

LOCAL LAW #7 OF 2012
A LOCAL LAW ESTABLISHING RULES AND REGULATIONS FOR RENTAL HOUSING
IN THE VILLAGE OF HORSEHEADS
Adopted 12/3/2012

ARTICLE I – GENERAL PROVISIONS

§ 1 - Findings and purpose.

The Board of Trustees has determined that there exist in the Village of Horseheads issues arising from the rental of dwelling units that may be substandard or in violation of the New York State Uniform Fire Prevention and Building Code, the New York State Multiple Residence Law, or other state codes or local codes; dwelling units that are inadequate in size, overcrowded and dangerous, that tend to promote or encourage deterioration of the housing stock of the Village, create blight, excessive vehicular traffic and parking problems and that tend to overburden municipal services.

§ 2 - Citation; copies available.

A. This law and all provisions incorporated in this law, by reference or otherwise, shall be known as the "Horseheads Rental Housing Law," shall be cited as such and will be referred to in this law as such or as "this law."

§ 3 - Effect on other laws.

This law supplements and/or incorporates the requirements contained in the State Building Code, the State Property Maintenance Code, and the State Multiple Residence Law. In the event of a conflict between the aforementioned codes and this law, the most restrictive requirements shall prevail to the extent permitted under applicable law. This law is intended to supplement rather than supersede existing state law.

§ 4 - Scope, applicability and exceptions.

A. The provisions of this law shall apply to the maintenance, repair, use and occupancy of all residential rental buildings and structures now in existence or hereafter constructed, rehabilitated, renovated or converted to residential rental use within the Village limits, whether or not the use and occupancy thereof shall be permitted under the applicable use regulations for the zoning district in which it is located, except those residential rental buildings and structures specifically excluded from the provisions of this law. Any structure that was in

compliance with this law on the day previous to the adoption of this law will be allowed to remain, except if:

- (1) Such structure is substantially damaged by fire or other causes;
- (2) Any state, county or local code requires changes to existing structures.

B. The legal occupancy of any residential rental building or structure existing on the date of adoption of this law shall be permitted to continue without change, except such changes as are specifically required to be made, from time to time, to existing rental buildings or structures in this law, the New York State Rental Housing Law, the New York State Building Code, the Property Maintenance Code of New York State or the Fire Code of New York State.

C. Nothing in this law shall be deemed to change the validity of or requirements for a certificate of occupancy under the Building Code of New York State.

D. Exceptions. The provisions of this law do not apply to:

- (1) Buildings, structures and uses owned and operated by any governmental unit or governmental agency, including the State of New York, or the County of Chemung.
- (2) Single-family dwellings occupied by a record title holder.
- (3) Transient shelters subject to State inspection and group homes subject to State inspection.
- (4) Residential structures of which ownership passes to a governmental unit.
- (5) Hotels or motels or any commercial business operating exclusively and catering to transient clientele, that is, customers who customarily reside at these establishments for short durations for the purpose of vacationing, travel, business, recreational activities, conventions, emergencies and other activities that are customary to a commercial hotel/motel operation. For the purposes of this law "short duration" shall be defined as not more than 21 consecutive days. This exception shall not apply to any hotel or motel whose primary purpose is to provide permanent residences to their customers. For the purpose of this law, "permanent residence" shall be defined as more than 21 consecutive days.
- (6) Tourist homes or bed-and-breakfast dwellings.
- (7) Nursing homes, intermediate care nursing homes or convalescent dwellings.
- (8) Agricultural worker housing.

E. Where a nonresidential business or activity or a state-licensed or state-approved use occupies a portion of a building and the building contains premises which would otherwise be subject to this law, this law shall be and remain applicable to the residential and common or public areas of such building and premises.

§ 5 - Definitions.

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms have the following meanings and shall be so construed wherever they appear in this law:

AGENT – A person designated by an owner to receive mailed notice or service of process on behalf of the owner.

AGRICULTURAL WORKER HOUSING - Any area of land and all buildings or other structures pertaining thereto, any part of which may be occupied by persons employed as laborers and farm activities in the Village or Town of Horseheads who are provided with sleeping facilities, in whole or in part, by the owner without a stipulated agreement as to the duration of their stay or whether or not they are supplied with meals, but who are supplied with such services or facilities as are necessary for agricultural production on the owner's property.

APPROPRIATE AUTHORITY - The Code Enforcement Officer.

BEDROOM - Any room or space used or intended to be used for sleeping purposes.

CIVIL PENALTY - A penalty levied by the Code Enforcement Officer against an existing permittee in accordance with this law.

