

STATE OF INDIANA

BEFORE THE CLARKSVILLE TOWN COUNCIL

ORDINANCE NO. 2022 – G – 05

AN ORDINANCE AMENDING CHAPTER 150 OF THE TOWN MUNICIPAL CODE (BUILDING REGULATIONS) TO ADD A NEW SUBCHAPTER ENTITLED “RESIDENTIAL RENTAL PROPERTY REGISTRATION AND INSPECTION CODE”

WHEREAS, the Town Council of the Town of Clarksville has determined that it is necessary to implement an organized residential rental property registration and inspection program to provide an efficient and timely system of communication regarding code enforcement, fire safety, and law enforcement in relation to residential rental property located within the Town of Clarksville town limits for the health, safety, and welfare of all residents of the Town of Clarksville; and,

WHEREAS, Ind. Code §§ 36-1-20, *et seq.*, empowers the Town Council to adopt measures for the registration and inspection of residential rental units; and,

WHEREAS, this Town Council now desires to enact a residential rental property registration and inspection program as part of the town’s building regulations to be administered and enforced by the Office of the Building Commissioner requiring owners to participate in said program for the health, safety, and general welfare of all residents of the Town of Clarksville, and now adopts this Ordinance for such purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CLARKSVILLE, INDIANA, as follows:

SECTION 1. TITLE.

This subchapter and all material included herein by reference shall be known as the Residential Rental Property Registration and Inspection Code for the Town (hereinafter referred to as “this subchapter”).

SECTION 2. SCOPE.

(A) Unless excepted by Section 2(B), this subchapter shall apply to all residential rental units and residential rental unit communities and all areas associated therewith including, but not

limited to, parking lots, common areas, driveways, landscaping, accessory structures, fences, retaining walls, swimming pools, hot tubs, and spas.

(B) This subchapter shall not apply to:

(1) Hotels, motels, bed and breakfast, or residential rental units with rental periods of less than thirty (30) consecutive days to the same tenant; or,

(2) Owner-occupied residential rental units. For structures containing more than one (1) residential rental unit, this exclusion shall only apply to the individual residential rental unit that is owner-occupied, and this subchapter shall apply to all other residential rental units in the structure.

(C) This subchapter does not supersede or take precedence over contractual agreements or contracts between an owner and/or landlord and any tenant(s). The Town will not intervene as an advocate of either party, act as an arbiter, or hear or resolve any complaints by an owner and/or landlord or any tenant(s) that do not clearly relate to the provisions of this subchapter or other Town ordinances.

SECTION 3. DEFINITIONS.

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

ENFORCEMENT AUTHORITY. The enforcement authority to enforce the provisions of this subchapter shall be the Building Commissioner or his designee.

HEARING AUTHORITY. The Building Commission.

LANDLORD. The meaning as set out in Ind. Code § 32-31-3-3.

OWNER. The meaning as set out in Ind. Code § 32-31-3-4.

PERSON. The meaning as set out in Ind. Code § 32-31-3-5.

PROFESSIONAL REAL ESTATE MANAGER. An individual, partnership, corporation, or limited liability company satisfying the requirements to manage real estate set forth in Ind. Code § 25-34.1-3-2.

RENTAL UNIT. The meaning as set out in Ind. Code § 32-31-3-8.

RENTAL UNIT COMMUNITY. The meaning as set out in Ind. Code § 36-1-20-1.5.

TENANT. The meaning as set out in Ind. Code § 32-31-3-10.

UNSAFE BUILDING AND/OR UNSAFE PREMISES ORDER. An order issued pursuant to Ind. Code § 36-7-9-5 as adopted by Section 150.070 of the Clarksville Municipal Code.

SECTION 4. HAZARDOUS CONDITIONS.

The owner shall immediately notify the Office of the Building Commissioner of any hazardous conditions at a residential rental unit or residential rental unit community, including, but not limited to:

- (A) Fire;
- (B) Flood;
- (C) Interruption of electrical or water service with a duration of four (4) hours or longer;
- (D) Sewage backup; or
- (E) Other health hazards.

SECTION 5. REGISTRATION.

(A) Initial Registration.

(1) Owners must register all residential rental units or residential rental unit communities subject to the provisions of this subchapter by electronically submitting a rental property registration application to the Town accompanied by payment of the registration fee set forth in Section 150.125 of the Clarksville Municipal Code.

(2) The initial registration of each residential rental unit or residential rental unit community subject to the provisions of this subchapter operating as of the date of passage of this ordinance shall be completed on or before January 13, 2023.

(3) The initial registration of each newly created or newly established residential rental unit or residential rental unit subject to the provisions of this subchapter after the

date of passage of this ordinance shall be completed before any residential rental unit is occupied by a tenant.

