

ORDINANCE

AN ORDINANCE ENACTING CHAPTER 177 OF THE MUNICIPAL CODE OF THE CITY OF LACKAWANNA ENTITLED "RENTAL DWELLING UNIT REGISTRATION."

BE IT ENACTED by the City Council as follows:

Chapter RENTAL DWELLING UNIT REGISTRATION

177.1 Legislative findings & intent.

The Lackawanna City Council hereby finds and declares that the rental of dwelling units constitutes a business which impacts upon the public health, safety, and general welfare of the people of the City of Lackawanna. The intent of this chapter is to regulate the offering for rental of dwelling units to protect the public health, safety, and general welfare of the people of the City of Lackawanna and to further achieve the following beneficial purposes:

- A. The protection of the character and stability of residential area;
- B. The correction and prevention of 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 the dwelling;
- C. The enforcement of minimum standards for heating, plumbing, and other sanitary equipment Necessary for health & safety;
- D. The enforcement of minimum standards for light and ventilation necessary for health and safety;
- E. The enforcement of minimum standards for the maintenance of existing residential buildings and the prevention of slum and blight conditions;
- F. The preservation of the value of land and buildings throughout the City of Lackawanna.

177.2 Definitions.

As used in the chapter, the following terms shall have the meanings indicated:

DIRECTOR OF DEVELOPMENT, or DIRECTOR: The Department Head of the Department of Development. This person will be in charge of the Code Enforcement Officers.

CODE ENFORCEMENT OFFICERS: The only persons authorized to inspect dwelling units and issue code violations citations.

DWELLING UNIT: A single residential accommodation which is arranged, designed, used or, if vacant, intended for use exclusively as a domicile or residence of one or more human beings.

HOUSING CODE: All state and or local laws, codes, ordinances, rules, and regulations for the establishment and maintenance of housing standards.

OWNER: The owner or owners of the freehold of the premises or lesser estate therein, a mortgage or vendee in possession, assignee or rents, receiver, executor, trustee or agent.

177 .3 Rental dwelling unit registration required; exemptions.

A. Registration required. No person shall allow to be occupied, or rent to another for occupancy, any dwelling unit unless the owner has first obtained a rental dwelling unit registration certificate as hereafter provided.

B. Exemptions. The provisions of this chapter shall not apply to owner-occupied properties containing two or fewer dwelling units; hotels; motels; bed-and-breakfast establishments; rooming or boarding houses; hospitals; nursing homes; or other dwelling units which offer or provide medical or nursing services if such units are subject to state or federal licensing or regulations concerning the safety of the users, patients or tenants. The provisions of this chapter shall not apply to buildings having an existing and valid certificate of occupancy.

177 .4 Application for registration.

A. Within 90 days after the effective date of this chapter, the owner of each dwelling unit existing on the effective date of this chapter shall make written application to the Director of Development for a rental dwelling unit registration certificate. The Director shall establish regulations to implement the registration of all dwelling units. In addition, the owner of each dwelling unit constructed after the effective date of this chapter shall make written application to the building official for a rental dwelling unit registration certificate as herein provided prior to any initial occupancy. Such application shall be made on a form furnished by the Director and shall set forth the following information, in addition to other information required by the Director from time to time which may be necessary to administer, enforce, and insure compliance with the provisions of this chapter and the housing code.

(1) Name, principal residence address, principal business address, and telephone number of the owner.

(2) If the owner is an association, limited liability partnership, joint tenancy, tenancy in common or tenancy by the entirety, then each and every owner or general partnership shall be indicated on the application and register an address in accordance with Subsection A(1) of this section.