CODE ENFORCEMENT OFFICE - The division or department within the Village charged with the duty to inspect dwelling units, rooming houses, rooming units, premises and structures for compliance with this law, and may also mean, as the context indicates, a member of that division or department.

CODE ENFORCEMENT OFFICER - The person designated by the Village Manager (Manager) to issue permits, the administrator of the Code Enforcement Office or his designee. Nothing herein shall be deemed to require the Village Manager to delegate permitting authority to the Code Enforcement Officer. The designated officer shall be the authorized representative for the enforcement of this law and for the administration of the division or department.

CODE OFFICIAL - Also referenced as the "Code Enforcement Officer," the person appointed by the Village Manager to issue permits; and the person charged with the administration and enforcement of this law or any duly authorized representative thereof.

COMMUNITY SERVICE OFFICER or CSO – The person designated by the Manager to assist the Code Enforcement Officer in the administration and enforcement of this law including, but not limited to, the inspection of rental units.

DUPLEX - A building containing two attached dwelling units under the same ownership.

DWELLING UNIT - A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EXTERIOR PROPERTY - The open space on the premises and on adjoining property under the control of owners or operators of such premises.

FAMILY -

A. One of the following:

(1) One, two, three or four persons occupying a dwelling unit; or

(2) More than four persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.

B. It shall be presumptive evidence that more than four persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a traditional family.

C. In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:

(1) The group is one which in theory, size, appearance, structure and function resembles a traditional family unit.

(2) The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family.

(3) The group shares expenses for food, rent or ownership costs, utilities and other household expenses.

(4) The group is permanent and stable. Evidence of such permanency and stability may include:

(a) The presence of minor dependent children regularly residing in the household who are enrolled in local schools;

(b) Members of the household have the same address for purposes of voter's registration, driver's license, motor vehicle registration and filing of taxes;

- (c) Members of the household are employed in the area;
 - (d) The household has been living together as a unit for a year or more whether in the current dwelling unit or other dwelling units;
 - (e) There is common ownership of furniture and appliances among the members of the household; and
 - (f) The group is not transient or temporary in nature.
- (5) Any other factor reasonably related to whether or not the group is the functional equivalent of a family.

HABITABLE SPACE - Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility space and similar areas are not considered habitable spaces.

MANAGER OR VILLAGE MANAGER – The Village Manager of the Village of Horseheads. MULTIPLE

DWELLING - Any dwelling containing more than two dwelling units or rooming units. OWNER - The record title holder or contract purchaser, property manager, tenant under a recorded lease or any executor, administrator, trustee, conservator or other fiduciary, mortgagee or lien holder thereof; an agent for the receipt of notice, legal process or other service or any individual acting in a fiduciary capacity for the record title holder or contract purchaser.

PERMITTEE - An owner who has been issued a rental permit within the preceding 36 months.

PERSON - Any natural person and any entity that is recognized by law as having the rights and obligations of a natural person.

PROPERTY MANAGER – The person or firm charged with operating rental buildings and structures by the owner thereof.

RECORD TITLE HOLDER - Any person holding title of record by deed, contract of sale, or judicial determination.

RENTAL AGREEMENT - A written or oral agreement embodying and fixing the terms and conditions for the transfer of possession and the use and occupancy of premises, whether or not for a definite period of time.

RENTAL BUILDINGS AND STRUCTURES

A. Dwelling units, duplex, rooming houses, rooming units, or multiple dwellings which are occupied by one or more persons, none of whom is a record title holder; or

B. Dwelling units, duplex, rooming houses, rooming units or multiple dwellings which are used for residential purposes under the terms of a rental agreement.

ROOMING HOUSE - A building offered or occupied for lodging, with or without meals, and not occupied as a one- or two-family dwelling.

ROOMING UNIT - Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

STATE – New York State.

TENANT - A person, corporation, partnership or group, not the legal owner of record, occupying a building or portion thereof as a unit.

VILLAGE – The Village of Horseheads.

§ 6 through § 15. (Reserved)

ARTICLE II – ADMINISTRATION AND ENFORCEMENT

§16 - Inspections.

A. In the event of conviction of violation of this law (Section 17) or revocation or non-renewal of a permit (Section 18), the Code Enforcement Office shall cause inspections of the particular building or structure which was the subject of the violation, revocation or non-renewal to be promptly made, to determine the condition of same and accessory structures located within the Village limits, and may issue notices or take such action as provided in this law and/or the Village Code, and may inspect more frequently.