(4) If ownership of a registered residential rental unit or residential rental unit community is transferred during the year, the new owner shall complete a new initial registration not later than thirty (30) days after the change of ownership. This includes transfers of ownership between corporations or other legal entities even where there is identical ownership interest in the acquiring legal entity and the transferring legal entity.

(B) Duration and Renewal of Registration. All registrations shall begin on the day of registration approval from the Town and end one day less than one calendar year from the date of registration approval. All registrations shall be renewed each year.

(C) Change of Registration. If any of the following occur during the annual registration period, the owner shall submit a change of registration form electronically to the Town not later than thirty (30) days after the occurrence:

- (1) Change in the professional real estate manager, if applicable;
- (2) Change in contact information for the owner, landlord, or professional real estate manager, if applicable; or
- (3) Change in the number of residential rental units in a residential rental unit community.

SECTION 6. INSPECTIONS.

(A) Regularly Scheduled Inspections. All residential rental units or residential rental unit communities subject to the provisions of this subchapter must be inspected. When completing the initial registration or the annual registration renewal in the year an inspection certificate will expire as set forth in Section 8(B), the owner shall contact the enforcement authority to schedule an inspection by the Town or submit an application for third-party inspection if all qualifications in Section 6(B) are met. Should an owner fail to schedule the inspection or provide a qualified third-party inspection report in the time period required, the enforcement authority reserves the right to contact the owner to schedule an inspection to be conducted by the enforcement authority.

(B) Third-Party Inspections. Residential rental units may qualify for third-party inspection in lieu of inspection by the enforcement authority if all of the following are satisfied:

- (1) The residential rental unit is:

- (a) Managed by; or
- (b) Part of a rental unit community that is managed by;

a professional real estate manager.

(2) During the previous twelve (12) months, the rental unit has been inspected or is part of a rental unit community that has been inspected by either of the following:

(a) By or for:

(i) The United States Department of Housing and Urban Development, the Indiana Housing and Community Development Authority, or another federal or state agency; or

(ii) A financial institution or insurance company authorized to do business in Indiana; or

(b) By an independent inspector who:

(i) Is a registered architect;

(ii) Is a professional engineer; or

(iii) Holds a valid unexpired nationally recognized code organization certification as a commercial building inspector.

(3) Independent inspectors may not be an employee of the owner or landlord.

(4) The third-party inspection report meeting the requirements set forth in Section 7(A) shall be submitted to the enforcement authority by the due date set by the enforcement authority.

(5) If all requirements in this Section 6(B) are satisfied, any inspection reports prepared by or for the United States Department of Housing and Urban Development shall be valid for purposes of maintaining the qualification third-party inspections until the earlier of:

(a) The date specified in the inspection report; or

(b) Thirty-six (36) months after the date of the inspection report.

(6) After application for third-party inspection and receipt of the third-party inspection report, the enforcement authority shall make a determination as to whether all requirements for third-party inspections pursuant to this Section 6(B) have been satisfied.

(a) If all requirements have been satisfied, no inspection fee shall be due, and the enforcement authority shall issue the inspection certificate pursuant to Section 8.

(b) If one (1) or more of the requirements have not been satisfied, the enforcement authority shall notify the owner and may schedule an inspection to be conducted by the enforcement authority pursuant to Section 6(A).

(C) Non-routine Inspections. The enforcement authority may conduct a nonroutine inspection of any residential rental unit subject to the provisions of this subchapter, regardless of whether the residential rental unit qualifies for third-party inspections under Section 6(B), if the enforcement authority:

(1) Has reason to believe; or

(2) Receives a complaint;

that the residential rental unit does not comply with applicable code requirements.

(D) Re-Inspections. If an inspection reveals noncompliance with applicable code requirements as set forth in Section 7(B), the enforcement authority may require one (1) or more re-inspections to confirm the violations of applicable code requirements have been satisfactorily cured prior to issuance of an inspection certificate.

(E) Inspections Conducted by the Enforcement Authority.

(1) For each inspection conducted by the enforcement authority, including regularly scheduled inspections after submittal of a third-party inspection report if all requirements for a third-party inspection have not been satisfied, the owner shall pay the applicable fee based on the type of inspection set forth in in Section 150.125 of the Clarksville Municipal Code.

(2) The owner shall notify tenants of the inspection date and time, that the inspection requires access to the interior of the residential rental unit, and that any pets are to be controlled or restrained by the tenant at all times during the inspection. The owner is responsible for ensuring access at the time of the inspection and may be present during the inspection. In the

event the owner needs to reschedule the inspection, the owner shall contact the enforcement authority no less than twenty-four (24) hours, excluding weekends and holidays, before the scheduled inspection or be assessed a rescheduling fee as set forth in Section 150.125 of the Clarksville Municipal Code. A rescheduling fee may be reduced or waived at the discretion of the enforcement authority.

