

CITY OF ABSECON

ORDINANCE 08-2020

**AN ORDINANCE OF THE CITY OF ABSECON REPEALING AND REPLACING
CHAPTER 251 OF THE CODE OF THE CITY OF ABSECON ENTITLED
“RENTAL HOUSING”**

WHEREAS, the City of Absecon (“City”) is a municipal entity organized and existing under the laws of the State of New Jersey and located in Atlantic County; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, the Governing Body is authorized to enact and amend ordinances as deemed necessary for the preservation of the public health, safety and welfare and as may be necessary to carry into effect the powers and duties conferred and imposed upon the City by law; and

WHEREAS, Chapter 251 of the Code of the City of Absecon, entitled “Rental Housing” regulates and governs the renting of real property within the City; and

WHEREAS, the Mayor and City Council have determined it to be in the best interest of the public health, safety and welfare to repeal and replace Chapter 251 to provide for consistent and clear standards for the renting of real property within the City and to ensure all individuals comply with all applicable provisions of the Code of the City of Absecon.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABSECON IN THE COUNTY OF ATLANTIC, STATE OF NEW JERSEY AS FOLLOWS:

Section 1. Chapter 251 of the Code of the City of Absecon, entitled “Rental Housing” is hereby repealed in its entirety and replaced with the following new sections:

ARTICLE I

RENTAL PROPERTY PERMIT

§251-1 Definitions. Unless the context clearly indicates a different meaning, the following words or phrases when used in this Chapter shall have the following meaning:

- A. *Owner* shall mean the person who owns, purports to own or exercises control over any building. Consistent with the definitions contained in the Uniform Construction Code (UCC) and the Uniform Fire Code (UFC) "Owner" shall also mean: "The owner or owners in fee of the property or a lesser estate therein, a mortgagee or vendee in possession, an assignee of rents, receiver, executor, trustee, lessee or any other person, firm or corporation, directly or indirectly in control of a building, structure or real property and shall include any subdivision thereof of the State."
- B. *Person* shall mean an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

- C. *Real estate licensee* shall mean an individual who is licensed by the State of New Jersey as a real estate salesperson, a real estate broker-salesperson, and/or a real estate referral agent, as those terms are defined in the New Jersey Real Estate Brokers and Salesmen Act ("Brokers Act"), N.J.S.A. 45:15-1 to -29.5.
- D. *Rental Agent* shall mean the person who negotiates for the lease of the Rental Unit on behalf of the Owner. Such person shall be the holder of the required license mandated by the State of New Jersey. The Rental Agent is not the Managing Agent under the terms of this chapter unless the Rental Agent should expressly consent to assume such duties or obligations.
- E. *Rental Property* shall mean a building or structure which contains one or more Rental Units including, which is rented, leased, sub-leased or occupied by a Tenant.
- F. *Rental Unit* shall mean, collectively the term Apartment or Dwelling, Building, Dwelling Unit, as defined by this chapter. This definition shall not apply to any single-family home which is not available for rental purposes.
- G. *Residence* shall mean a house, condominium, or other residential dwelling unit in a building or structure or part of a building or structure that is designed, constructed, leased, rented, let or hired out, or otherwise made available for use as a residence.
- H. *Tenant* shall mean any person who occupies any Rental Unit, as a named lessee, pursuant to the terms of a lease agreement, whether written or oral, or who occupies a Rental Unit pursuant to permission or license of any kind granted by an Owner or Owner's Agent. The term shall be construed liberally to include not only tenants but guests and occupants. The term shall also include sub-tenants.
- I. *Visitor(s)* shall mean a person or persons who, on a temporary or occasional basis, visit(s) a Rental Unit at the express or implied invitation of the Tenant(s) but who does/do not reside there or sleep there. The term is the same as "Guests".

§251-2 Rental Property Permit Required for All Rental Properties. No person(s), corporation or business entity shall offer any residential property for rent, lease or let any residential property to any person(s) without first obtaining a Rental Property Permit from the City.

