

**CITY OF SOUTHGATE
CAMPBELL COUNTY, KENTUCKY
ORDINANCE NO. 15-12**

AN ORDINANCE OF THE CITY OF SOUTHGATE, KENTUCKY, IN CAMPBELL COUNTY, AMENDING CHAPTER 97 OF THE SOUTHGATE CODE OF ORDINANCES TO CLARIFY THAT THE CITY'S RENTAL LICENSE APPLICATION FEE IS A REGULATORY FEE, REQUIRE THE CITY TO OBTAIN AN ADMINISTRATIVE WARRANT PRIOR TO CONDUCTING AN INTERIOR RENTAL DWELLING INSPECTION, AMEND THE APPEALS PROCEDURE FOR ADVERSE LICENSING ACTIONS, DESIGNATE THE CODE ENFORCEMENT OFFICER AS THE ENFORCEMENT OFFICIAL FOR THE CITY'S RENTAL LICENSING ORDINANCE, AND AMEND EXEMPTIONS FROM THE RENTAL LICENSING ORDINANCE.

WHEREAS, the City of Southgate, pursuant to Chapter 97 of the Southgate Code of Ordinances, has implemented a licensing and inspection program for rental dwellings located within the City; and

WHEREAS, a regulatory fee “is really just a fee imposed to defray the costs of services rendered by government to the individual. This fee may not exceed the sum which will compensate the licensing authority for such services as issuing, recording, and inspecting related to the regulations to be enforced.” *Renfro Valley Folks v. City of Mt. Vernon*, 872 S.W.2d 472, 474 (Ky. App. 1993); and

WHEREAS, a fee must have a rational relationship to the benefit received. *Long Run Baptist Asso. v. Louisville & Jefferson County Metropolitan Sewer Dist.*, 775 S.W.2d 520, 522 (Ky. App. 1989); and

WHEREAS, the City Council finds that the City incurs regulatory costs related to issuance, recording, and inspecting, and other costs related to the enforcement of its rental licensing and inspection program, and further finds that a regulatory fee of \$40.00 is reasonable, does not exceed the City's costs, and bears a rational relationship to the benefit received; and

WHEREAS, the City Council further finds that, because Chapter 97 of the Southgate Code of Ordinances authorizes the inspection of rental dwellings, additional procedural safeguards will protect the Fourth Amendment rights of property owners and tenants; and

WHEREAS, the regulation of rental dwellings promotes the health, safety and general welfare of the owners and occupants of rental dwellings within the City of Southgate, Kentucky.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SOUTHGATE, CAMPBELL COUNTY, KENTUCKY AS FOLLOWS:

SECTION I

That Chapter 97 of the Code of Ordinances of the City of Southgate is hereby amended to read as follows. All portions thereof not listed remain unchanged:

SECTION 97.01 DEFINITIONS.

For purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CODE ~~[CITATION]~~ **ENFORCEMENT OFFICER.** The ~~[Civil Citation]~~ Code Enforcement Officer of the City of Southgate.

~~[TREASURER. The Treasurer of the City of Southgate.]~~

SECTION 97.02 APPLICABILITY; EXEMPTIONS.

(C) This Chapter does not apply to rental dwelling units in which one or more of the occupants is the grandparent, parent, child, grandchild, aunt, ~~[ø]~~ uncle, niece, or nephew (including steps and in-laws of the same relation) of the owner.

SECTION 97.04 LICENSE PROCEDURE.

(A) The owner of a rental dwelling shall apply to the ~~[Treasurer]~~ City Clerk or his or her designee for a rental dwelling license prior to allowing that unit to be occupied.

(B) The application shall be accompanied by a non-refundable ~~[application processing]~~ regulatory fee of \$40.00 to compensate the City for its costs related to issuance, recording, inspection, and other costs related to the enforcement of this Chapter. ~~[, which will be applied to the licensing fee upon approval.]~~ If the application is denied or voluntarily withdrawn by the owner, the ~~[application]~~ regulatory fee shall be retained by the City.

(C) The owner of two or more residential dwelling units that share the same street address (for example, the owner of a duplex or multi-family apartment building) may use a single application to apply for license for all of the units that share that address. In that event, the application shall be accompanied by a non-refundable ~~[application processing]~~ regulatory fee of \$40.00 per unit for which licenses are applied.