(3) Observation of any violations of any section of the Clarksville Municipal Code made during the regular course of any inspection by the enforcement authority may lead to enforcement action separate from or in addition to any enforcement action under this subchapter.

SECTION 7. INSPECTION REPORT.

(A) Contents of Inspection Report. After every inspection conducted by the enforcement authority pursuant to Section 6, a written inspection report shall be issued to the owner that verifies whether the residential rental unit or residential rental unit community is safe and habitable with respect to:

- (1) Electrical supply and electrical systems;
- (2) Plumbing and plumbing systems;
- (3) Water supply, including hot water;
- (4) Heating, ventilation, and air conditioning equipment and systems;
- (5) Bathroom and toilet facilities;
- (6) Doors, windows, stairways, and hallways;
- (7) Functioning smoke detectors; and
- (8) The structure in which a rental unit is located.

To qualify for third-party inspections pursuant to Section 6(B), any third-party inspection report must contain all information required in this subsection.

(B) Noncompliance with Rules of the Fire Prevention and Building Safety Commission.

(1) If an inspection by the Town reveals the residential rental unit is noncompliant with the rules of the Fire Prevention and Building Safety Commission as adopted by reference in Chapter 150 of the Clarksville Municipal Code, each nonconforming item shall be considered a violation, and the inspection report shall be accompanied by a notice of violation or unsafe building and/or unsafe premises order issued pursuant to Sections 150.070 through 150.077 of the Clarksville Municipal Code, which must identify each nonconforming item to be cured and include a reasonable time, of at least ten (10) days, but not more than sixty (60) days, for the violation to be cured. The determination as to whether a notice of violation or unsafe building and/or unsafe premises order is issued is within the discretion of the enforcement authority.

(2) For common areas which are owned by a single owner but shared among more than one (1) residential rental unit, violations shall, at the discretion of the enforcement authority, be assigned to a single residential rental unit for purposes of this subchapter or an independent notice of violation or unsafe building and/or unsafe premises order may be issued pursuant to Sections 150.070 through 150.077 of the Clarksville Municipal Code. In no event shall said violations be included as nonconforming items on the inspection report for more than one (1) residential rental unit sharing access to the common area.

(3) For common areas associated with condominiums, violations shall not be assigned to the owner of any single residential rental unit or included on the inspection report for any residential rental unit. A notice of violation or unsafe building and/or unsafe premises order may be issued to the association of co-owners pursuant to Sections 150.070 through 150.077 of the Clarksville Municipal Code.

(C) Service of Inspection Report and Corresponding Documents.

(1) Each inspection report prepared by the Town which verifies that the rental unit or rental unit community is safe and habitable and does not identify noncompliance with any applicable code requirements shall be served upon the owner, along with the inspection certificate pursuant to Section 8, by regular first-class mail, postage prepaid.

(2) Each inspection report prepared by the Town which identifies the residential rental unit is noncompliant with applicable code requirements shall be served upon the owner, along with the notice of violation or unsafe building and/or unsafe premises order, by a manner of serving notice set forth in Ind. Code § 36-7-9-25.

SECTION 8. INSPECTION CERTIFICATE.

(A) Issuance. The enforcement authority shall issue an inspection certificate for each residential rental unit or residential rental community subject to the provisions of this subchapter upon:

(1) Confirmation that the residential rental unit or residential unit community has valid unexpired registration either as an individual residential rental unit or as part of a rental unit community as set forth in Section 5;

(2) Confirmation that all inspection fees, re-inspection fees, and rescheduling fees, if applicable, have been paid; and

(3) Receipt of a satisfactory inspection report as set forth in Section 7.

(B) Expiration. Inspection certificates expire three (3) years from the date of issuance.

(C) Revocation. Inspection certificates may be revoked as follows:

(1) Failure to complete the initial or annual renewal registration as required by Section 5;

(2) Failure to submit a change of registration form as required by Section 5;

(3) Upon the enforcement authority's reasonable belief that the owner supplied false information knowingly with the intent to deceive during the registration process or by submitting a false third-party inspection report;

(4) For inspections conducted by the Town, failure to correct any deficiencies noted in an inspection report within the time specified in the notice of violation or unsafe building and/or unsafe premises order issued pursuant to Sections 150.070 through 150.077 of the Clarksville Municipal Code;

(5) Failure to correct any violations by the time required in a final unsafe building and/or unsafe premises order issued pursuant to Sections 150.070 through 150.077 of the Clarksville Municipal Code issued for any other violation; or

(6) Construction commenced on a rental unit not in conformity with a valid building permit from the Town as required by Section 150.020 of the Clarksville Municipal Code.

(D) Hearing; Revocation.