- (3) If the owner is a corporation, the principal place of business of the corporation must be provided and the name, title, and residence address of all officers, directors, managing or general agents must be included.
- (4) If the owner has designated an agent or managing company, then the name, principal residence address, principal business address and telephone number of such agent or managing company must be included in addition to that of the owner.
- (5) It shall be the responsibility of the owner to properly register any change of address, agent or any other information which occurs after the filing of the application, and do so within 30 days of such change.
- (6) For purposes of this section, a post office box shall not be accepted as the owner's address. Further, the building intended to be licensed shall not be accepted as the owner's address unless it is the principal place of business or residence of the owner.
- (7) The owner shall specify the address to which all notices of violation issued pursuant to Chapter 83 or Chapter 139 of the City Code or other violations of the housing codes, and invoices for fees are to be forwarded.
- (8) If the owner does not reside within the County of Erie (New York State), the name, address, and telephone number of a contact/agent who resides in the County of Erie (New York) must be provided.

B. Failure to provide such information shall be grounds to deny a rental dwelling unit registration.

177.5 Issuance or denial of rental dwelling unit registration.

Upon completion of an inspection of a building or dwelling units therein, if the Director or Code Enforcement Officers finds noncompliance with the housing code, the Director or Code Enforcement Officers shall issue a notice of violation in accordance with §139.10 of the City Code for the correction of any violations of the housing code. Upon reinspection, if the Director or Code Enforcement Officers find noncompliance with the notice of violation, the Director or Code Enforcement Officers shall deny a certificate or revoke any issued certificate in accordance with the procedure set forth in section 84.10 of this chapter. The Director shall issue a written statement setting forth the reasons for the denial or revocation.

177.6 Effect of denial or revocation.

A. Vacant units. When a rental dwelling unit registration certificate has been denied or revoked, no further rental and occupancy of dwelling units then vacant shall be permitted until a rental dwelling unit registration certificate has been issued.

B. Occupied units. In addition to other penalties under this chapter, when a rental dwelling unit registration certificate has been denied or revoked, the dwelling units containing such violations shall be vacated after the Director provides notice to the owner

and the occupants of the dwelling units containing said violations. Such notice shall direct the owner and occupants of the dwelling units containing such violations to vacate within a period of time as determined by the Director or Code Enforcement Officers and may provide a reasonable period for the owner or occupants an opportunity to correct such violations. For the owner, such notice shall be mailed by first class mail to the owner at the address provided by the owner pursuant to §84.4 of this chapter or personally served upon the owner by delivering the notice to the owner or by delivering the notice to a person of suitable age and discretion at the owner's residence or place of business. For the occupants, such notice shall be mailed to the occupant at the dwelling unit or posted conspicuously at the occupant's dwelling unit. Vacated dwelling units shall not be reoccupied until a rental dwelling unit registration certificate has been issued.

C. Occupied units; immediate hazard. In addition to other penalties under this chapter, when a rental dwelling unit registration certificate has been denied or revoked for reasons which, in the determination of the Director, present violations of the housing code that create an immediate hazard to the health and safety of the occupants, the dwelling units containing such violations shall be vacated within 30 days of such determination. The Director's determination shall be in writing and shall direct the owner and occupants of the dwelling units containing such violations to vacate the premises within a period of time not to exceed 30 days, as determined by the Director. The Director's determination shall be mailed by first-class mail to the owner at the address provided by the owner pursuant to §84.4 of this chapter or personally served upon the owner by delivering the notice to the owner or by delivering the notice to a person of suitable age and discretion at the owner's residence or place of business. The Director's determination shall be posted at the subject building and, to the extent possible, it shall also be posted conspicuously at each dwelling unit. Vacated dwelling units shall not be reoccupied until a rental dwelling unit registration certificate has been issued.

D. The notices provided under this section shall not be used to institute, or deemed to establish sufficient grounds for, a summary eviction proceeding under the Real Property Actions & Proceedings law.

177.7 Term of rental dwelling unit registration.

A rental dwelling unit registration issued pursuant to this chapter shall expire three years after the date of its issuance, unless sooner revoked pursuant to §84.10. Within 60 days prior to the expiration of a rental dwelling unit registration certificate, the owner shall make written application for a rental dwelling unit registration certificate in accordance with §84.40 of this chapter. In no event shall a certificate be issued pursuant to this chapter remain in effect more than three years after the date of its issuance unless further extended by the Director for sufficient cause. When a certificate is extended, a copy of both the letter from the owner requesting an extension, as well as the letter authorizing the extension from the Director, will be submitted to the Lackawanna City Council for reference.