(E) In the event that any of the information required to be provided herein should change either before or after the rental dwelling unit license is issued, the applicant or licensee shall, within 14 days of such a change, notify the ~~[Treasurer]~~ City Clerk or his or her designee, in writing, of the change.

SECTION 97.05 LICENSE FEES; RENEWAL.

(A) The ~~[license]~~ regulatory fee for each rental dwelling license shall be \$40.00 per license period.

(B) The license period shall be one full year, beginning on July 1 of each calendar year and ending on June 30 of the following calendar year.

(C) There shall be no proration of or reduction in the ~~[license]~~ regulatory fee for the first year in which a rental dwelling license is issued.

(D) A licensee must apply to renew his or her license on or before June 1 of each year if the unit will be occupied in the following license period. A non-refundable [~~application~~] regulatory fee of \$40.00 must accompany the renewal application to compensate the City for its costs related to issuance, recording, inspection, and other costs related to the enforcement of this Chapter. [~~, and will be applied toward the applicant's license fee for the new license period if the application is approved.~~] If the application is not approved or if the licensee voluntarily withdraws his renewal application, the [~~non-refundable application~~] regulatory fee shall be retained by the City.

SECTION 97.06 LICENSING STANDARDS AND CONDITIONS.

Upon receiving an application for a rental dwelling license or an application for renewal of such a license, the [~~Treasurer~~] City Clerk or his or her designee shall refer the application to the [~~Civil Citation~~] Code Enforcement Officer, who shall review the application for compliance with this Chapter.

The following minimum standards and conditions shall be met in order to obtain or renew a rental dwelling license. Failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation or suspension of any rental dwelling license.

(A) The applicant shall have paid the required rental dwelling license regulatory fee.

(B) The unit must not be overcrowded or illegally occupied in violation of the fire, zoning, life safety, property maintenance and/or building codes of the City.

(C) The unit must not have been used or converted to any other type of use in violation of the zoning code.

(D) If the unit is one of 3 or more in a single building, it is subject to a fire inspection by the City Fire/EMS Department.

(E) The unit must comply with all provisions of the applicable City fire, zoning, life safety, property maintenance and/or building codes.

(F) The applicant shall maintain a current register of all tenants and other persons with a lawful right of occupancy to any rental dwelling. The register shall be produced to the City Clerk upon demand by the City.

(G) The applicant shall have submitted a complete application.

(H) There shall be no delinquent property taxes, assessments or any unpaid code enforcement citations and/or liens on the rental dwelling.

(I) No [~~new rental dwelling license shall be issued for the property during the pendency of any~~] adverse licensing action shall be pending against the property. [~~until disposition of the same.~~]

SECTION 97.07 ISSUANCE OF A LICENSE.

(A) When the [~~Civil Citation~~] Code Enforcement Officer or his or her designee finds that the minimum standards for licensing set forth herein have been met, he or she shall issue a rental dwelling license.

(B) When the Code Enforcement Officer or his or her designee finds that the minimum standards for licenses set forth herein have not been met, he or she shall deny the issuance of a rental dwelling license. The denial shall be in writing and shall state that the applicant shall have 30 days to appeal the denial to the Appeals Board.

~~(B)~~ (C) The issuance of a rental dwelling license shall not have the effect of changing the legal status of a rental dwelling, including, but not limited to legalizing an illegally created dwelling unit, use or other circumstance, or recognizing a nonconforming use, structure or other nonconformity.

SECTION 97.09 DETERMINATION OF NON-COMPLIANCE.

(A) If the [~~Civil Citation~~] Code Enforcement Officer or his or her designee determines that any rental dwelling or unit therefor fails to meet the licensing standards and conditions set forth herein, he or she mail a notice to the owner or the owner's agent. Notice shall be deemed sufficient if sent by regular first class mail to the owner or owner's designated agent at the address specified in the last license application filed with the City. Notice shall also be conspicuously posted on the rental dwelling. The notice shall specify the reasons for the rental dwelling's failure to meet the required licensing standards and conditions and shall include a copy of any inspection report, if applicable.

(C) Whenever a notice of noncompliance is issued hereunder, the [~~Civil Citation~~] Code Enforcement Officer or his or her designee shall also cause a notice to the tenants to be prominently posted on the rental dwelling. The notice shall indicate that a license proceeding has been commenced against the owner because the rental dwelling has been found to be in violation of the property maintenance code or any other applicable code and that the tenants may be required to vacate the building.

