INSPECTION REQUIREMENTS AND PERMIT DURATIONS; IDENTIFYING AN OPTION FOR MEDIATION; AND MAKING OTHER MISCELLANEOUS AND MINOR CORRECTIONS THERETO, INCLUDING CHANGES IN THE FINES TO PERMIT REVOCATION OF THE USE AND OCCUPANCY PERMIT OF THE RENTAL UNIT IN CERTAIN CIRCUMSTANCES, AND INCLUDING A PENALTY FOR BASELESS CLAIMS BY TENANTS, AND PENALTIES FOR THOSE WHO HAVE UNREGISTERED RENTAL UNITS.

The Council of the Borough of Parkesburg, Chester County, Pennsylvania, hereby ORDAINS that the PARKESBURG RENTAL ORDINANCE NO. 467 IS AMENDED AS FOLLOWS:

The title and all provision set forth therein, are deleted in their entirety and replaced with the following:

1. TITLE

This Ordinance shall be known as the "Parkesburg Rental Space Ordinance, as Amended."

A. PURPOSES: It is recognized that in the Borough of Parkesburg, certain Rental Units as identified hereinafter, have not been properly maintained in accordance with applicable rules and regulations and, as a result, have, in instances, been unsightly, unsanitary and subject to overcrowded living conditions, which such conditions are not as prevalent with respect to owner-occupied residential houses such that the Borough, out of concern for the health, safety and welfare of the community, has determined that it is important to regulate Rental Unit(s) to assure that they are properly cared for and maintained in accordance with all operable rules and regulations and that there are procedures for inspections, as needed.

2. DEFINITIONS AND INTERPRETATION

A. In this Ordinance, the following terms (which are identified in this Ordinance by use of first letter capitals) shall have the meanings indicated in this Section:

Application: An application for a Permit, filed with the Borough by the Property Owner, pursuant to this Ordinance.

Board: The Rental Space Review Board established pursuant to this Ordinance.

Borough: The Borough of Parkesburg, Chester County, Pennsylvania.

Borough Secretary: The person appointed as the Borough Secretary by Council.

Building Code: The Borough's Building Code as the same may be amended from time to time.

Building Permit: The building permit required by the Borough's then-current Building Code.

Code Officer: The Borough Manager, Secretary or other person designated by the Borough Manager to act as Code Enforcement Officer to inspect pursuant to and enforce this Ordinance.

Council: The Council of the Borough.

Dwelling Unit: One or more rooms, in a building, designated, used or intended to be used as a single and separate unit, with its own sleeping area(s), and cooking and sanitation facilities, occupied or to be occupied by one or more persons living as a housekeeping unit.

Major Code Violation: This is the highest level of violation. It involves matters which are of serious concern with respect to the health, safety and welfare of the resident of the property in question. If more than three Minor Code Violations are observed at the same time, this shall constitute a Major Code Violation. Additional examples -- addressing instances of a single violation necessary to reach this level of violation -- include any violation which presents an immediate threat to public safety, such as unsafe electrical wiring, a heating system which does not have an appropriate exhaust system, or any similar public safety hazard.

Minimal Code Violation: This is the lowest level of violation. It consists of maintenance type matters where minor work is needed to address wear and tear caused by regular use or weather conditions, but such minor and cosmetic violations do not rise to the level of a violation affecting the health, safety and welfare of the resident of the property in question. Examples of such violations would include a need for mowing, painting, removal of trash etc.

Minor Code Violation: This is an intermediate level of violation. It involves matters which are of greater concern than a Minimal Code Violation and does affect the health, safety and welfare of the resident of the property in question. Examples of such violations would include broken window panes, damaged railings, a leaky roof, or other such violations, in circumstance where there are no more than three such violations identified at any one time, and none is identified as life threatening (provided such violations are corrected promptly and warnings are supplied until the work can be completed).

Notice of Appeal: A Notice of Appeal filed with the Borough pursuant to this Ordinance.

Notice of Hearing: A Notice of Hearing to be held by the Board pursuant to this Ordinance.

Notice of Violation ("NOV"): Any Notice of Violation given by the Code Officer pursuant to this Ordinance.

Ordinance: This Ordinance.

Owner: Any individual, firm, corporation, association, partnership, or other legal entity which alone, or jointly or severally with others, holds legal or equitable title to the Rental Unit (the plural use includes each and every Owner).