§251-3 Procedure for Obtaining Rental Property Permit. In order to qualify for a Rental Property Permit, the following requirements shall be met by the applicant or applicant's agent:

- A. *Rental Property Permit Form.* An application on a form supplied by the City shall be completed and shall contain all of the information, including any attachments which may be required.
- B. *Proof of Taxes.* All municipal taxes, water and sewer charges and any other municipal assessments are paid on a current basis, which is, paid through the tax quarter immediately preceding the initial application or any renewal thereof.

- C. *Valid Certificate of Inspection.* No property shall receive a Rental Property Permit unless the owner thereof produces, at the time of registration, a current, valid certificate of inspection indicating that the property has either been inspected by the State of New Jersey, Division of Codes and Standards, Bureau of Housing or by the officials of the City of Absecon having jurisdiction and that the property does not contain any code violations.
- D. *Payment of Fees.* The payment of an application fee as set forth in §251-58(A).

§251-4 Term. The Rental Property Permit shall be valid for one year from the date of issuance by the City Construction Official.

§251-5 State Registration Requirement. Every owner of rental property shall comply with the landlord registration requirements of N.J.S.A. 46:8-28 as amended and supplemented. Compliance with this Chapter shall not satisfy the registration and filing requirements imposed by State law but shall be in addition thereto.

§251-6 Limitations on Occupancy. Rental Units shall not be occupied by more than a maximum specified number of tenants and occupants, including minor children, which number has been computed in accordance with the following:

- A. *Calculation.* Every room occupied for sleeping purposes by one (1) occupant shall contain at least the minimum square footage as calculated by the City officials using the standards established by the 2015 International Property Maintenance Code.
- B. *Prohibited Occupancy.* Kitchens, non-habitable spaces and interior public areas shall not be occupied for sleeping purposes.
- C. *Maximum Occupancy.* Notwithstanding any other provision of this chapter, or any other law or ordinance, or any other rule, regulation or code to the contrary, and notwithstanding any method of calculating occupancy authorized by this chapter, no Rental Property, inclusive of all Rental Units contained therein, shall have an authorized aggregate maximum permitted occupancy greater than twenty-four (24) occupants, as provided in the Hotel/Motel Dwelling Law N.J.S.A. 55:13A-I, et seq.
- D. *Posting.* The maximum number of occupants shall be posted in each Rental Unit in a location visible to any occupant of the Rental Unit. It shall be unlawful for any Person or Persons to occupy the Rental Unit in excess of the maximum number permitted. Any Person violating this provision shall be subject to the penalty provisions hereof.

§251-7 Transferability. A Rental Property Permit is non-transferrable and shall not be assigned or sold to a third party.

§251-8 Occupancy Prohibited. No person, other than the Owner, shall hereafter occupy, or attempt to occupy, any Rental Unit, nor shall the Owner, Managing Agent or Rental Agent permit occupancy or attempted occupancy of any Rental Unit within the City unless the same has received a Rental Property Permit in accordance with this chapter.

§251-9 Landlord Prohibited from Leasing Unlicensed Rental Unit. Any Landlord who leases a Rental Unit while such unit is unregistered or who represents to any Person, including

any Tenant, realtor, attorney or other agent that such unit is properly registered, shall be deemed in violation of this article and subject to the fines and penalties herein. Each day that a Tenant shall remain in occupancy of such unlicensed Rental Unit shall be considered a separate and distinct violation of this chapter for which the Landlord shall be responsible.

§251-10 Occupancy by Tenant When Unit Unlicensed. Any Tenant who knowingly leases and/or occupies an unregistered Rental Unit shall be deemed in violation of this chapter and subject to the fines and penalties included herein. Each day such Tenant shall remain in occupancy of such unregistered premises shall be considered a separate and distinct violation of this chapter.

