

Providing for Inspections and Certificate of Occupancy for Residential Rental Units

WHEREAS, the Alabama Uniform Residential Landlord and Tenant Act, Act No. 2006-316, codified as Sections 35-9A-101 et seq. 1975 Code of Alabama, became effective on January 1, 2007; and

WHEREAS, Section 35-9A-102(b) states that one of the purposes of the Act is to encourage landlords and tenants to maintain and improve the quality of housing;

WHEREAS, Section 11-40-10(b) authorizes a municipality to enforce police or sanitary regulations within the city limits and to prescribe fines and penalties for violations of the regulations; and

WHEREAS, Section 11-45-8(c) authorizes a municipality to adopt ordinances, rules and regulations as a code for the construction, erection, alteration or improvement of buildings, the installation of plumbing or plumbing fixtures, installation of gas or gas fixtures, fire prevention, health and sanitation, mechanical, housing, elimination and repair of unsafe buildings, and other like codes; and

WHEREAS, Section 35-9A-204(a)(1) requires a landlord to comply with the requirements of applicable building and housing codes materially affecting health and safety; and

WHEREAS, Section 35-9A-301(1) requires a tenant to comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety; and

WHEREAS, pursuant to Section 11-45-1, a municipality is authorized to adopt ordinances not inconsistent with the laws of the state to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the inhabitants of the municipality; and

WHEREAS, in Opinion No. 2007-009, dated October 31, 2006, the Attorney General issued an opinion to Mayor Ronald K. Davis of the City of Prichard that a municipality has the authority to adopt an ordinance (1) requiring the annual inspection of apartments and rental houses to ensure compliance with the local building code, (2) charging a reasonable fee to defray the expense of performing the inspections, and (3) charging a reasonable fine or revoking the certificate of occupancy of any apartment or rental house failing to comply with the local building code; and

WHEREAS, the City of Alexander City now seeks to adopt an ordinance of the type approved by the Attorney General to provide for the safety and to preserve the health of persons residing in rental housing and to enhance the sustainability of our neighborhoods and the associated benefits to surrounding property owners;

NOW, THEREFORE BE IT ORDAINED, by the City Council of the City of Alexander City Alabama, as follows:

Section 1. The City Code is amended by adding two new sections to Article I of Chapter 18, Buildings and Building Regulations, as follows:

Sec. 18-2 Rental property inspection.

(a) All rental housing units, and those under a contract for sale (lease/purchase agreement), which are or become vacant after January 1, 2010, must be inspected for compliance with all building codes and a Certificate of Occupancy shall be issued if the unit is in substantial compliance, prior to occupancy by a new tenant. Thereafter, whenever a rental housing unit or a unit under a contract for sale (lease/purchase agreement) becomes vacant, the property shall be inspected for compliance and a new Certificate of Occupancy issued.

(b) The cost of the initial inspection and one follow-up inspection will be without charge. Any additional follow-up inspections which are required shall cost \$100 each if the previous non-compliance violations noted have not been corrected. The owner of the unit shall be responsible for contacting the building department to schedule inspections. After the initial inspection following the adoption of this Ordinance, if the unit has been occupied without an Certificate of Occupancy issued, the cost of the inspection shall be as follows: (1) \$100 for the first occupancy without an Certificate of Occupancy; (2) \$250 for the second occupancy within one year without an Certificate of Occupancy; or (3) \$500 for the third occupancy within one year of date of initial inspection without a Certificate of Occupancy.

(c) For purposes of this section, a rental housing unit is defined as a structure or the part of a structure, including a manufactured home, that is rented as a home, residence, or sleeping place by one or more persons. The following arrangements are not covered by this definition:

(1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(3) transient occupancy in a hotel, motel, or lodgings;

(4) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises rented by the occupant primarily for agricultural purposes;

(7) continuation of occupancy by the seller or a member of the seller's family for a period of not more than 36 months after the sale of a dwelling unit or the property of which it is a part;

(8) occupancy under a rental agreement with the Alexander City Housing Authority.

(d) If, upon inspection of the residential rental unit, the building official, or his designee, determines that the unit is in violation of any building code, as defined in the City of Alexander City Rental Housing Inspection Report, and informs the owner of the violations, no Certificate of Occupancy may be issued until the condition of the unit is brought up to code

standards. Under such circumstances, it shall be unlawful for a person to lease or occupy the unit until a Certificate of Occupancy is issued.

(1) Before utilities can be registered in the new tenant's name and utility services restored to rental unit, the proposed tenant must provide the City of Alexander City Utility Department with a copy of the Lease Agreement with the name of the owner of said rental unit. Said copy of Lease Agreement will be kept on file in a secured location in the office of the Alexander City Building Department.

(2) At a minimum, the Lease Agreement must include the E-911 address of the rental unit, the name of all occupants of said property and the name, address and telephone number of the owner of the rental unit. This information will be stored in a secure location in the Building Departments Office.