B. The Code Enforcement Officer or his designees are authorized to enter common areas at reasonable times for the purposes of conducting a visual inspection. If entry is refused or not obtained, the code official is authorized to pursue entry to the fullest extent authorized by law.

C. Application of this section is subject to the limitations contained in § 25.

§17 - Prohibited actions.

Violations of the following shall be deemed violations of this law and an offense within the meaning of NYS Penal Law:

A. No owner of a rental building or structure shall lease, let, rent or permit the occupancy and use of same as a rental building or structure without first having obtained a rental permit as provided herein.

B. No owner shall enter into a rental agreement with or cause a dwelling unit to be inhabited by more than four persons unless such persons are a family as defined in this law.

C. No owner shall cause, permit, suffer or allow to exist any condition on or in a rental building or structure, or exterior property, which is a violation of this law, the Horseheads Village Code, or the laws of the State of New York, including, but not limited to, the New York State Building Code, the New York State Property Maintenance Code, and the New York State Multiple Residence Law, the New York State Multiple Dwelling Law and their successors, after written notice has been given to the owner or permit holder of such deficiency.

§18 - Revocation or nonrenewal of permit.

A. The following findings, upon substantial evidence, shall be grounds for revocation or nonrenewal of a Rental Permit for a rental building or structure or a particular dwelling unit therein:

(1) The owner is a habitual violator as described in § 66;

(2) Three or more violations of this law, the Village Code or the Property Maintenance Code of NYS, as amended or revised from time to time, having occurred either at a particular rental building or structure, or dwelling or unit therein, as the case may be, within an eighteen-month period; or

(3) Four (4) or more police responses within any consecutive six (6) month period having occurred at a particular dwelling unit within a rental building or structure. Police responses shall include animal enforcement responses and shall also include responses for medical reasons if same arise out of acts which may constitute a penal law violation or crime. Police responses shall not include responses for such reasons such as people being locked out of vehicles and buildings, lost or missing persons, to victims of crimes, or the like.

B. Before a rental permit may be revoked or issuance or renewal denied, except in cases of emergencies, the permittee or aggrieved person shall be entitled to a hearing before the Village Manager or the Manager's designee, who shall have appellate jurisdiction with regard to findings of fact upon which the Code Enforcement Officer has issued his or her decision. Written notice of the hearing date, time and place shall be mailed to the permittee or served upon the aggrieved person no less than seven days in advance of the hearing and shall apprise the permittee or aggrieved person's of the right to be heard. At the hearing, the permittee or aggrieved person shall be entitled to be again apprised of the claims against him or her, must be given an opportunity to be heard in explanation or rebuttal, and shall have the right to confront witnesses. Determinations of the Village Manager or designee must be based upon substantial evidence and must incorporate the factual findings in the record as the basis for the

determination. Prior convictions of offenses under this law from a court of competent jurisdiction shall be conclusive evidence of the violation(s) upon which such conviction was based. The Village Manager or designee, for good cause shown, may stay the enforcement of any revocation for such period as the Village Manager or designee deems appropriate. Persons seeking relief from applicable provisions of the New York State Uniform Fire Prevention and Building Code or other NYS Codes may file a petition with the New York State Department of State Codes Division, for variance and/or an appeal of the Code Official's determination with respect to such Codes.

§ 19 through § 20. (Reserved)

ARTICLE III – DWELLING INSPECTION AND RENTAL CERTIFICATION

§21 - Information required from owner and agent.

A. Owners of rental buildings and structures located in the Village shall complete and sign a registration form provided by the Code Enforcement Office, and swear to the truthfulness and completeness of the information it contains. The form shall indicate:

- the name, physical address, and telephone number of each owner, and property manager when they are not the same;
- the number and address of each rental dwelling for which a rental permit is sought,
- the tax map designation of the address of the rental dwelling(s),
- the number of dwelling units contained within each rental dwelling,
- daytime and evening telephone numbers of the owner, and property manager when they are not the same,
- the maximum number of tenants who may occupy a dwelling unit,
- and any other pertinent data sought by the Code Enforcement Office or Code Enforcement Officer.

The form shall indicate an address for receipt of notices by mailing under this law. The permittee shall be responsible for timely updating such information in the event that changed circumstances would render the information in the registration form inaccurate.

B. Owners of rental buildings and structures located in the Village who reside in any county other than Chemung County shall provide the Code Enforcement Office with the name and physical address of an individual over the age of 18 who shall reside in or who maintains a permanent place of business in Chemung County and who shall be designated as agent for receiving mailed notice or service of process. Such agent shall be deemed to have the rights and responsibilities of a permittee for the purposes of this law. A new owner shall provide the information required in this subsection within ten (10) days from the date of any change of ownership.

