

RESOLUTION #XX-2017

JULY 3, 2017

BY: ENTIRE COUNCIL

INTRO NO. 6 TO LOCAL LAW #6-2017

CITY OF DUNKIRK, NEW YORK

A LOCAL LAW TO CREATE CHAPTER 61

OF THE DUNKIRK CITY CODE

REGULATING RENTAL PROPERTIES IN THE CITY OF DUNKIRK

BE IT ENACTED by the Common Council of the City of Dunkirk, New York, as follows:

Section 1 Intent

It is the intent of this Local Law to create Chapter 61 of the Dunkirk City Code to regulate rental properties in the City of Dunkirk.

Section 2 Amendment of City Code

Chapter 61 is hereby amended as follows:

ADD

§ 6101-1 Purpose

The purpose of this article is to establish a procedure and standards for the identification and registration of rental properties, to ensure that the City has a meaningful, efficient and effective means of communicating with those persons and companies who own rental properties, to provide for the inspection of certain residential property when there is a change in occupancy, and to fix the responsibilities on owners to ensure that residential rental property is maintained in accordance with the standards set forth in this article and the building and property is maintained in accordance with the standards set forth in this article and the building and property maintenance codes promulgated by the New York State Department of State and the City Code. This chapter is adopted to promote the health and safety of tenants and to alleviate conditions of substandard housing, including slums and blight.

This Chapter is also adopted to maintain a balance of responsibility by tenants of their responsibilities according to City Code.

§ 6101-2 Enforcement Officer

This article shall be enforced by the Housing, Building, and Zoning Officer.

§ 6101-3 Definitions

As used in this article, these terms shall have the meanings indicated as follows:

ABSENTEE LANDLORD - Any owner of a rental property who does not reside within Chautauqua County, or if a corporation or other business entity, which does not have a principal place of business within Chautauqua County.

ACTION or PROCEEDING - Any process that may be instituted in a Court of competent jurisdiction for an alleged violation of any ordinance or law of the City of Dunkirk.

BUILDING - Any structure occupied or intended for occupancy.

CHANGE IN OCCUPANCY - A tenant moves from, vacates, or quits a tenancy.

OWNER - Any person, agent, operator, firm or corporation having a legal or equitable interest in residential real property located within the City; or recorded in the official records of the State, County or Municipality as holding title to such property; or otherwise having control of the property including as guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

OWNER OCCUPIED - A residential unit is owner occupied if the record owner actually resides there, or if it is the residence of the spouse, son or daughter, or parent of the record owner who is living.

PROCESS - A summons or any notice, mandate or any other paper process issued under any provision of the Code of the City of Dunkirk or any law or regulation of the State of New York.

RENTAL CERTIFICATE - A document issued by the Housing, Building and Zoning Officer to a property owner in accordance with this Chapter.

RENTAL PROPERTY - All properties which are either rented, leased, let or hired out to be occupied for residential or mixed use (commercial-residential), and are non-owner occupied.

RENTAL UNIT; UNIT - A residential unit occupied by a party other than an owner.

RESIDENTIAL UNIT - One or more rooms with provision for sanitary and sleeping facilities, for food preparation, for living and for working.

TEMPORARY RENTAL CERTIFICATE - A document issued by the Housing, Building and Zoning Officer for a specified period of time.

TENANT - A party whose right to possession of a rental unit is subject to the express or implied consent of the owner.

ARTICLE I
PROPERTY REGISTRATION

§ 6101-4 Registration of Owner; Landlord Registration Statement

- A. The owner of a property constituting a rental property shall register the same with the Housing, Building, and Zoning Officer within 60 days of the effective date of this Chapter on a form approved by the Housing, Building and Zoning Officer. This form shall be known as a "landlord registration statement" which shall be signed by the owner under oath.
- B. It shall be unlawful for any owner to offer any unit for rent, or to rent any unit, or to allow any rental unit to be occupied without having first registered pursuant to this Chapter as required herein within the time prescribed for such registration. Failure to receive notice of the registration deadline will not excuse failure to register rental property. It is the owner's responsibility to fulfill the requirements of this article.
- C. Every owner of a rental property, as above defined, shall file with the Housing, Building, and Zoning Officer, within 60 days after the adoption of this Chapter, a

landlord registration statement on forms to be supplied by the Housing, Building and Zoning Officer, containing the following:

- (1) A description of the premises by street number or block and lot number, including tax identification number.
- (2) The owner's name, residential address, and mailing address, together with his/her business telephone number, home phone number, and fax number, or, if such owner is a corporation, the name and address of such corporation and the name, residence, business address, together with the residence, business telephone numbers, and fax numbers of an officer or principals responsible for management of the premises.
- (3) Designation of managing agent. All absentee landlords and owners who are not natural persons, must designate a managing agent. If a managing agent is required, then the owner shall provide the following information to the Housing, Building and Zoning Officer: the name, residence and business address and residence, business and telephone and fax numbers of a natural person, 21 years of age or over, who actually resides within the County of Chautauqua, New York, and who shall be designated by such owner as a managing agent responsible for and in control of the maintenance and operation of such dwelling, and who shall be designated as the person upon whom process may be served on behalf of the owner. The managing agent and/or owner shall keep a current record of all the tenants, and their names and addresses, who are renting, leasing or living in the premises. There shall be endorsed upon such statement a written consent to such designation signed by such managing agent. An owner who is a natural person and who meets the requirements of this subsection as to the location of the residence or place of transacting business of a managing agent may designate him/herself as such managing agent.
- (4) The owner shall be obligated to keep the information required by this section to be reported to the Housing, Building, and Zoning Officer updated at all times. When there is a change in any of the

information so required, the owner must update this information with the Housing, Building, and Zoning Officer within 15 days of the date of any such change.

(5) Nothing contained in this section shall be construed as preventing a corporation, which is an owner of a rental property, from designating as its managing agent, with respect thereto, any officer of such corporation who meets the requirements of this section as to location of the residence or the place of transacting business of the managing agent.

(6) Any designation as managing agent made pursuant to the provisions of this section shall remain in full force and effect until changed or terminated as herein after provided.

- D. Upon completion and execution and submission of the landlord registration statement as aforesaid, said registration shall be reviewed by the Housing, Building and Zoning Officer or its designee for adequacy. Should the Housing, Building and Zoning Officer and/or its designee 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 in compliance with the requirements of this article.
- E. It shall be the responsibility of each owner to timely notify the Building inspector whenever the information provided in the landlord registration statement has become outdated or for any reason is no longer accurate.
- F. A copy of the approved application shall be required and shall be a condition precedent before the owner shall be entitled to rent any unit contained in the rental property.
- G. In the event that the owner of the rental property or mixed use property does not reside in the County of Chautauqua, the owner shall be required to hire a managing agent.
- H. Where, after filing of any landlord registration statement in relation to any rental property under the applicable provisions of this article, the owner of such property shall have granted or transferred his/her right,

title or interest therein or in any part thereof, the new owner shall file with the Housing, Building and Zoning Officer within 90 days after such grand or transfer, a written statement which, under oath, shall contain the name and residence, business address, business and home telephone, and fax number of the new owner, transferee or other successor of such right, title or interest, or if such grantee, transferee or successor is a corporation or other business entity, the name and address of such corporation or business entity, including the names of all officers, and the addresses, business and residence phone and fax numbers of at least two officers or principals responsible for management of the premises.

- I. Where after the filing of any landlord registration statement with the Housing, Building and Zoning Officer pursuant to the application provisions of this article, any change other than a designation of a difference managing agent or a change of ownership or interest occurs in any name, residence or any business address of a list of officers required to be included in such statement, the owner, within 15 days after such change, shall file in duplicate, on forms to be furnished by the Housing, Building and Zoning Officer, a statement under oath, setting forth the particulars of such change so as to supply the information necessary to make currently correct the last landlord registration statement filed pursuant to the applicable provisions of this section.
- J. Any designation of the managing agent made pursuant to the applicable provisions of this section shall cease to be effective if such agent shall die or be judicially declared incompetent.
- K. An owner may terminate such designation by filing with the Housing, Building and Zoning Officer a sworn statement designating a new managing agent made in conformity with the provisions herein above cited.
- L. Any landlord registration statement or designation of a managing agent required to be filed with the Housing, Building and Zoning Officer by any owner of a rental property under the provisions of this section shall be signed by such owner, or if such owner is a corporation, by an officer thereof, or if such owner is a partnership, by a partner thereof, and said statement must be sworn to under the penalties of perjury.

M. Any such landlord registration statement or designation of a managing agent shall be deemed prima facie proof of the statement therein contained, in any criminal or civil prosecution instituted by the City of Dunkirk or by any property prosecutorial agency against the owner or managing agent of a rental property.

