

A LOCAL LAW to amend the Russell Gardens Code.

Section One. The Russell Gardens Code is hereby amended by the addition of a new Chapter 40A entitled "Rental Registry/Registry of Leases" to read as follows:

RENTAL REGISTRY/REGISTRY OF LEASES

§ 40A-1 Legislative Intent.

The Board of Trustees has determined that the rental of residential dwellings in the Village of Russell Gardens is a health and safety concern for Village residents. The rental of dwellings to transient persons can overburden municipal services and promote or encourage deterioration of the housing stock of the Village. Furthermore, transient rentals significantly affect the quality of life in the Village inasmuch as they create a disproportionate share of noise, traffic, parking issues and deplete housing stock for long term rentals which are far less impactful. The Board of Trustees further recognizes that rentals are frequently owned and operated by absentee landlords. Absentee landlords are less able to maintain daily oversight of their properties to ensure compliance with the Village Code. The registration of all non-owner occupied rental units will better ensure enforcement of the law and yield greater compliance with housing standards and municipal regulations. The Board of Trustees finds that enactment of this Chapter will halt proliferation of such disadvantageous conditions and enhance the public health, safety, welfare and good order and governance of the City. The foregoing provisions will also assist in protecting the character and stability of residential areas and preserving the value of land and buildings throughout the Village.

§ 40A-2 Definitions.

All defined terms in Section 60-2 of the Village Code shall be applicable herein unless stated otherwise. As used in this chapter, the following terms shall have the meanings indicated:

CODE ENFORCEMENT OFFICER

The Building Inspector or the Commissioner of Buildings of the Village of Russell Gardens or their delegates or assistants.

DWELLING

A building or structure designed for and occupied exclusively as a home or residence for one or more families, including multiple dwellings.

OWNER

The person who holds title to the dwelling or any other person or persons or entity or entities having the right to possession of a dwelling.

RENT

A return, in money, property or other consideration (including payment in kind or services or other thing of value), for use and occupancy or the right to the use and occupancy of a dwelling, whether or not a legal relationship of landlord and tenant exists between the owner and the occupant or occupants thereof.

RENTAL DWELLING

A dwelling established, occupied, used or maintained for rental occupancy.

RENTAL OCCUPANCY

- A. The occupancy or use of a dwelling by a person or persons other than the owner as defined herein as a home or residence under an arrangement whereby the occupant or occupants thereof pay rent for such occupancy and use.
- B. A rental occupancy is permitted only if the term of the rental occupancy is a minimum of one year.
- C. There is a rebuttable presumption that any occupancy or use of a dwelling is a rental occupancy if the owner of the building containing the dwelling does not reside in the same building.

TRANSIENT RENTAL OCCUPANCY

The occupancy or use of a dwelling by a person or person other than the owner as a home or residence under an arrangement whereby the occupant or occupants thereof pay rent for such occupancy and use for a period of less than one year.

§ 40A-3 Applicability; more restrictive provisions to prevail.

- A. Scope. This chapter shall apply to all rental dwellings located within the Village, whether or not the use and occupancy thereof shall be permitted as provided in this chapter.
- B. Applicability. The provisions of this chapter shall be deemed to supplement applicable state and local laws, ordinances, codes and regulations; and nothing in this chapter shall be deemed to abolish, impair, supersede or replace existing remedies of the Village, county or state or existing requirements of any other applicable state or local laws, ordinances, codes or regulations. In case of conflict between any provision of this chapter and any applicable state or local law, ordinance, code or regulation, the more restrictive or stringent provision or requirement shall prevail. The issuance of any permit or the filing of any form under this chapter does not make legal any action or statement of facts that is otherwise illegal under any other applicable legislation.

§ 40A-4 Rental registration.

- A. Rental registration required. Any owner who wants to rent a rental dwelling must first file a rental registration form with the Building Department on a form provided by the Building Department for that purpose. Only one rental registration per rental dwelling is permitted within a twelve-month period. Rental registrations for existing rentals must be submitted to the Village within thirty days of adoption of this section. It shall be the responsibility of the owner of each residential rental premises which is subject to the provisions of this chapter to timely file a registry application form with the Building Department for each premises, accompanied with a fee, which may be set by resolution of the Village Board of Trustees from time to time.