Owner Occupied Dwelling: A building with one Dwelling Unit or a residential condominium unit owned, in whole or in part, by one or more of the occupants and exempt from the terms of this Rental Space Ordinance.

Permit: A Rental Occupancy Permit issued by the Code Officer pursuant to this Ordinance.

Person: Any individual.

Regulations: Regulations, adopted pursuant to this Ordinance, to implement this Ordinance (the use of "regulations" in the lower case is not this term).

Rental Unit: A Dwelling Unit or Rooming Unit.

Rooming House: A building or part of a building with two or more Rooming Units.

Rooming Unit: Any room or group of rooms occupied or intended to be occupied by one or more persons for sleeping or living, but not a Dwelling Unit.

Violation(s): A violation and/or non-compliance with the requirements of this Ordinance, the Regulations and/or any other applicable Borough regulation.

B. Whenever an "Owner" is required to do something pursuant to this Ordinance, all Owners shall have the duty jointly and severally.

C. Whenever the phrase "pursuant to this Ordinance" is used with respect to a requirement, it shall mean, unless the context clearly indicates otherwise, pursuant to this Ordinance, the Regulations and any Determination and/or order of the Code Officer.

3. **RENTAL OCCUPANCY PERMITS**

A. Permits Required.

Except for those uses in which state or federal regulation pre-empt any local regulation of the use and create an exemption from this Ordinance, a current valid Permit, for the effected Rental Unit(s), is required:

- (1) for each Rental Unit, prior to the expiration of the current valid Permit; and
- (2) for conditioned occupancy of any Rental Unit after the Permit for that Unit has been revoked and any period for achieving a new Permit for that Unit, as established by the Code Officer, has elapsed.

B. Duration of Permit.

- (1) Each Permit for a Rental Unit, shall expire automatically 5 years after it is initially issued, unless the rental unit is given a rating by the Code Officer after the issuance of the initial permit or observations requiring

an inspection which results in the determination that such Rental Unit requires a shorter permit period as identified in Section 3.D.(3)herein.

- (2) A Permit shall become invalid if and when revoked, by the Code Officer, pursuant to the Code Officer's written determination, issued to the Owner, that the Rental Unit for which the Permit was issued is no longer compliant with the applicable Borough Property Maintenance Code and/or Building Code.

C. Application for Permit.

- (1) The Owner(s) of the property where a Rental Unit requiring a Permit is located is/are responsible, jointly and severally, for filing an Application to the Borough for the Permit, which Application must comply with all the requirements, established pursuant to this Ordinance, and any applicable Regulation, for such Applications.
- (2) All Applications shall be in writing, shall use the Borough's form, shall provide all the information required pursuant to this Ordinance and shall be accompanied by the required fee. The Borough shall have no duty to process any Application without the required fee.
- (3) The information to be provided, by the Owner, with the Application, shall include:
 - (a) the street address of the property where the Rental Unit to be permitted is located, the Chester County uniform parcel identifier number for that property and any street address separately identifying the Unit itself;
 - (b) the number of Rental Units located on the property;
 - (c) the name and mailing address of the Owner(s) of the property to which notices should be sent pursuant to this Ordinance;
 - (d) the number and names of all occupants of each Rental Unit who will occupy the Unit pursuant to the requested Permit, which such information shall be kept current with any changes in the names and numbers of tenants supplied by the Owner in supplemental filings within (10) ten days after any change in circumstances; and,
 - (e) all information required pursuant to the Regulations.

D. Requirements for Issuance of Initial Permit and Classification for Purposes of Inspections:

The Code Officer shall issue the Initial Permit for the Rental Unit when:

- (1) the required Application has been filed with the Borough;
- (2) all the required Fees have been paid in full;
- (3) After the Initial Permit has been issued, or investigation establishes a need to classify otherwise, the Code Officer shall classify the Rental Unit as follows:
 - (a) Class Green - Rental Units with Minimal Code Violations (as defined herein) - inspected (and permitted) every five (5) years after issuance of Initial Permit.
 - (b) Class Amber - Rental Units with Minor Code Violations (as defined herein) - inspected (and permitted) every two (2) years after issuance of Initial Permit.
 - (c) Class Red - Rental Units with Major Code Violations (as defined herein) - inspected (and permitted) every year after issuance of Initial Permit.