§251-11 Agent Prohibited From Renting Unregistered Rental Unit. Any realtor, attorney or other Person who knowingly acts as a representative of the Landlord, Tenant or both in order to effectuate the leasing and/or occupancy of an unregistered Rental Unit, shall be deemed in violation of this chapter and subject to the fines and penalties herein provided. The City will, on request and without charge, provide to each real estate office a list of all Rental Units which have been registered.

§251-12 Owner Responsibilities; State and Municipal Registration; Maintain Tenant Register; Responsibility Form. Every Owner of a Rental Property or Rental Unit shall:

- A. Comply with the registration requirements of the Landlord Registration Act, N.J.S.A. 46:8-27, et seq., as the same may be amended and supplemented. A completed Rental Property Permit Application under this chapter shall also serve as a registration pursuant to the New Jersey Landlord Registration Act and the City shall index and file a copy of such registration application as required by law. The Owner must, however, fully comply with any other requirements of the New Jersey Landlord Registration Act as the same may be amended or supplemented.
- B. Comply with New Jersey State law which requires that owners of Rental Units register such units with either the Municipal Clerk or with the State of New Jersey as follows:
 1. Owners of one and two Rental Units which are owner occupied are exempt from registration under the "Landlord Registration Act" (N.J.S.A. 46:8-27, et seq.) but shall be required to obtain a Rental Permit Registration City pursuant to this chapter.
 2. Owners of one and two Rental Units which are not owner occupied are required to register such Rental Units with the City Clerk or the Clerk's designee under the "Landlord Registration Act" (N.J.S.A. 46:8-27, et seq.) and shall, in addition, be required to obtain a Rental Permit Registration pursuant to this chapter.
 3. Owners of three or more Rental Units shall be required to register such units with the State of New Jersey, Department of Community Affairs, Bureau of Housing Inspection, or such other or additional Department, Division or agency as may hereafter be designated by the State of New Jersey. In addition, owners of Rental Properties containing three or more Rental Units shall also be required to obtain a Rental Permit Registration pursuant to this chapter.

- C. Every Owner of a Rental Property or unit shall have the following further duty and responsibility: It shall be the responsibility of the Owner or the Owner's agent or Managing Agent to register all Tenants in the Tenant Register and to give a copy of the Tenant register to the tenant(s) and to advise the tenant(s) of the requirement that the Tenant register be maintained on the rental or leased premises at all times.

§251-13 Tenant Responsibilities. Each Tenant shall:

- A. Complete and sign the Tenant Register in accordance with this chapter and maintain and safeguard such Tenant Register in the Rental Unit at all times;
- B. Immediately produce the Tenant Register, at all times, upon the request of City Officials or employees including the Chief of Police or any officer of the Absecon Police Department or any representative of the licensing, inspection or Code Enforcement departments or divisions of the City of Absecon or a representative of the Atlantic County Department of Health;
- C. Be responsible for maintaining the Rental Unit in such manner so as to avoid and prevent said premises from becoming loud or disorderly or a nuisance so as to interfere with the peace and tranquility and quality of life of other nearby residents and visitors. Loud, offensive and disorderly conduct may include excessive noise, unruly behavior, obscene language, fighting, littering, parking of vehicles on lawns and on neighboring property, public urination, poor maintenance of the property and grounds and violation of trash collection and recycling ordinances.
- D. Be responsible for the proper storage and disposal of solid waste and recyclable materials and to do so in accordance with applicable City Ordinances;
- E. Comply strictly with the maximum occupancy limits established for each Rental Unit and shall prevent occupancy by more than the maximum number of occupants permitted.

§251- 14 Enforcement.

The provisions of any of the several Articles of this Chapter shall be enforced by any one or more of the following: the Chief of the Absecon Police Department or his/her designee, the Construction Code Official, the Fire Code Official, Code Enforcement Official and Zoning Official of the City, any employee designated by resolution by the City Council, and the Atlantic County Department of Health.

ARTICLE II

INSPECTIONS

§251-15 Certificate of Inspection. The City Construction Department shall issue a Certificate of Inspection only after inspecting the property and confirming compliance with the Uniform Fire Safety Act of the State of New Jersey, the International Property Maintenance Code (IPMC) to the extent that same has been adopted by the City and the Municipal Code of the City of Absecon as well as any other code or codes in effect and applicable at the time of any inspection.