(1) The hearing authority, upon receipt of written documentation from the enforcement authority recommending revocation, shall provide written notification to the owner the reason for revocation of the inspection certificate and the date and time the owner is to appear for a hearing on said revocation by a manner of serving notice set forth in Ind. Code § 36-7-9-25.

(2) If, after the hearing, the hearing authority is satisfied that the weight of the evidence clearly indicates any of the circumstances set forth in Section 8(C), the hearing authority may revoke the inspection certificate.

(E) Transfer.

(1) Unless prohibited by Section 8(E)(2), an inspection certificate may be transferred to a new owner. The new owner shall submit the request for transfer as part of the initial registration pursuant to Section 5(A)(4). The expiration date of an inspection certificate shall not be extended by a transfer.

(2) An inspection certificate shall not be transferred if:

(a) The inspection certificate is expired;

(b) The inspection certificate has been revoked or if the hearing authority has initiated the revocation process;

(c) The new owner currently has any inspection certificate revoked for any other residential rental unit; or

(d) The new owner currently has an unresolved notice of violation, unsafe building and/or unsafe premises order issued pursuant to Sections 150.070 through 150.077 of the Clarksville Municipal Code, or citation or violation of any federal or state code for any other residential rental unit; or

(e) The new owner has any outstanding fees, penalties, or liens assessed by the Town for any rental unit.

(3) If the new owner consists of more than one (1) person or entity, transfers shall be prohibited under Sections 8(E)(2)(c), 8(E)(2)(d), and 8(E)(2)(e) if any of the persons or entities is an owner, whether individually or with other persons or entities, of another residential rental unit for which transfer would be prohibited.

SECTION 9. RESIDENTIAL RENTAL PROPERTY FUND.

A Residential Rental Property Fund is hereby established as a non-reverting fund in accordance with Ind. Code § 36-1-20-3, which fund shall be contained within the operating budget of the enforcement authority. Said fund shall be administrated in accordance with Ind. Code § 36-1-20-3.

SECTION 10. VIOLATIONS.

(A) It shall be unlawful for an owner of residential real property included in the scope of this subchapter as set forth in Section 2 to fail to maintain valid registration, maintain a valid inspection certificate, or otherwise comply with the provisions of this subchapter.

(B) If the owner fails to pay penalties, fees, costs and expenses owed pursuant to this subchapter, the Town may pursue collections as allowed by law, including in the same manner as prescribed by law, including, but not limited to, Ind. Code § 36-1-6-2, Ind. Code § 36-7-9-13, and Ind. Code § 36-7-9-13.5. Any fee collected pertaining to this subchapter shall be deposited into the Residential Rental Property Fund.

(C) The Town may file a civil suit to enjoin any violation of this subchapter.

(D) If a third-party inspection report submitted under this subchapter is found to be fraudulent, altered, otherwise defective or deceptive, or the result of other misconduct, at any time:

(1) The inspection certificate shall be immediately revoked as set forth in Section 8;

(2) The owner shall immediately, upon notification from the Town, contact the enforcement authority to schedule an inspection for each residential rental unit by the enforcement authority included in the rental property registration application;

(3) The Town reserves any and all rights to pursue all remedies available, including, but not limited to revoking any business registrations under Sections 111.45 through 111.52 of the Clarksville Municipal Code, filing a complaint with the violator's professional licensing agency, if any, and seeking criminal prosecution if warranted by the violation.

SECTION 11. PENALTIES.

Failure to comply with the provisions of this subchapter is punishable by a fine of not more than two thousand five hundred dollars and no cents (\$2,500.00) per residential rental unit for a first violation, or not more than seven thousand five hundred dollars and no cents (\$7,500.00) per residential rental unit for a second or subsequent violation. Each day the residential rental unit is not in compliance shall constitute a separate violation. In the event a court finds a penalty assessed under this provision exceeds the maximum permitted by statute, the penalty shall be limited to the maximum permitted by Ind. Code § 36-1-3-8(a)(10)(B). The assessment of penalties shall in no way limit the other remedies provided elsewhere in this subchapter.

SECTION 12. SEVERABILITY.

If any provision of this Ordinance is declared invalid, by a court of competent jurisdiction, for any reason, the remaining provisions shall not be affected, if such remaining provisions can, without the invalid provision or provisions, be given their original intended effect in adopting this Ordinance. To this end, the provisions of this Ordinance are severable.

SECTION 13. EFFECTIVE DATE.

This Ordinance shall be effective immediately from and after the date of its adoption by the Town Council.

So Ordained by majority vote of the entire membership of the Clarksville Town Council at
a properly noticed and convened public meeting held this _____ day of _____, 2022.

CLARKSVILLE TOWN COUNCIL

By: _____
Ryan Ramsey, President

Attested by:

Robert P. Leuthart, Clerk-Treasurer