E. Denial of Permit

- I If, there is an outstanding Notice of Violation with respect to any Rental Unit and there has, accordingly, been an inspection by the Code Officer, as a result of which the Code Officer has determined that the Permit should not be granted, due to any condition(s) that does/do not comply with applicable regulations, the Code Officer shall issue, to the Owner, a written determination identifying the non-compliant condition(s) and ordering that compliance be achieved in a timely manner. The Owner shall comply with all such orders. Provided, however, that the Owner may appeal any such order to the Board, but only as provided in this Ordinance, no such appeal shall relieve the Owner of the immediate duty to correct dangerous and/or nuisance conditions.

F. Effect of Permit.

The issuance of a Permit, for a Rental Unit which is not new construction, is based upon inspection of conditions readily observable. A Permit does not constitute the Borough's representation that there is no condition, at the inspected premises, which violates applicable Borough regulations. The

Borough's ability to enforce compliance with its regulations, with respect to conditions existing at the time any Permit is issued, is not limited by the issuance of the Permit or any reliance thereon.

4. ADMINISTRATION, INSPECTION AND ENFORCEMENT

A. The Code Officer shall administer and enforce this Ordinance and the Regulations.

B. The Code Officer is hereby authorized to inspect to determine the condition, occupancy, number of occupants, use and/or compliance, of any and all Rental Units, with this Ordinance, the Regulations and other applicable Borough regulations.

C. The Code Officer is authorized to issue Permits, revoke Permits and issue determinations of non-compliance with this Ordinance, the Regulations and other applicable Borough regulations; to issue orders compelling such compliance; and to file and prosecute legal and equitable action to compel such compliance.

D. Search Warrants.

If entry to any property, building or Rental Unit, for the purpose of inspection, is denied to the Code Officer, the Code Officer may apply to the appropriate authority for an administrative search warrant. Without limitation, when denied access, the Code Officer may request a warrant for the following reasons:

- (1) the inspection is part of a systematic inspection, permitting and enforcement program;
- (2) the affiant has knowledge of or probable cause to believe that there is an existing or potential violation of applicable Borough regulations, in the Rental Unit; and/or
- (3) the entry is necessary for the purpose of re-inspecting a violation of a Borough regulation previously observed by the Code Officer and which the Code Officer ordered to be corrected.

No search warrant is required if an imminent danger to health and safety exists, or the Code Officer has probable cause to believe that dangerous conditions exists and an inspection is required to determine if an inherent danger to health or safety exists.

E. Emergency Order.

If the Code Officer determines that, within any residential premises, an emergency condition exists which requires immediate action to protect the public health, safety and/or welfare, the Code Officer may issue a Determination declaring the existence of such emergency condition and an Order requiring the action necessary to be undertaken by any Owner to correct such condition effectively and immediately. The owner may file an Appeal of any such Order with the Board, but any such Appeal shall neither serve as nor have the effect of a supersedeas.

5. **ENFORCEMENT, SERVICE OF NOTICES AND ORDERS**

- A. Whenever the Code Officer believes, or has cause to believe, that a violation of this Ordinance, any Regulations or any other Borough regulations (including but not limited to the Property Maintenance and Building Codes) exists, the Code Officer shall give written notice to the Owner that an inspection is required and the Owner shall promptly schedule the inspection.
- B. If the Code Officer determines that a Violation exists, the Code Officer shall first attempt to mediate the issue for a period of no greater than seven (7) days with a citizen/professional mediator chosen by Borough Council, the Code Officer and thereafter (unless the problem has been resolved), shall issue a Notice of Violation to the Owner, which Notice shall:
- (1) state the nature of the violation;
 - (2) identify the regulation violated;
 - (3) identify the date the notice is issued; and
 - (4) include an Order requiring correction within a specified time.

The Notice of Violation may contain other requirements for compliance as well as any other pertinent information or statements which the Code Officer deems appropriate under the circumstances including, with the landlord's consent, a requirement that the Use and Occupancy Permit for the Rental Unit be revoked.

C. Service of Notice.

- (1) Service of a Notice of Violation, issued by the Code Officer, shall be made by both regular first class mail, postage prepaid, and certified mail, return receipt requested, requiring a receipt signed by any person identified as the Owner or the Owner's authorized agent as identified on the Application or by subsequent written notice from the Owner to the Borough Secretary. Service of the NOV shall be

complete upon delivery. If an NOV served by certified mail is returned with the notification by the U.S. Postal authorities that the addressee failed to claim the NOV, refused to accept the NOV, or that the NOV was undeliverable, and the NOV mailed by first class mail has not been returned within fifteen (15) days of mailing, the NOV shall be deemed effectively served at the end of said fifteen (15) day period.