§251-16 Frequency of Inspection. Unless otherwise provided for in §251-16 (A), (B) and (C) herein, each rental unit shall be inspected at least once every two years, upon each change of occupancy, or as otherwise necessitated by safety considerations, alleged violations and as otherwise required by this chapter. The initial inspection shall occur prior to occupancy in which a Rental Property Permit is sought pursuant to this Chapter.

- A. Rental Units registered with the State of New Jersey pursuant to the Hotel and Multiple Dwelling Act as defined in N.J.S.A. 55:13A-3 common ownership, and inspected every five years in accordance with applicable regulations, shall be inspected by the City solely upon each change of occupancy, and as otherwise necessitated by safety considerations, alleged violations, and as otherwise required by this chapter.
- B. For purposes of this Article, the inspection requirement upon a change of occupancy shall not apply to a change of occupancy of a Transient Accommodation as defined in Article III of this Chapter. Transient occupancies will be inspected annually.

§251-17 Term of Certificate of Inspection. A Certificate of Inspection shall be good for two years from the date of the issuance of the certificate.

§251-18 Failed Inspection. In the event that a Rental Unit fails to pass inspection, the following shall apply:

- A. *Unoccupied Unit.* Whenever a Rental Unit is unoccupied at the time of the failed inspection, such unit shall not thereafter be occupied and the Owner of the Property, the Managing Agent or Rental Agent shall not rent or lease such Rental Unit, nor permit any Tenant to occupy such Rental Unit until the unit has passed inspection.
- B. *Occupied Unit(s).* Whenever a Rental Unit is occupied by a Tenant at the time of the failed inspection, said unit may continue to be occupied provided that all such repairs or corrections are made within thirty (30) days of the original inspection. If the nature of the deficiency is such that continued occupancy poses an imminent threat to the safety of the occupants or others, then the appropriate officials may preclude further occupancy of the Rental Unit until such time as the repairs are satisfactorily made, or the officials may, in the exercise of their sound discretion, reduce the time for making necessary repairs from thirty (30) days to a lesser time depending on the nature and extent of repairs to be made and the nature of the threat. In the event that the necessary repairs are not made within the time period specified herein, then the Owner and any Tenant occupying the unit thereafter shall be deemed in violation of this article and subject to the penalty provisions hereof. Each and every day that the violation continues shall constitute a separate offense.

§251-19 Rental Property Permit Suspended Pending Repairs. Upon re-inspection of a Rental Unit, if it is determined that the necessary repairs have not been made within the time period specified in §251-18(B), above, then in such event, the Rental Property Permit shall be suspended and remain suspended until the necessary repairs have been made and the property re-inspected.

§251-20 Scheduling of Inspection. The owner of a Rental Unit is responsible for contacting the City Construction Department to schedule an inspection in accordance with this Chapter.

Inspections shall be scheduled according to the date the request for inspection is received by the City Construction Department.

ARTICLE III

TRANSIENT ACCOMODATION LICENSE AND OCCUPANCY TAX

§251-21 Purpose and Findings. The New Jersey Legislature, pursuant to N.J.S.A. 40:52-1 (n) specifically authorized municipalities to license and regulate the “rental of real property for a term of less than one hundred seventy-five (175) consecutive days for residential purposes by a person having a permanent place of residence elsewhere.”

Furthermore, most, if not all, such Rental Units are located within residential neighborhoods in the City and abut owner-occupied homes and residences and many such Rental Units have an immediate and harmful negative impact upon the immediate neighbors and interfere with the peace and tranquility that such neighbors have every right to expect. Experience indicates that such problems are especially associated with “transient accommodation” that is, rentals of less than one hundred seventy-five (175) days.

§251-22 Definitions.