177 .8 Transfer of rental dwelling unit registration.

A rental dwelling unit registration issued pursuant to this chapter is not transferable to any person who has acquired ownership of a registered building for the unexpired portion of the three year term for which it was issued. A new rental dwelling unit registration certificate application must be submitted to the Director within 30 days of when the new owner has officially taken custody of the property title and the rental dwelling unit registration certificate will only be issued after a satisfactory inspection from the Code Enforcement Officers.

177 .9 Revocation of rental dwelling unit registration certificate.

A. A rental dwelling unit registration certificate issued pursuant to this chapter may be revoked by the Director for any one or more of the following reasons.

(1) Fraud, misrepresentation or a false statement as to a material fact in the application.

(2) A finding that a rental dwelling unit registration was issued in error and not in accordance with applicable law.

(3) A violation of any provisions of this chapter, including noncompliance with a notice of violation issued pursuant to §83.10 and §139.10 of the City Code for any violations of Chapter 75 of the City Code or any other Code section relating to building maintenance or safety.

B. Prior such revocation, the Director shall hold a hearing, with at least 10 days notice of the time and place of the hearing provided to the owner. The Director shall issue a written statement setting forth the reasons for the decision.

177 .10 Duties of certificate holder.

Every holder of a rental dwelling unit registration certificate shall

A. Conspicuously post the certificate in a protected mounting in the public corridor, hallway, or lobby of the building for which the certificate was issued. This posting shall be in a common entrance. If no common entrance exists, then posting shall be made at the entrance of each dwelling unit.

In the alternative to such posting, the license shall be produced by the owner at the request of a tenant, a prospective tenant, or upon demand of the Director.

B. Conform with all other applicable state, county, and city laws and ordinances on matters not specifically addressed in this chapter.

177 .11 Fees.

A. The Director shall review the fee schedule annually and recommend changes, as he deems appropriate, to the Lackawanna City Council.

177 .12 Penalties for offenses.

A. Any violation of this chapter by a person, firm, corporation or other entity shall be a violation punishable in accordance with the general penalty provisions under Lackawanna Code **177 .6** with said penalties to be in addition to the revocation of a rental dwelling unit registration certificate issued under the provisions of this chapter. In addition, the annual registration fee will double 30 days after the due date has passed and a second invoice for payment has been sent first-class mail to the owner. In addition, a summons will be issued 60 days after the due date has passed and a fine in the amount of \$75.00 will imposed in addition to all outstanding registration fees and late charges. Furthermore, a notice to vacate may be issued and all tenants removed for failure to register a dwelling unit 30 days after the due date has passed and after notice to the owner and occupants by the Director.

B. Notwithstanding the lack of a specific reference thereto, failure to comply with any section, provisions or requirements in this chapter shall be a violation and shall be punishable by a fine or penalty of not more than \$250.00 or by imprisonment for not more than 15 days, or by both such fine and imprisonment, for each such offense and any other applicable state statutes. This chapter is a part of the City health, safety, housing, building, fire prevention and housing codes, and a violation thereof shall be deemed to be a violation for purposes of state statutes allowing escrow of rent to remedy violations. Any charges involving violations of this chapter may be brought before the Housing Part in Lackawanna City Court.

177 .13 Enforcement inspection criteria and authority.

A. Inspection criteria. The Director or Code Enforcement Officers shall inspect any rental dwelling unit for the purpose of registration every three years. The initial inspection for each dwelling unit existing on the effective date of this chapter shall be performed within three (3) years of the effective date of the chapter. A registration certificate will not be issued if one of the following occurs:

(1) The owner fails to properly register subject properties, or the registration certificate is revoked;

(2) Such unit has been abandoned by the owner, or the owner of such unit cannot be found;

(3) An excessive amount of exterior inspection violations or excessive callback fees have been imposed or billed as a result of enforcement activity under Chapter 83 of the City Code;