SECTION 97.10 SUSPENSION OF LICENSE WHEN RENTAL DWELLING IS CONDEMNED.

When any rental dwelling is condemned as hazardous or unfit for human habitation due to defects in its structure or its electrical, plumbing, or mechanical systems, or is boarded, requiring a code compliance inspection prior to re-occupancy, the rental dwelling license issued therefor shall be suspended by the [~~Civil Citation~~] Code Enforcement Officer or his or her designee effective the date of condemnation. Any appeal thereof shall be taken to the Appeals Board. The rental dwelling shall thereunder only be eligible to hold a rental dwelling license upon issuance of a certificate of occupancy.

SECTION 97.11 INSPECTION GUIDELINES.

(A) The ~~[Civil Citation]~~ Code Enforcement Officer shall be required to periodically inspect all rental dwellings for which licenses are required hereunder to:

~~[(A)]~~ (1) Determine whether the rental dwelling complies with all provisions of the applicable City property maintenance code and/or other applicable City ordinances. ~~[-and/or city ordinance.]~~

~~[(B)]~~ The Civil Citation Officer, or any other designated city employee shall determine whether the owner of the rental dwelling is delinquent in paying property taxes or any other assessment.]

~~[(C)]~~ (2) Determine whether the rental dwelling is in violation of the criminal nuisance ordinance, or other city ordinance.

~~[(D)]~~ (3) Identify rental dwellings that are unlicensed or unregistered.

~~[(E)]~~ Identify rental dwellings with police and/or fire/EMS runs relating to drug offenses, prostitution, crimes of force or violence or loud and disorderly disturbances.]

(B) The Code Enforcement Officer or any other designated City employee shall periodically inspect City records with respect to all rental dwellings for which license are required hereunder to:

(1) Determine whether the owner of the rental dwelling is delinquent in paying property taxes or any other assessment.

(2) Identify rental dwellings with police and/or fire/EMS runs relating to drug offenses, prostitution, crimes of force or violence or loud and disorderly disturbances.

(C) The following shall apply to all interior inspections conducted pursuant this chapter:

(1) The Code Enforcement Officer or his or her designee shall make a minimum of one attempt to contact the owner of the rental dwelling to obtain consent for the inspection, and shall contact the tenant of any occupied unit to obtain consent for the inspection.

(2) The Code Enforcement Officer or his or her designee may enter a unit and the common areas used by the tenant in that unit at the tenant's invitation without the consent of the owner.

(3) If the Code Enforcement Officer or his or her designee is unable to obtain consent for an interior inspection, the City shall not conduct an interior inspection without first applying to a court of competent jurisdiction and receiving an administrative warrant or other relief necessary to obtain legal access to the interior of the rental dwelling.

SECTION 97.12 CONDUCT ON LICENSED PREMISES.

(B) In the event that the [~~Civil Citation~~] Code Enforcement Officer determines that any use of conduct upon, or condition on, the premises of a rental dwelling unit, is contrary to the Kentucky Revised Statutes or the Southgate Code of Ordinances, he or she will notify the licensee of his or her determination by regular first class mail, which shall act as prima facie proof that the licensee has been placed on notice of same. The licensee shall have 30 days from the notice of such determination to take such corrective measures or appropriate action to remedy that use of or conduct on the rental dwelling unit so as to prevent further use or conduct from occurring thereon or to evict the offending tenant, if necessary.

SECTION 97.13 SUSPENSION, REVOCATION AND TERMINATION OF LICENSE.

(A) If, after the issuance of a notice of noncompliance pursuant to § 97.11 or § 97.12 and a period of no less than 30 days, the [~~Civil~~] Code Enforcement Officer or his or her designee determines or has probable cause to believe any rental dwelling fails to comply with any of the licensing standards and conditions or any other provision set forth herein, the same shall be sufficient grounds [~~to request the~~] for revocation or suspension of any rental dwelling license issued hereunder, with notice to the holder and [~~upon a hearing~~] with the right to appeal as hereinafter provided.