- A. *Obtained through a transient space marketplace* means that payment for the accommodation is made through a means provided by the marketplace or travel agency, either directly or indirectly, regardless of which person or entity receives the payment, and where the contracting for the accommodation is made through the marketplace or travel agency.
- B. *Professionally managed unit* means a room, group of rooms, or other living or sleeping space for the lodging of occupants in the State, that is offered for rent as a rental unit that does not share any living or sleeping space with any other rental unit, and that is directly or indirectly owned or controlled by a person offering for rent two or more other units during the calendar year.
- C. *Purchaser* means any person purchasing or hiring property or services from another person, the receipts from which are taxable.
- D. *Residence* means a house, condominium, or other residential dwelling unit in a building or structure or part of a building or structure that is designed, constructed, leased, rented, let or hired out, or otherwise made available for use as a residence.
- E. *Transient Accommodation* shall mean a room, group of rooms, or other living or sleeping space for the lodging of occupants, including but not limited to residences or buildings used as residences, that is obtained through a transient space marketplace or is a professionally managed unit.

Transient accommodation does not include: a hotel or hotel room; a room, group of rooms, or other living or sleeping space used as a place of assembly; a dormitory or other similar residential facility of an elementary or secondary school or a college or university; a hospital, nursing home, or other similar residential facility of a provider of

services for the care, support and treatment of individuals that is licensed by the State; a campsite, cabin, lean-to, or other similar residential facility of a campground or an adult or youth camp; a furnished or unfurnished private residential property, including but not limited to condominiums, bungalows, single-family homes and similar living units, where no maid service, room service, linen changing service or other common hotel services are made available by the lessor and where the keys to the furnished or unfurnished private residential property, whether a physical key, access to a keyless locking mechanism, or other means of physical ingress to the furnished or unfurnished private residential property, are provided to the lessee at the location of an offsite real estate broker licensed by the New Jersey Real Estate Commission pursuant to R.S.45:15-1, *et seq.*; or leases of real property with a term of at least 90 consecutive days.

F. *Transient Space Marketplace* shall mean a marketplace or travel agency through which a person may offer transient accommodations to customers and through which customers may arrange for occupancies of transient accommodations. “Transient space marketplace” does not include a marketplace or travel agency that exclusively offers transient accommodations in the State owned by the owner of the marketplace or travel agency.

G. *Vendor* means any person selling or hiring property or services to another person upon the receipts from which a tax is imposed.

§251-23 Transient Accommodation License Required. No person(s), corporation or business entity shall offer any Transient Accommodation for rent, lease or let any property to any person(s) without first obtaining a Transient Accommodation License as provided for within this Article.

§251-24 Procedure for Obtaining Transient Accommodation License. In order to qualify for a Transient Accommodation License, the following requirements shall be met by the applicant or applicant's agent:

- A. *Valid Rental Property Permit.* Prior to the issuance of a Transient Accommodation License, the applicant shall have obtained a current and valid Rental Property Permit issued pursuant to Article I of this Chapter.
- B. *Payment of License Fees.* The payment of a licensee fee as set forth in §251-58(D).
- C. *Acknowledgement of Occupancy Tax.* The owner of the Transient Accommodation is required to acknowledge the requirements of §251-26 to -30 of this chapter.

§251-25 Transient Accommodation Bi-Annual Reports. A bi-annual accounting report must be filed for every Transient Accommodation by the owner with the City Clerk’s office. The reports shall be due on April 15 October 15 and shall include:

- A. The name of the person who provided the transient accommodation;
- B. The name of the customer who procured occupancy of the transient accommodation;
- C. The address, including any unit designation, of the transient accommodation;

- D. The dates and nightly rates for which the consumer procured occupancy of the transient accommodation;
- E. The municipal transient accommodation registration number, if applicable;
- F. The individualized name or number of each such advertisement or listing connected to such unit and the uniform resource locator (URL) for each such listing or advertisement, where applicable; and
- G. Such other information as the City Council may by rule require.