(4) The unit is on a parcel of land which is on the list of delinquent taxes filed by the Department of Assessment and Taxation, or a list of delinquent user fee charges, or outstanding administrative adjudication charges, or any other collection accounts outstanding with the City of Lackawanna

(5) The unit or the property within which the unit is located has, within the preceding three months, been the subject of a written petition filed with the Department of Development or by any City Council member, which petition requests that such unit be inspected and is signed by five or more persons having personal knowledge of the unit or property, stating one or more reasons why such unit should be inspected by the City;

(6) The Director or Code Enforcement Officers have a reasonable basis to believe that there exists within such unit one or more violations of codes which constitute a serious danger to the health, safety and welfare of persons living in such unit, or which would make the unit or structure in which the unit was located a dangerous structure or unfit for human habitation under Chapter 83 and Chapter 139 of the City Code.

(7) If the owner has failed or refused to pay fees to the City for inspections, certificates, or any other fees required by law.

B. The Director is hereby authorized to make or cause to be made inspections of premises subject to the requirements of this chapter to determine the condition of dwelling units in order to enforce the provisions of this chapter. The Director is authorized to enter, upon consent of the owner or occupant, any premises or dwelling unit subject to the requirements of this chapter in order to enforce the provisions of this chapter.

C. Inspection access. If any owner, occupant or other person in charge of a dwelling or dwelling units fails or refuses to permit free access and entry to the structure or premises under his control for any inspection pursuant to this chapter, the Director may seek a search warrant or other appropriate court order authorizing entry. Nothing in this chapter shall be deemed to authorize the Director or Code Enforcement Officer to conduct an inspection of any premises subject to this chapter without the consent of the owner, or occupant, or other person in charge of property, or a warrant duly issued by an appropriate court.

177.14 Notice of violation.

A. Whenever the Director or Code Enforcement Officers determine that a building or a dwelling unit contained therein is in violation of the housing code, he shall issue a notice of violation setting forth at a minimum:

- (1) The location of the subject property;
- (2) Specific violations of the housing code; and
- (3) A reasonable time, not to exceed 60 days, for the correction of any violations.

B. Such notice may contain any additional informational information as determined by the Director or Code Enforcement Officers, which may be necessary to achieve the goals of this chapter.

C. For purposes of this chapter, the Director may grant additional time to correct violations of the housing code beyond 60 days for sufficient cause as determined by the Director. Any such extensions shall be issued in writing by the Director stating the reasons for such extension and otherwise in accordance with the requirements of this sections.

D. The notice of violation may be mailed by first-class mail to the address provide by the owner pursuant to §84.4 of this chapter.

177.15 Tenant accountability.

A. With respect to the dwelling unit which the tenant occupies, controls or uses, the tenant shall be responsible for the following standards.

(1) Occupancy limitations and the lawful use of the dwelling unit.

(2) Maintenance of the dwelling unit in a clean, safe, and sanitary condition.

(3) Maintenance of plumbing, cooking and refrigeration equipment, appliances, fixtures and facilities contained in the dwelling unit in a clean and sanitary condition and providing reasonable care in the operation and use thereof.

(4) Keeping exits in the dwelling unit free and clear.

(5) Disposing of garbage and refuse into provided facilities in a sanitary manner and keeping the dwelling unit free and clear from garbage, refuse, and debris.

(6) Keeping domestic animals and pets in an appropriate manner and under control.

B. To the extent that the owner can provide the Director or Code Enforcement Officers with competent evidence that tenants have not complied with the above standards or that the tenants have contributed to the existence of housing code violations at the property, the Director may deem such circumstances to be sufficient cause to extend time for the correction of the violations pursuant to §84.16A 1-6 of this chapter.