- B. Content of rental registration. Such form shall be filed in duplicate and shall contain:
- (1) The name, address and telephone number, if any, of the owner of the rental dwelling intended for rental occupancy.
 - (2) The street address of the rental dwelling intended for rental occupancy.
 - (3) The number of persons under and over the age of 18 and the dates of birth of each person presently residing in or occupying such dwelling intended for rental occupancy.
 - (4) The name, address and telephone number, if any, of the managing agent or operator of each such intended rental dwelling.
 - (5) Such form shall be signed by the owner of the dwelling, and the statements of such owner therein contained shall be verified under oath.
- C. Copy of lease and owner affidavit required. The rental registration application shall be accompanied by the following:
- (1) A copy of the lease or other rental occupancy agreement for the rental dwelling.
 - (2) An affidavit, acknowledged by a notary public, from the owner confirming that:
 - (a) The rental registration and lease provided to the Village are true and accurate;
 - (b) That there are no other rental agreements in place for the rental dwelling.
- D. Notice to advertise a dwelling required. Any owner who wants to rent a rental dwelling must first file a notice on a form provided by the Building Department for that purpose. This will serve to put the Village on notice that the owner is searching for a tenant and that the tenancy complies with the regulations set forth in this chapter.
- E. The rental registration application shall be reviewed by the Building Department or their designee for adequacy. Should the Building Department determine that said application is incomplete, defective, or untruthful for any reason, said application shall be marked "rejected" and returned to the filer. A rejected application shall not be deemed to comply with the filing provisions of this chapter.
- F. It shall be the responsibility of each owner to timely notify the Building Department whenever the information provided in the registry application has become outdated or for any reason is no longer accurate.
- G. Every approved application shall be valid for two years and shall be given a registry number by the Building Department which shall be valid for two years from the date of issuance. A copy of the approved application with the approval stamp of the Building Department issued to the property owner after satisfactory inspection of residential occupancy shall be necessary to rent any residential premises in the Village of Russell Gardens.

§ 40A-5 Registry of leases.

It shall be the duty of the Code Enforcement Officer to maintain a registry of leases and rental agreements of all rental dwellings in the Village. Such registry shall be kept by street address, showing the name and address of the owner and tenant, the lease term and the expiration of the lease term.

§ 40A-6 Entire rental unit to be rented.

It shall be unlawful and a violation of this chapter and an offense within the meaning of the Penal Law of the State of New York for any owner to permit any tenant or other person to take up residence by a rental occupancy in anything less than an entire rental unit or rental dwelling.

§ 40A-7 Transient rental occupancy prohibited.

- A. A transient rental occupancy is not permitted.
- B. A tenant in possession is prohibited from subleasing or otherwise licensing the use or occupancy of any portion thereof.
- C. Advertising for the subleasing of, or selling or assigning of shares to, the dwelling by a tenant, or occupant, for the use or occupancy of all or a portion of the dwelling is prohibited.
- D. There is a rebuttable presumption that any occupancy or use of a dwelling is a transient rental occupancy if the dwelling is offered for lease on a short-term rental website, including but not limited to Airbnb, HomeAway, Vrbo,[®] and the like for a period of less than one year; the dwelling is offered for lease in any medium for a period of less than one year. This foregoing presumption may be rebutted by evidence presented to the Village that the dwelling is not a transient rental occupancy.
- E. It shall be unlawful and a violation of this chapter and an offense within the meaning of the Penal Law of the State of New York for any owner to permit any tenant or other person to take up residence by a rental occupancy for a term of less than one year or to enter into or allow a transient rental occupancy.

§ 40A-8 Rental registration required.

It shall be unlawful and a violation of this chapter and an offense within the meaning of the Penal Law of the State of New York for any owner to permit any tenant or other person to take up residence by a rental occupancy in any dwelling without the owner's first having completed and filed with the Code Enforcement Officer a rental registration form provided by the Commissioner of Buildings. A new form must be filed on an annual basis. The annual filing is required even if the same tenants occupy the dwelling under the same rental agreements.

§ 40A-9 Filing of rental agreement; identification of tenants.