§251-26 Purpose and Findings. It is the purpose of this article to implement the provisions of P.L. 2019, c. 235 which authorizes the governing body of a municipality to adopt an ordinance imposing a tax at a uniform percentage rate not to exceed three (3%) percent on charges of rent for every occupancy of an transient accommodation subject to taxation pursuant to Subsection (d) of Section 3 of P.L. 1966, c. 40 (N.J.S.A. 54:32B-3) which shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the occupancy of a hotel room.

§251-27 Transient Accommodation Occupancy Tax Established. There is hereby established a Transient Accommodation Occupancy Tax in the City of Absecon which shall be fixed at a uniform percentage rate of three (3%) percent on charges of rent for every occupancy of an transient accommodation subject to taxation pursuant to Subsection (d) of Section 3 of P.L. 1966, c. 40 (N.J.S.A. 54:32B-3).

§251-28 Tax in Addition to Other Taxes and Fees. The Transient Accommodation Occupancy Tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the occupancy of a transient accommodation.

§251-29 Statutory Requirements. In accordance with the requirements of P.L. 2019, c. 235:

- A. The purchaser shall pay all taxes imposed by this Article.
- B. A vendor shall not assume or absorb any tax imposed by this Article.
- C. A vendor shall not in any manner advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax will be assumed or absorbed by the vendor, that the tax will not be separately charged and stated to the customer or that the tax will be refunded to the customer.
- D. Each assumption or absorption by a vendor of the tax shall be deemed a separate offense, and each representation or advertisement by a vendor for each day that the representation or advertisement continues shall be deemed a separate offense.
- E. The penalty for violation of the foregoing provisions shall be one thousand two hundred and fifty dollars (\$1,250.00) for each offense.

§251-30 Collection of Transient Accommodation Occupancy Tax. The tax imposed by this chapter shall be collected on behalf of the City of Absecon by the person collecting the rent from the transient accommodation customer. Each person required to collect the tax herein imposed shall be personally liable for the tax imposed, collected or required to be collected hereunder. Any such person shall have the same right in respect to collecting the tax from a customer as if the tax were a part of the rent and payable at the same time; provided that the chief financial officer of the City shall be joined as a party in any action or proceeding brought to collect the tax.

ARTICLE V

REVOCAION OR SUSPENSION; OTHER DISCIPLINARY ACTION; PROCEDURE; CONDITIONAL RENEWALS.

§251-31 Grounds for Revocation, Suspension or Probation of Rental Registration Permit and or Transient Accommodation License.

- A. The City may, administratively, decline to issue or renew a Rental Registration Permit and/or Transient Accommodation License. This action shall be in addition to any other penalty prescribed herein, in accordance with the provisions of N.J.S.A. 40:52-2 and N.J.S.A. 40:48-2, upon the happening of one or more of the following:
1. Any fraud, material misrepresentation, or false statement contained in the application for license.
 2. Any violation of this Chapter.
 3. Conviction of the Licensee of any felony or of a misdemeanor involving moral turpitude.
 4. Failure of the applicant or Licensee to comply with the conditions required for the issuance of a Rental License as set forth in this Chapter.
 5. Any grounds which would justify the revocation or suspension of a Rental License as specified in §251-31(B)(1-9) shall also be cause for the denial or any renewal of a Rental License.

A Landlord/Owner – Licensee shall be entitled to appeal any such decision by the filing of an appeal within the time permitted and in accordance with the procedures set forth in §251-33.

- B. The City may also revoke or suspend an issued and outstanding Rental Registration Permit and/or Transient Accommodation License, or place such license in a probationary status. This action shall be in addition to any other penalty prescribed herein, in accordance with the provisions of N.J.S.A. 40:52-2 and N.J.S.A. 40:48-2, upon the happening of one or more of the following:

1. Conviction of the Owner(s), or any of them if there is more than one, of a violation of this chapter in the municipal court or other court of competent jurisdiction.
2. Following a determination by the City after a hearing that a violation of this chapter has occurred.
3. If, in any twelve (12) month period there shall be three (3) or more complaints, or in any twenty-four (24) month period, there shall be four (4) or more complaints, on separate occasions, of conduct upon or in proximity to any rental premises, and attributable to the acts or incitements of any of the tenants of those premises, and such complaints have been substantiated by prosecution and conviction in any court of competent jurisdiction as a violation of any provision of Title 2C of the New Jersey Statutes or any municipal ordinance governing disorderly conduct
4. A pattern of permitting the Rental Unit(s) to be occupied by more than the maximum number of occupants as defined herein.
5. Maintaining the Rental Unit or units or the property in which the Rental Unit is a part in a dangerous condition likely to result in injury to person or property.
6. A false, misleading, or fraudulent statement made in connection with the registration, licensing or inspection of a Rental Unit or units, under this chapter.
7. A pattern of conduct which results in creating, maintaining, permitting or suffering the existence of any of the following conditions at or about the Rental Unit:
 - i. A nuisance as that term is defined by N.J.S.A. 2C:33-12 provided, however, that a conviction of such person or persons under that statute shall not be required in order for the City to take action relating to the Rental License under this section;
 - ii. The failure to comply with any directive of the City concerning the abatement of conduct prohibited by paragraph 7(a), above.
 - iii. The failure to comply with City ordinances pertaining to the proper accumulation and disposal of solid waste (trash) and recyclable material or otherwise allowing such materials to accumulate in such a way as to be unsanitary or unsightly.
8. If the Licensee, who is an owner of the property affected by the License or upon which the licensed business or activity is conducted, has failed to pay the taxes water, sewer or other municipal charges due on the property for at least three (3) consecutive quarters.
9. Any other grounds that would be a basis for denial or non-renewal of a Rental License rental license shall also constitute grounds for the revocation or suspension of a Rental License or the placing of such license in a probationary status.

- C. It shall be a defense to any proceeding for the revocation or suspension of a Rental Registration Permit and/or Transient Accommodation License to demonstrate that the Owner has taken appropriate action and has made a good faith effort to abate the conditions or circumstances giving rise to the revocation or suspension proceeding including but not limited to the institution of legal action against the tenant(s), occupant(s) or guests for recovery of the premises; eviction of the tenant(s) or otherwise. Evidence of such actions on the part of the owner or managing agent, however, shall not preclude the City from placing the Rental Registration Permit and/or Transient Accommodation License in probationary status as provided in this Chapter, nor shall it preclude the City from taking any other action authorized by law.

§251-32 Notice of Revocation or Suspension; Filing. A written notice seeking the revocation or suspension of a Rental Registration Permit and/or Transient Accommodation License shall be filed with the City Clerk by any person mentioned as an Enforcement Official in §251-14 of this Chapter. The notice shall be sufficiently specific to inform the Landlord/Owner - Licensee of the charges pending and shall state the particulars of any substantiated violations underlying the charges. The notice may be filed on the basis of information and belief and the complainant need not rely on personal knowledge or information.

§251-33 Appeal. Any Person who is denied the issuance of a Rental Registration Permit and/or Transient Accommodation License or any renewal thereof pursuant to §251-31(A), or who has had a Rental Registration Permit and/or Transient Accommodation License revoked or suspended pursuant to §251-31(B), may appeal such determination to a Hearing Officer. Such appeal shall be filed with the City Clerk not later than 45 days following notification of City action.

A. *Notice of Appeal.* The notice of appeal to be filed with the City Clerk shall be in writing and shall contain the following:

1. Name, address, telephone number and email address of the person(s) filing the appeal;
2. Name, address, telephone number and email address of the Managing Agent, if any;
3. Location of the Rental Property specifying Block, Lot number and street address;
4. Number of Rental Units at that location licensed or intended to be licensed; and
5. Specifying the specific grounds for the appeal.