- (2) If both mailed NOV's are returned as either unclaimed, unaccepted or undeliverable, the Borough shall attempt to serve the NOV personally upon any adult occupant of the Rental Unit which is the subject of the NOV and the NOV shall also be affixed to the exterior of the room or building in which the Rental Unit is located.
- (3) An NOV personally served on the Owner shall be effective immediately for all purposes.

6. **REGULATIONS**

The Code Officer may prepare and recommend to Council such Regulations as the Code Officer determines necessary or appropriate for the implementation and administration of this Ordinance. Before any such Regulations become effective, they must be approved by Council by written Resolution.

7. **DUTIES OF OWNER**

- A. The Owner Of each Rental Unit shall file the requisite Application by January 1, 2007, and thereafter sixty (60) days prior to the expiration of the then-current Permit.
- B. The Owner of each Rental Unit shall maintain the Unit and all common areas used by the occupants of the Unit and all facilities servicing the Unit and the building in which and the property on which the Unit is located in compliance with all applicable regulations at all times.
- C. The duties of the Owner shall be to receive notices and correspondence, including service of process from the Borough; to arrange for the inspection of the Rental Unit(s) in the event that the Code Officer has identified a need for inspection due to alleged violations at that Rental Unit(s); to do or arrange for the performance of maintenance, cleaning, repair, pest control, etc. and insure continued compliance of the Rental Unit(s) with the current Codes, Building Codes and Zoning Ordinance in effect in the Borough.
- D. No Dwelling Unit shall be occupied, knowingly by the Owner, by a number of persons that is in excess of the requirements outlined in the 2006

International Property Maintenance Code, chapter 4, Light, Ventilation, and Occupancy Limits, Section PM-404.5, Overcrowding, or any update thereof.

- E. To protect the health, safety, and welfare of the residents of the Borough, it is hereby declared that the Borough shall require hazard and general liability insurance for all property owners, letting property for occupancy in the Borough contain minimum coverage of \$50,000 in general liability insurance and hazard and casualty insurance in amounts sufficient to either restore or remove the building in the event of a fire or other casualty. Further, in the event of a fire or loss covered by such insurance, it should be the obligation of the Owner to use such insurance proceeds to cause the restoration or demolition or other repair of the property in adherence to the Borough Code and all applicable ordinances. Owner shall be required to place their insurance company name, policy number and policy expiration date on their Rental Occupancy Permit, or in the alternative, to provide the Code Officer with a copy of the Certificate of Insurance.
- F. Certification. The Owner shall certify in the Rental Occupancy Permit that the Rental Unit(s) is currently compliant with all of the applicable rules and regulations and Codes of the Borough and that the Rental Unit complies with all requirements of Ordinance No. 467 as amended.

8. FEES AND CHARGES

Fees, the time for their payment, and interest for non-payment for Applications, Permits, inspections, re-inspections and other matters pursuant to this Ordinance and the Regulations shall be as established, from time to time, by Council, by written Resolution.

9. APPEAL

- A. An Owner to whom a Notice of Violation has been issued by the Code Officer may appeal the NOV to the Board, but only as provided in this Ordinance.
- B. Any such Appeal shall be commenced only by filing a Notice of Appeal with the Borough Secretary within fifteen (15) days after service of or deemed service of the NOV on the appellant pursuant to Section 5.C hereof. At the time of filing the Notice of Appeal, the appellant shall pay to the Borough Secretary a filing fee, the amount of which shall be established by Resolution of Council. The Notice of Appeal shall state specifically all the grounds and facts on which the Code Officer's determination and/or Order is challenged and shall identify the mailing address of the appellant for purposes of all communications concerning the appeal.