ARTICLE II
PROPERTY INSPECTION

§ 6101-5 Certificate Required

It shall be unlawful for any owner to permit the occupancy of any rental unit subject to this Chapter, unless such unit has a current and valid rental certificate or temporary rental certificate.

§ 6101-6 Required Posting

A rental certificate shall be conspicuously posted inside each rental unit at all times. It shall be unlawful for any owner, tenant or occupant to remove or fail to post the current rental certificate.

§ 6101-7 Application; Standards; Issuance; Temporary Certificate

A. Rental Certificate

- (1) This chapter shall apply to all buildings in the City of Dunkirk which contain two or more rental units, except rental units inspected and leased under contract with the Dunkirk Housing Authority and the United States Department of Housing and Urban Development.
- (2) Whenever a vacancy shall exist in a rental unit and a leasing or rental is about to occur, or whenever there is a change in occupancy, the owner shall submit a written application for a rental certificate. This application shall indicate the name and address of the owner, the location of the property and the identity of the rental unit by number or other suitable means.

- (3) Within five (5) working days of receipt of an application, the Housing, Building, and Zoning Officer shall inspect the rental unit to determine if the rental unit is in compliance with the New York State Uniform Fire Prevention and Building Code, and chapters 15, 40, 53, and 56 of the Dunkirk City Code. If violations are found to exist, the Housing, Building, and Zoning Officer shall deny the application and notify the owners of such denial with a notice of denial.

B. Temporary Rental Certificate

An owner may apply for a temporary rental certificate whenever the Housing, Building and Zoning Officer is unable to inspect the unit within five (5) working days of receipt of an application for a rental certificate. The application for a temporary rental certificate must be accompanied by a sworn affidavit of the owner that the rental unit substantially complies with the New York State Uniform Fire Prevention and Building Code, and chapters 15, 40, 53, and 56 of the Dunkirk City Code.

§ 6101-8 Inspection

- A. During regular business hours with two (2) weeks written notice, to the tenant, landlord and/or agent, or in an emergency, the Housing, Building, and Zoning Officer or his representative or any duly authorized City representative, upon the showing of proper credentials and in the discharge of his duties, may enter any building or rental unit within a building.

B. Inspection by Court Order

1. At the request of the Building Inspector, the City Attorney is authorized to make application to the City Court of the City of Dunkirk or any other court of competent jurisdiction for the issuance of an order directing the owner, managing agent, or any tenant to permit an inspection, within a reasonable amount of time to be set by the court, of any premises subject to this Chapter.

2. Such application must be supported by an affidavit of the Housing, Building, and Zoning Officer that: a. there is reasonable cause to believe that the dwelling unit contained in the property is in violation of the New York Uniform Fire Prevention and Building Code, this chapter, any code of the City of Dunkirk, or any applicable fire code; and b. the owner, managing agent, or any tenant has refused to permit such inspection.
3. The Court may order that, in addition to any other penalty prescribed by law for violation of a Court Order, that any rental certificate for the property shall be revoked if an inspection is not permitted within the time set pursuant to the Court's Order.
4. In any action against an owner, landlord, or managing agent pursuant to this section, it shall be no defense that the tenant or tenants will not allow entry.

§ 6101-9 Term

The rental certificate shall be valid until the Housing, Building, and Zoning Officer revokes such permit pursuant to § 6101-10 of this Chapter, or a transfer of property upon occupancy, or from two (2) years of the issuance of the last certificate.

§ 6101-10 Revocation

- A. The Housing, Building, and Zoning Officer may revoke a rental certificate after notice to the owner and an opportunity for the owner to be heard upon a finding that the requirements of this article or any conditions of said rental certificate have been violated or that the premises are not being maintained in accordance with the requirements of this Chapter or any applicable law, rule or regulation.
- B. Whenever the Housing, Building, and Zoning Officer revokes a rental certificate, he shall serve the owner with a written notice of revocation which shall include a statement of the grounds for revocation and a statement of particulars specifying in what respect the rental unit or building in which it is located is in violation.

§ 6101-11 Transfer of Title

Within 10 days of transfer of legal or equitable title, the owner of the building must submit a written application for a rental certificate.

§ 6101-12 Contents

A rental certificate shall state the identity of the owner; the address of the premises and owners; the identity of the unit by number or other suitable means; the identity of the existing or proposed tenants; the date of inspection; the finding of the inspector concerning the habitability of the premises, and signature of the inspector.