177.16 Appeals.

A. Any person affected by any notice or order which has been issued under any provisions of this chapter or of any rule or regulation adopted pursuant thereto may request and shall be granted a hearing on the matter before the Director of Development. Upon receipt of a written petition from such person, which petition shall contain a brief statement of the grounds therefore, the Director shall hold a hearing, at which time such

person shall be given an opportunity to show why such notice or order should be modified or withdrawn. No such hearing shall be required unless the petition therefore shall have been filed in the office of the Director within fifteen days after the date the notice or order was issued. On receipt of such petition, the Director shall set a time and place for such hearing and shall give the petitioner written notice thereof. The hearing shall be commenced no later than 10 days after the date on which the petition was filed unless otherwise agreed by the petitioner and Director. After such hearing, the Director may sustain, modify, or withdraw the notice or order complained of by the petitioner, depending upon his findings as to whether the provisions of this chapter and of rules and regulations adopted pursuant thereto have been complied with. After such hearing, in the case of any notice or order suspending any permit required by this chapter, when such notice or order has been sustained by the Director, such suspended permit shall be deemed to have been revoked. The proceedings at such hearing, including the findings and decision of the Director, shall be reduced to writing and entered as a matter of public record in the Office of the Director. Such record shall also include a copy of every notice or order issued in connection with the matter. Any person aggrieved by the decision of the Director may appeal therefrom to any court of competent jurisdiction under the procedures provide by the laws of this state.

B. No provision or requirement herein contained for a hearing shall in anyway whatsoever affect or impair the right of the Director to at any time bring legal proceedings, actions or prosecutions as otherwise or elsewhere are permitted by law or ordinance.

C. Whenever the Director or Code Enforcement Officers finds that an emergency exists which requires immediate action to protect the public health, he may without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this chapter, such order shall be effective immediately. Any person to whom such order is directed, shall comply therewith immediately but, upon written petition to the Director, shall be afforded a hearing as soon as possible. After such hearing, depending upon his findings as to whether the provisions of this chapter and the rules and regulations adopted pursuant thereto have been complied with, the Director shall continue such order in effect or modify or revoke it.

177 .17 Severablilty

If a term, part or provision, section, subdivision or paragraph of this chapter shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remaining terms, parts, provisions, sections, subdivisions, and paragraphs.

177 .18 Director's regulations.

The Director is authorized to promulgate regulations consistent with the provisions of this chapter in order to carry out the objectives of this legislation.

177.19 Remedies not exclusive.

The provisions of this chapter are not exclusive and are in addition to and do not supersede or preempt other remedies or provisions of the City, state, or federal laws and housing codes as may apply.

177.20 Fees.

A. Certificate issuance. The fee, to be submitted at the time of application, for the issuance of a rental dwelling unit registration certificate and the first three-year fee shall be \$50.00 for a rental dwelling unit in a single-family dwelling, \$75.00 for a two unit rental dwelling, \$100.00 for a three or four unit rental dwelling and \$200.00 for a five or more unit rental dwelling.

B. Renewal fees. The owner shall pay the same fees as above (Fees/Part A) when the rental dwelling unit registration certificate expires after the three-year expiration date and has resubmitted the application for renewal. A title transfer in ownership will declare the current rental dwelling unit certificate null and void. The new owner will have to submit a new application for a rental dwelling unit registration certificate at the cost of the set fees, as above (Fees/Part A).

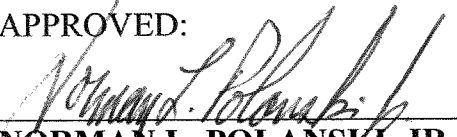
C. No fee for new buildings. There shall be no fee charged for the issuance of a rental dwelling unit registration certificate for new dwellings at the completion of their construction covered by a building permit.


D. Inspection fees. Every property owner shall pay a fee of \$50.00, per dwelling unit, to be assessed against the property, for each inspection after the second inspection in which violations of a state or local building code are found, unless such fee is waived by the Director, when, in the evaluation of the inspector, the status of the violation has not progressed or been satisfactorily completed. The fee shall not be applicable to inspections ordered after the commencement of a court action.

E. Non-Compliance. Unpaid fees as provided above shall constitute an unpaid tax lien against the real property involved and added to the owner's real property tax bill for said real property.

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.

Dated: 6/21, 2011
Lackawanna, New York

APPROVED:

NORMAN L. POLANSKI, JR.
Mayor

APPROVED
ASTOR FORM AND SUFFICIENCY

City Attorney

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