C. The Code Enforcement Office shall maintain a register of permits issued pursuant to this law. Such register shall be kept by tax map designation, street address, the name of the permittee, the number of dwelling units at such street address, and the date of expiration of the permit for such unit.

§ 22 - Fees; duration of permits; issuance of permits.

A. Rental permit fees, inspection fees and reinspection fees will be charged in the amount set forth in the Schedule of Fees adopted by the Village Board by resolution from time to time.

B. Rental permits will be issued for thirty-six-month periods and shall be valid for such periods unless invalidated or revoked as provided in this law.

C. Permits will be issued when all requirements of this law have been met.

D. Newly constructed or renovated rental buildings or structures, including conversions, are required to pay a permit fee in the amount set forth in the Schedule of Fees adopted by the Board by resolution when the rental permit is issued.

§ 23 - Notice of violation; method of service.

If the Code Enforcement Officer determines that there are reasonable grounds to believe that premises are being maintained in violation of this law, that Officer shall give notice of the alleged violation to the owner or agent and such notice shall contain the elements required of an information under § 100.15 of the Criminal Procedure Law. Such notice shall:

A. Be in writing;

B. Include a description of the real estate sufficient for identification;

C. Describe the violation, cite the applicable section of the local law, Village Code and/or the Codes of New York State pertaining to property maintenance, and remedial action required;

D. Describe the facts upon which the violation is based;

E. State that all health, safety and maintenance violations must be corrected immediately. The Code Enforcement Officer shall return at a specified date to verify conformance with the notice of violation/order to remedy. Any maintenance items which cannot be completed at this time because of weather constraints may be granted a time extension. Time extensions are to be negotiated with the owner or the property manager and the Code Enforcement Officer and in the end are set by the Code Enforcement Officer.

F. State that, if upon reinspection a violation still exists, the Code Enforcement Officer shall order that the rental permit be suspended or revoked and the structure vacated.

G. Be mailed via first class, registered or certified mail to or served upon the owner, permittee, agent or any other person in accordance with the applicable provisions of the Criminal Procedure Law.

H. State the time to file an appeal, as provided in §18 the amount of the appeal fee, the right to call witnesses and the right to be represented by counsel.

§ 24 - Application for search warrant authorized.

The Code Enforcement Officer shall have the right to inspect all or any part of rental buildings and structures or units, provided that the tenant has consented, except that in the event that the owner is not a permittee, then the owner, agent or person in charge thereof shall have the right to insist upon the procurement of a search warrant from a court of competent jurisdiction in order to enable such inspection. The officials charged with conducting the inspection pursuant to this law shall be required to obtain a search warrant in the event that they are unable to obtain the consent of the owner, if the owner is not a permittee, and, in all circumstances, also a tenant with common authority over the premises to be searched after such tenant has been advised that he or she has a constitutional right to refuse entry of the officials without a search warrant. The Code Enforcement Officer is authorized, on sworn affidavit stating the factual basis therefore (i.e. that there is reasonable cause to believe that a violation of this law occurred), to make application to the Village of Horseheads Justice Court or to such other court as may be deemed appropriate for the issuance of an administrative search warrant. The search warrant may be executed by the Code Enforcement Officer only in the case of permittees and, in all other cases, by a police or peace officer who may be accompanied by the Code Enforcement Officer in order to conduct an inspection of any premises covered by this law where the occupant refuses or fails, after due notice as provided herein, to allow an inspection of the dwelling unit or premises, where there is reasonable cause to believe that a violation of this law or a violation of the Multiple Residence Law, the New York State Uniform Fire Prevention and Building Code or the Code of the Village of Horseheads exists, or where there is reasonable cause for inspection. The application for a search warrant shall, in all respects, comply with applicable federal and state laws.

§ 25 - Contents of rental permit.

The rental permit issued under this law shall contain the following information:

- A. The address, and property classification.
- B. The date of inspection.
- C. The date of issuance.
- D. The expiration date.
- E. Number of dwelling units, or unit number as the case may be.
- F. A statement, where applicable under this law, that the structure cannot be inhabited by more than four nonfamily persons as defined in this law.

§ 26 - Transferability of permit.

A current rental permit issued under this law shall not be invalidated by sale or transfer of the property.

§ 27 - Notices on sale of dwelling; unpaid fines.