§ 6101-13 Fees

- A. The fees for the inspection prior to the issuance of a rental certificate for each rental unit are as follows: \$20.00 every two (2) years for one or two unit buildings; \$30.00 every two (2) years for three units; \$40.00 every two (2) years for four units or more, in the same building.
- B. The fee for the issuance of a rental certificate whenever an owner fails to submit an application for a rental certificate prior to renting a unit is \$100.00. This fee shall be in addition to the fee for inspection.

**ARTICLE III
ENFORCEMENT AND RECORDS**

§ 6101-14 Public Access to Records

Nothing in this article shall prevent any member of the public, prospective tenant or any resident of the City of Dunkirk from determining whether any particular rental property has been registered, inspected and certified as habitable pursuant to this Article. The general public shall have full access to said landlord registration statements and rental certificates upon filing of the proper Freedom of Information Act application.

§ 6101-15 Enforcement

- A. Criminal proceeding. A summons or appearance ticket for any violation of this article may be served in the County of Chautauqua, New York as defined within the meaning of the New York Criminal Procedure Law §150.40.
- B. A designated managing agent of an owner may be served with a notice of violation, order of remedy, order of violation, an appearance ticket or other service of process, whether criminal or civil, pursuant to and subject to the provisions of law as if actually served upon the owner.
- C. No owner who designates a managing agent pursuant to the provisions of this article may assert the defense of lack of notice or lack of in personam jurisdiction based solely upon the service of process upon his designated agent.
- D. Nothing contained in this section shall limit the discretion of the Building Inspector or Corporation Counsel from seeking an arrest warrant from a court of competent jurisdiction where permitted by law and as the circumstances may require.

§ 6101-16 Service of Papers; Notice of Violations

Service of papers including notices of violation shall be:

- A. By delivering to and leaving a copy of the same with any person or persons violating, or who may be liable under any of the several provisions of this Chapter; or
- B. By registered or certified mail to the most current address on file in the landlord registration statement upon the owner and/or managing agent; or
- C. If none is on file, to the most current address in the City Assessors Office by registered or certified mail to the owner and/or managing agent; and if such person or persons cannot be served by any of the aforesaid methods after diligent search shall have been made for him/her or them, then such notice or order may be served by posting the same in a conspicuous place upon the rental

property where such violation is allowed to exist, or to which such notice may refer, or which may be deemed unsafe or dangerous, while it shall be the equivalent of personal service of said notice upon all parties, including the owner and/or managing agent for who such search shall have been made; or

D. By any other method or service authorized pursuant to Article III of the New York State Civil Practice Law and Rules.

E. Notice by mail to owners residing out of state. If the person or persons or any of them to whom said notice is directed do not reside in the State of New York and have no known place of business therein, the same may be served by delivering to or leaving with such person or persons or either of them a copy of said notice. If said person or persons cannot be found with a diligent search, then by posting a copy of the same in a manner aforesaid and depositing a copy thereof in a post office in the City of Dunkirk, enclosed in a sealed wrapper addressed to said person or persons at his/her last known [place of residence with the postage paid thereon, and said posting and mailing a copy of said notice shall be equivalent to personal service of said notice.

§ 6101-17 Penalties for Offenses

A. Violations of Article I:

- (1) Failure to designate a managing agent as required by Article I of this chapter shall be a Misdemeanor, punishable by a fine of up to \$1000.00 or imprisonment up to one year, or both.
- (2) Failure of an absentee landlord to file a landlord registration statement as required by Article I of this chapter shall be a Misdemeanor, punishable by a fine of up to \$1000.00 or imprisonment up to one year, or both.
- (3) Any other violation of Article I of this Chapter will constitute an offense within the meaning of the Penal Law of the State of New York punishable as provided for herein. In addition, a violation of any provision of this article shall constitute a municipal infraction and will be subject to applicable penalties

under this article, and the City of Dunkirk may choose to enforce this article as a criminal or civil matter, or both. Any owner who violates, disobeys, neglects, or refuses to comply with any of the terms of this article shall be subject to a fine of not less than \$100.00 and not more than \$500.00. Each week a violation continues shall be deemed a separate offense.