- C. Within thirty (30) days after the Borough's receipt of the Notice of Appeal, the Board shall hold a public hearing thereon. Written notice of the hearing shall be given not less than fifteen (15) days prior to the date of the hearing to the following individuals:
 - (1) the appellant;
 - (2) the Council;
 - (3) the Code Officer; and
 - (4) the Borough Solicitor.
- D. The Board shall issue an Adjudication within fifteen (15) days after the conclusion of the Board's hearing. The Adjudication shall be in writing, shall contain findings of fact, reasons for the adjudication, conclusions of law, and an Order. The Adjudication and Order shall be served upon all parties or their attorney of record by first class regular mail, postage pre-paid, or by personal service, within three (3) business days of the issuance of the Adjudication.
- E. During the hearing, the Board shall review the Notice of Violation, the Notice of Appeal, applicable rules and regulations, take such testimony and hear such witnesses as the Board deems appropriate. Strict rules of evidence shall not apply. The scope of the Board's review shall be limited to the specific issues raised by the Notice of Appeal.
- F. The Board's hearing and any adjudication rendered by it shall be held in accordance with the provisions of the Pennsylvania "Local Agency Law" (2 Pa.C.S.A. §551, et seq.), as amended.
- G. Any Appeal of the Board's Adjudication and Order shall be filed with the Court of Common Pleas of Chester County within thirty (30) days after the date any such Adjudication and Order is mailed to or served personally to the party appealing or the attorney for the party appealing, whichever occurs first.

10. **CREATION OF RENTAL SPACE REVIEW BOARD**

- A. There is hereby created a Rental Space Review Board.
- B. The Board shall consist of three (3) members ("Members"), who shall be appointed by Council. Members who are first appointed shall serve for terms, as designated by Council, of one (1), two (2) and three (3) years,

respectively, from the time of their appointments. Thereafter, the term of office shall be for a period of three (3) years for all Members.

- C. If a vacancy occurs on the Board, Council shall fill such vacancy by appointment; any person so appointed shall hold that position until the end of the unexpired term to which that person was appointed.
- D. Board Members shall elect a Chairperson from among themselves and may adopt such rules, procedures and regulations, consistent with this Ordinance and the Local Agency Law, as the Board deems necessary and appropriate to perform its duties

11. PENALTIES FOR VIOLATION

- A. Any person or Owner who violates any provision of this Ordinance or fails to comply with any Order and/or Notice of Violation issued by the Code Officer or Order or Adjudication of the Board shall, upon adjudication thereof, pay a civil penalty of not less than Two Hundred Dollars (\$200.00) for the first offense, Three hundred Dollars (\$300.00) for the second offense, Three hundred Dollars (\$300.00) for the third offense and not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) for the fourth and subsequent offences as well as the revocation of the Use and Occupancy Permit issued by the Borough with respect to the relevant Rental Unit. In all cases the violator shall pay all the costs of prosecution, including, but not limited to, the Borough's reasonable legal fees.
- B. Every violation of this Ordinance shall constitute a separate offense, and each day such violation exists shall constitute a separate offense. Each offense shall be subject to a separate civil penalty.
- C. The amendments to this Ordinance are taking effect in approximately April 2008 and thereafter, effective July 1, 2008, any owner of a Rental Unit which has not been properly registered and permitted by the Borough in accordance with the terms of this Ordinance shall receive a mandatory fine of \$1,000 and be liable for all costs of prosecution including, but not limited to, the Borough's reasonable legal fees.
- D. If the tenant of a Rental Unit shall provide a written complaint regarding the condition of a Rental Unit such that Code Officer, on the basis of such complaint, conducts an inspection of a Rental Unit pursuant to the authority of Section 5. A of this Ordinance, and such written complaint is determined to be without any basis in fact, then the tenant shall be in violation of this Ordinance and shall be required to pay the expenses of the Borough in conducting the inspection at issue or, for failing to do so, shall be charged

with a first offense subject to the penalties identified in subsection 11-A above.

12. SEVERABILITY

If any section or provision of this Ordinance is held, by the final Order of any Court of competent jurisdiction, to be unconstitutional, illegal or invalid, such holding shall not affect the constitutionality, legality or validity of other sections and provisions of this Ordinance which shall continue to be effective.

13. REPEAL OF CONFLICTING ORDINANCES

All Borough Ordinances, to the extent inconsistent with this Ordinance, are hereby repealed, including, in particular, Ordinance No. 433, the "Parkesburg Borough Rental Housing Registration Ordinance."

Passed by Borough Council this 21st day April, 2008.

14. EFFECTIVE DATE

This order shall become effective immediately upon enactment.

ORDAINED and ENACTED by the Parkesburg Borough Council this 21st day of April, 2008

PARKESBURG BOROUGH COUNCIL

BY: _____
DAVID W. P. JONES, President

ATTEST:

WENDY A. KEEGAN, Secretary

Approved this 21st day of April, 2008.

JOHN P. HAGAN, II, Mayor