It shall be unlawful and a violation of this chapter and an offense within the meaning of the Penal Law of the State of New York for any owner to permit any tenant or other person to take up residence by a rental occupancy without the owner first having filed with the Code Enforcement Officer a copy of the rental agreement and a form identifying the tenants provided by the Commissioner of Buildings. A rental agreement and new tenant identification form must be filed whenever a dwelling becomes vacant and the owner intends to permit a new tenant or other person to take up residence.

§ 40A-10 Confidentiality of rental registration, rental agreement and tenant identification form.

Under Public Officers Law § 87(2)(b), rental registration forms, rental agreements, tenant identification forms and that portion of the rental occupancy permit application required under Section 83-4 of this Chapter shall be exempt from disclosure under the Freedom of Information Law, on the grounds that such disclosure would constitute an unwarranted invasion of personal privacy. The Code Enforcement Officer will institute strict policies to ensure that such information is available only to Village personnel who are engaged in the enforcement of the provisions of this chapter.

§ 40A-11 Collection of rent.

The following shall be conditions precedent to renting any dwelling or dwelling unit within the Village:

- A. The filing of a valid rental registration form for the tenancy as required by § 40A-4A and B.
- B. The filing of a copy of the lease rental agreement as required by § 40A-4C.
- C. The filing of an owner's affidavit as required by § 40A-4C.
- D. The filing of photo ID for all occupants who will be living in the rental dwelling.

§40A -12 Presumptions applicable to rental registration enforcement and prosecutions.

- A. Within the context of rental registration enforcement and prosecutions, the presence or existence of any of the following shall create a rebuttable presumption that a dwelling is being used as a rental occupancy or an illegal multiple occupancy rental:
 - (1) The dwelling is occupied by someone other than the owner, or the owner of the property represents in writing or otherwise, to any person or establishment, business, institution or government agency, that he resides at an address other than the rental property;
 - (2) Utilities, cable, phone or other services are in place or requested to be installed or used at the dwelling in the name of someone other than the record owner;
 - (3) There are separate entrances for segregated parts of the dwelling;
 - (4) There are partitions or internal doors which may serve to bar access between segregated portions of the dwelling, including but not limited to bedrooms;

- (5) There exists a separate written or oral lease or rental arrangement, payment or agreement for portions of the dwelling among its owner(s) and/or occupants and/or persons in possession thereof;
 - (6) Any occupant or person in possession thereof does not have unimpeded and/or lawful access to all parts of the dwelling unit;
 - (7) Two or more kitchens each containing one or more of the following: a range, oven, hot plate, microwave or other similar device customarily used for cooking or preparation of food and/or a refrigerator;
 - (8) A dwelling has been advertised in any newspaper, magazine, local advertising publication, or posted or billed as being available for rent;
 - (9) There are motor vehicles parked at the dwelling registered to a person or entity who is not the owner;
 - (10) There is more than one mailbox at the dwelling;
 - (11) There is more than one gas meter at the dwelling;
 - (12) There is more than one electric meter at the dwelling;
 - (13) There is more than one doorbell at the dwelling;
 - (14) There are three or more motor vehicles registered to the dwelling and each vehicle owner has a different surname;
 - (15) There are more than three waste receptacles, cans, containers, bags, or boxes containing waste from the dwelling placed for pickup at least twice during a weekly garbage pickup period; or
 - (16) There is no electric meter annexed to the exterior of the dwelling.
- B. The presumptions set forth in Subsection A above, subject to the limitations contained therein, shall also be applicable to enforcement and prosecution of residential illegal use and occupancy violations.
- C. Nothing herein shall be construed to prevent persons living together as a family unit, with the owner, as defined by the Village Code.

§ 40A-13 Penalties for offenses.

- A. Any person, association, firm or corporation which violates any provision of this chapter or assists in the violation of any provision of this chapter shall be guilty of a violation, punishable:
- (1) By a fine of not less than \$1,000 and not exceeding \$5,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense.

- (2) By a fine of not less than \$5,000 nor more than \$10,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the second offense.
- (3) By a fine of not less than \$10,000 nor more than \$20,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the third or subsequent offense of a series of offenses, all of which were committed within a period of five years.

B. Each week's continued violation shall constitute a separate additional violation.

§ 40A-14 Severability.

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in said judgment.

§ 40A-15 When effective.

This chapter shall be effective upon filing with the Secretary of State.

Section Two. This local law shall become effective upon filing with the Secretary of State.