B. Violations of Article II:

- (1) Any violation of Section 6101-5 shall be a misdemeanor, punishable by a fine of up to One Thousand (\$1000.00) Dollars, imprisonment up to one year, or both.
- (2) Any other violation of Article II of this Chapter shall be an offense and shall be punishable by a fine of not less than \$150.00 and not exceeding \$250.00, or by a civil penalty of not less than \$250.00. A separate offense shall be deemed committed on each day on which a violation occurs or continues.
- (3) Other than a violation of Section 6101-5, a second, independent violation of Article II during an eighteen month period, and any willful, intentional, and knowing violation of Article II, shall be a Class A misdemeanor and shall be punishable by a fine of not less than \$500.00 and not exceeding \$1000.00 and a period of incarceration of not less than ten (10) days, nor exceeding one (1) year. A separate offense shall be deemed committed on each day on which a violation occurs or continues.

§ 6101-18 Notice and Procedure.

Whenever the Housing, Building and Zoning Officer determines that there has been a violation of this Chapter or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible. Such notice shall:

- A. Be in writing;
- B. Include a description of the property sufficient for identification;

- C. Include a statement of the reason or reasons why the notice is being issued;
- D. Include a correction order allowing a reasonable time for the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this Chapter.
- E. Such notice shall be deemed to be properly served if a copy is:
- (1) Delivered to the owner personally; or
 - (2) Sent by mail addressed to the owner at the address of record. If the letter is returned, a copy shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.
 - (3) Each day that a violation continues after due notice has been served shall be deemed a separate offense and shall be considered a continuing violation until the violation is corrected and shall be punishable by any of the above remedies, or combination thereof, for each day that the property remains in violation.
 - (4) All individuals that have been duly served with a notice of violation issued by the Housing, Building and Zoning Officer and who fails to correct the violations of this Chapter or Chapters 15 or 17 of the City code, as directed therein, resulting in the issuance of appearance tickets for enforcement by City Court, shall be required to pay mandatory court costs in the amount of Fifty Dollars (\$50.00) for each and every appearance which is required in City Court, except for those cases where the City Court Judge makes a determination that there was no legal basis for the service of the notice of violation or appearance ticket. Such mandatory court costs shall be separate and independent from any fines or penalties imposed by this Chapter or other

Chapters of the City Code, and shall be payable to the City in any manner directed by the City Court Judge.

- (5) The City Attorney or the City Attorney's designee may, upon complaint of the Housing, Building and Zoning Officer, or upon his or her own motion, institute appropriate action to restrain, prevent, enjoin, abate, correct, or remove violations of this Chapter and take such other legal action as is necessary to carry out the terms and provisions of this Chapter.
- (6) The remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law.
- (7) Any and all remedies may be pursued concurrently or consecutively, and the pursuit of any remedy shall not be construed as an election or the waiver of any right to pursue any and all of the others.
- (8) An order to remedy that outlines legal action to be taken will be issued to the property owner if the violation is not corrected within the time frame outlined. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the Housing, Building and Zoning Officer shall post on the premises a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises or removing the placard.
- (9) In case of any unlawful acts, the Housing, Building and Zoning Officer shall institute an appropriate action or proceeding at law to exact the penalty provided in this law. Also, the Housing, Building and Zoning Officer shall ask the jurisdiction's legal representative to proceed in law or in equity against the person responsible for the violation for the purpose of ordering that person:
 - (a) To restrain, correct or remove the violation or refrain from any further execution of work;

(b) To retrain or correct the erection, installation, maintenance, repair or alteration of such structure;

(c) To require the removal of work in violation; or

(d) To prevent the occupancy of the structure that is not in compliance with the provisions of this Chapter.

(10) Any person who shall occupy a placarded premises and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises shall be liable for the penalties provided by this chapter. The Housing, Building and Zoning Officer shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the Housing, Building and Zoning Officer shall be subject to the penalties provided by this Chapter.

(11) If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Housing, Building and Zoning Officer is authorized to post a placard of condemnation on the premises and order the structure closed up. Upon failure of the owner to close up the premises within the time specified in the order, the Housing, Building and Zoning Officer shall cause the premises to be closed through any available public agency such as the City of Dunkirk Department of Public Works or by contract or arrangement by private persons and the cost shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and/or personally recovered from the owner.

(12) It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of

violation has been served to sell, transfer, mortgage, lease or otherwise dispose to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the Housing, Building and Zoning Officer a signed and notarized statement from the grantee, transferee, mortgagee, or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

§ 6101-19 Funding

All fines and penalties collected under this Chapter shall be received in a dedicated fund for the purpose of offsetting personnel costs of Code Enforcement Officers employed by the City of Dunkirk.

Section 3 Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State.