(B) The [~~Civil Citation~~] Code Enforcement Officer or his or her designee shall mail, both certified and regular, the notice of any [~~request for~~] revocation or suspension of the rental dwelling license. In the event that the certified mail is returned unclaimed, the notice shall then be conspicuously posted on the building. The notice shall contain the following information:

(1) That the [~~Civil Citation~~] Code Enforcement Officer or his or her designee has determined that the rental dwelling unit fails to comply with the licensing standards and conditions or any such provision set forth herein, indicating the specific reasons for such failure including copies of applicable inspection reports or notices sent to the licensee of conduct on the premises of the rental dwelling unit which have not been remedied. Notice shall be delivered to the tenant of each rental dwelling unit and shall also be conspicuously posted on the building containing the rental dwelling unit.

(2) That the licensee has failed to take appropriate remedial action.

(3) That the [~~Civil Citation~~] Code Enforcement Officer or his or her designee has [~~referred the matter to the Appeals Board with a recommendation to revoke or suspend the rental dwelling license who shall have the final determination~~] revoked or suspended the rental dwelling license, and that the licensee shall have 30 days to appeal the adverse licensing action to the Appeals Board.

(4) The notice shall set forth the [~~date, time and place for the hearing before the~~] procedure to be followed to request a hearing before the Appeals Board.

(5) That after any revocation or suspension, the rental dwelling shall not be reoccupied or rented until sufficient proof has been provided to the [~~Civil Citation~~] Code Enforcement Officer or his or her designee that all violations are corrected and the rental dwelling license reinstated or reissued.

(C) No new rental dwelling license shall be issued for a rental dwelling during the pendency of any adverse license action until disposition of the same.

SECTION 97.14 VACATION OF AFFECTED RENTAL DWELLINGS.

When any rental dwelling license has been denied, revoked or suspended, has failed to be initially applied for or renewed, or when the license holder has failed to obtain a current rental dwelling license upon proper application, the ~~[Civil Citation]~~ Code Enforcement Officer or his or her designee shall order the rental dwelling vacated, giving the tenants therefor a reasonable time, not to exceed 60 days, to arrange for new housing. No rental dwelling unit shall be rented again until the license holder/owner is properly licensed.

SECTION 97.16 APPEALS BOARD.

(A) The Civil Code Enforcement Board shall be designated as the Appeals Board authorized to conduct hearing on appeals from ~~[recommendations]~~ adverse actions of the ~~[Civil Citation]~~ Code Enforcement Officer or his or her designee ~~[for the revocation or suspension of]~~ with respect to any rental dwelling license and shall have the power to render decisions with regard thereto and to do any and all other acts as necessary to perform its function. The City shall bear the burden of proof in showing that the adverse licensing action was authorized by this chapter.

(B) Appeals to the Appeals Board shall be filed with the City Clerk, in writing, within 30 days of the adverse action by the Code Enforcement Officer or his or her designee. The appeal shall thereafter be docketed with the Appeals Board, with notice to all parties.

~~[(B)]~~ (C) The decision of the Appeals Board shall be reduced to writing and shall be final. The written decision shall be mailed to the licensee or applicant by both regular and certified mail. Any aggrieved party to a decision thereof may appeal he same, within 30 days of the date of the issuance thereof, to the Campbell ~~[Circuit]~~ District Court, as provided by law, ~~[the indication of which shall be set forth thereon]~~ and failure to do so within that time period constitutes a waiver of any further appeal of the Appeals Board's decision.

SECTION 97.18 PROMULGATION OF RULES AND REGULATIONS.

The ~~[Civil Citation]~~ Code Enforcement Officer, with the approval of the City Council, shall have authority to issue and promulgate such rules and regulations as he or she may consider necessary for the administration of this chapter, provided such rules and regulations are not inconsistent with the provisions thereof.

SECTION II

All ordinances or parts of ordinances that are not in conflict with this Ordinance are hereby repealed to the extent of the conflict.

SECTION III

This Ordinance shall be signed by the Mayor, attested by the City Clerk, recorded, and effective upon publication, which may be in summary form.

PASSED by the City Council of the City of Southgate, Campbell County, Kentucky, assembled in regular season.

CITY OF SOUTHGATE, KENTUCKY

BY:

Jim Hamberg, Mayor

ATTEST:

Brandi Barton, City Clerk

FIRST READING: _____ 11/18/15 _____

SECOND READING: _____ 12/2/15 _____

PUBLISHED: _____