(e) If, during an inspection of a residential rental unit, the building official, or his designee, determines that the unit is in violation of any building code, as defined in the City of Alexander City Rental Housing Inspection Report, and is not suitable for habitation until needed corrections are made to bring the condition of the unit up to code standards, it shall be unlawful for the tenant to remain in the unit. No Certificate of Occupancy shall be issued until said violations have been corrected.

(f) In lieu of an inspection by the city building official and in order to obtain a Certificate of Occupancy, the owner of the rental housing unit may submit to the building department a copy of the current credentials of the inspector and the full report of an inspection demonstrating compliance with applicable city codes, performed by a person currently licensed and in good standing with any of the following: (1) a home inspector licensed with the Building Commission, pursuant to The Alabama Home Inspectors Registration Act, §§34-14B-1 et seq., 1975 Ala. Code; (2) an architect registered with the Alabama Board for Registration of Architects, pursuant to §§34-2-1 et seq., 1975 Ala. Code; (3) a professional engineer with the Alabama Board of Licensure for Professional Engineers and Land Surveyors, pursuant to §§34-11-1 et seq., 1975 Ala. Code; (4) a residential building inspector, residential combination inspector or certified building official by the International Code Council, Inc.; or (5) an individual authorized to inspect residential construction by the United States Veterans Administration or the United States Department of Housing and Urban Development. In such a case, there will be no fee required for the issuance of a Certificate of Occupancy. A record of those addresses inspected by any of the above will be submitted to the Building Official for inclusion on the master list of rental dwelling units in Alexander City.

(g) The Building Official may conduct compliance inspections during active tenancy when requested by the tenant for just cause or when visible exterior conditions indicate probable housing code violations within or without the unit. For purposes of this subsection, just cause is defined as conditions in the unit that the tenant considers substandard and, further, the tenant reports that the landlord refuses to correct the violations. Before said unit will be inspected by the City of Alexander City, the tenant must have reasonable proof that the landlord has been notified of said violation and has had reasonable time to have corrected said violation(s). The Building Official shall submit his or her inspection report to the landlord citing all code violations and establishing a reasonable time period for correction, not less than thirty

(30) or more than ninety (90) days or incur penalties in the amounts specified under Section 18-3 Penalty. The Building Official may extend the time limit an additional ninety (90) days if, in his or her opinion, failure to meet the original deadline is due to conditions beyond the landlord's control. Complaints of alleged violations of building codes by a tenant of an eligible rental unit will be inspected for a cost of \$50 per inspection, payable by the landlord. However, if the inspection does not disclose the alleged violation of the adopted building codes, the cost of said inspection shall be the responsibility of the occupying tenant lodging said complaint.

(h) If a defined rental unit has had two (2) or more inspections within any twelve (12) month period where no building code violations were sited and a Certificates of Occupancy were issued, said rental unit will not be subject to any additional inspections for a period of two (2) years from the date of the second of the last two (2) inspections, unless a change in tenants occurs during that twelve (12) month period.

Section 18-3 Penalty.

Any violation of this ordinance shall be punished as provided in Section 1-7 of the City Code. The minimum fine shall be \$100. For a second offense within one year, the minimum fine shall be \$250. For a third or subsequent offense within one year, the minimum fine shall be \$500.

Section 2. The provisions of this Ordinance shall be effective as of the first day of the second month following publication. The provisions of Section 18-2(a) shall be effective as of ???????, 2010.

Section 18-4 Saving Clause

In the event any section, subsection, sentence, clause or phrase of this Ordinance shall be declared or held invalid or unconstitutional by any court of competent jurisdiction, such holding shall in no manner affect the other sections, sentences, clauses or phrases of this Ordinance, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or held invalid or unconstitutional were not originally a part thereof.

Section 18-5. Repeal of Existing Ordinances

All Ordinances and parts of Ordinances in conflict with this ordinance are hereby repealed.

Section 18-6. Effective Date

This Ordinance shall become effective upon adoption, approval and publication as required by law.

Section 18-7. Publication

The City Clerk is hereby directed to cause a copy of this Ordinance to be published in The Alexander City Outlook, a newspaper published in and of general circulation in the City of Alexander City, Tallapoosa County, Alabama.

ORDINANCE NO. _____

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ADOPTED and APPROVED by the City Council of the City of Alexander City, Alabama, on this the ?? day of ????????, 2010.

President of the City Council

APPROVED this ?? of ????????, 2010.

Mayor

ATTEST:

City Clerk

CERTIFICATION OF CITY CLERK

The undersigned, as the Clerk of the City of Alexander City, Alabama, hereby certifies that the foregoing is a true, correct and complete copy of **Ordinance No.**_____ which was duly adopted by the City Council on the ?? day of ????????, 2010.

WITNESS MY SIGNATURE, as Clerk of the City of Alexander City, Alabama, under the seal thereof, this the ?? day of ????????, 2010.

As Clerk of the
City of Alexander City,
Alabama

SEAL