- A. Every seller of rental buildings and structures, including property occupied under authority of an unrecorded contract for sale, shall inform the prospective buyer of the current status of the rental permit at least 14 days prior to the closing.
- B. Every seller of rental buildings or structures shall give notice of the sale or transfer of same in writing to the Code Enforcement Office within five business days after closing. This notice shall include the name and address and telephone number of the buyer.
- C. Each buyer of an interest in rental buildings or structures shall give notice in writing to the Code Enforcement Office within 10 business days after closing. The notice shall identify the address of the affected property, and the name and address of the buyer and seller.
- D. Any unpaid fines and/or fees pertaining to the affected property shall run with the land and shall be enforceable against the subsequent owner of the property.

§ 28 through §40. (Reserved)

ARTICLE IV – PENALTIES

§41 - Violations.

Violation of this Local Law shall be punishable by civil penalty, fine or imprisonment or both as prescribed in Chapter 1, Article II, “General Penalty” of the Village Code. Each and every week of violation shall constitute a separate additional offense. In addition, the violator shall be liable for payment of costs related to the enforcement of this Local Law for such violation(s) which shall include but not be limited to an assessment of the Village personnel’s time expended in enforcing and prosecuting the violation based upon such staff’s hourly rate of compensation, including benefits.

§ 42 - Collection of costs.

All permit, inspection fees, reinspection fees, demolition costs, administrative costs and legal costs incurred by the Code Enforcement Office in the enforcement of this law may be collected by an assessment or levy placed against the real estate involved to be collected as a property tax or by judgment entered against the owner personally or against the real estate.

§ 43 through § 50. (Reserved)

ARTICLE V -APPEALS

§ 51 - Filing of notice.

Appeals by an aggrieved person of any determination or action of a Code Enforcement Officer or CSO may be taken to the Village Zoning Board of Appeals pursuant to Article 7 of the Village Law of New York State, except as provided in §18 or as otherwise provided in this law. A notice of appeal shall be filed with the Code Enforcement Office within 15 days of the date of service of the notice of violation, determination or action. In no case shall the hearing be delayed beyond 21 days following the original scheduled hearing date. A party’s failure to present its case at the appointed time may result in an adverse inference against such party.

§ 52 through § 64 . (Reserved)

ARTICLE VI – ADDITIONAL PROVISIONS

§ 65 - Emergency actions.

A. Whenever a Code Enforcement Officer has probable cause to believe that a condition exists in or around a rental building or structure which constitutes an immediate and severe threat to the health, safety or welfare of the occupants or to the public, the Code Enforcement Officer may take any necessary action, including the temporary suspension of a rental permit. The Code Enforcement Officer shall serve upon the owner or agent a written order incorporating the factual finding upon which the emergency action is based, without a prior hearing, such suspension to be effective on the date specified in the order. Any costs incurred may be assessed against the property or collected as a personal judgment pursuant to valid legal action.

B. Whenever a Code Enforcement Officer has probable cause to believe that a condition exists in or around a rental building or structure which threatens the health, safety or welfare of the occupants or the public, the Code Enforcement Officer may issue an order describing the condition and requiring that specified action be taken. If the owner does not comply with the order within the time specified, the Officer may authorize the taking of the action specified in the order. Any costs incurred may be assessed against the property or collected as a personal judgment pursuant to valid legal action.

C. A copy of the order shall be sent to the owner or agent at their last known addresses. The method by which such notice shall be given shall be that method which provides notice within the shortest practicable period of time.

§ 66 - Habitual violators.

A. A permittee who fails to correct a violation within the time period given by notice, or an owner who has been required to appear before a court of competent jurisdiction for such failure, three or more times or on three or more separate properties during an eighteen-month period may be deemed an habitual violator if found by the Code Enforcement Officer, court, or Board of Appeals, where applicable, to have failed to correct the violations without good cause. Upon finding that a permittee or owner is an habitual violator, an agent or property manager of such permittee or owner shall be deemed an habitual violator as to all of those properties.

B. A finding that an owner is an habitual violator shall be a basis for a court of competent jurisdiction to find probable cause for the issuance of an administrative search warrant for all properties owned or managed by the habitual violator. The fee for this unified inspection will be charged at regular inspection rates as set forth in § 22 . The owner may be placed on an accelerated inspection schedule by the court, thereby reducing certification periods, if the result

of the unified inspection justifies such action. The fees as set forth in § 22 shall be charged for such inspections.

§ 67 - Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this law shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this law, which shall continue in full force and effect, and to this end the provisions of this law are hereby declared to be severable.

§ 68 - When effective.

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