B. *Procedure upon Filing of Appeal.* Upon the filing of an appeal, the City Clerk shall promptly consult with the City Solicitor and the Hearing Officer to determine a date when the required hearing shall be held which shall not be sooner than 30 days from the date of mailing as hereinafter provided

§251-34 Hearing Officer; Recusal. The hearing required by this section shall be held before the City Hearing Officer appointed by the City in accordance with §251-57(B) of this Chapter, unless such Hearing Officer shall recuse him/herself, in which event the City Council shall appoint another independent hearing officer to preside in the matter.

§251-35 Hearing. At the hearing convened pursuant to this Article the hearing officer shall give full hearing to both the complaint of the municipality and to any evidence in contradiction or mitigation that the landlord, if present or represented and offering such evidence, may present. The hearing officer may consider, to the extent deemed relevant by the hearing officer, prior complaints made against the property, even if those complaints did not result in a conviction.

A verbatim record shall be made of the hearing. All witnesses shall be sworn prior to testifying. The strict rules of evidence shall not apply and the evidential rules and burden of proof shall be the same as those which generally govern and are applied in administrative hearings. Any person shall be entitled to obtain a transcript of such hearing at his sole cost and expense.

§251-36 Appearance by Municipal Solicitor. The Municipal Solicitor shall appear and prosecute on behalf of the complainant in all hearings conducted pursuant to this Article.

§251-37 Recommendations of Hearing; City Council Determination. The Hearing Officer shall transmit his findings of fact and conclusions of law to the City Council within fifteen (15) days of the conclusion of the hearing. City Council shall then review the matter and may accept, reject, or modify the recommendations of the Hearing Officer based on the documentary evidence and written findings of fact and conclusion of law submitted by the Hearing Officer. City Council shall make the final determination by resolution and may, in its discretion, accept, reject, or modify the findings and recommendations of the Hearing Officer.

§251-38 Probationary Status; Terms. In lieu of a revocation or suspension of a Rental Registration Permit and/or Transient Accommodation License, the Hearing Officer may recommend placing the Rental Registration Permit and/or Transient Accommodation License in a probationary status. The Hearing Officer may also recommend specific terms of probation to be imposed, if any. Once imposed, the probationary status shall remain in effect for the remainder of that License term and may be made applicable to the succeeding renewal term.

- A. *Terms.* The terms of the probationary status shall be specifically set forth in a resolution of City Council, a copy of which shall be served upon the Owner, Managing Agent, and Rental Agent. Such notice shall be served personally or by certified mail, return receipt requested, or both. If service is made by certified mail, return receipt requested, it shall also be sent simultaneously by first class mail. Mail to the Owner and Managing Agent shall be at the address indicated on the Rental License Application. Copies shall also be sent to the names and addresses appearing on the City's tax records if different from the names and addresses appearing on the Rental License Application. Copies shall also be provided to the Chief of Police, Code Enforcement Officer, Fire Official and Construction Code Official.

§251-39 Modification of Probationary Conditions. The City Council may on its own initiative or at the request of an Owner, Managing Agent, Tenant or Occupant of the Rental Unit modify the terms of such probationary status at any time during the probationary term. If modified, it shall be by resolution, copies of which shall be served upon such persons and in such manner as specified in the preceding subsection.

§251-40 Violation of Conditions of Probationary Status. The violation of any term or condition of the probation by the Owner, Managing Agent, Tenant or Occupant, shall be cause for the immediate suspension or revocation of the Rental License. Prior to suspension or

revocation, the Licensee shall be entitled to a hearing conducted in accordance with the provisions of §251-35.

§251-41 Renewal of License in Probationary Status. Any Rental License which is in probationary status may be renewed for the succeeding license term conditioned upon compliance by the Owner, Managing Agent, Tenant and Occupants with the terms and conditions of probation.

§251-42 Rental License Deemed Severable for Disciplinary Action. A Rental License shall be deemed severable with respect to the revocation, suspension or disciplinary actions instituted pursuant to this chapter. Accordingly, the revocation or suspension or other disciplinary action involving a Rental License may be limited to one or more Rental Units or may apply to all Rental Units in a Property. If limited to less than all of the Rental Units, such License shall remain in full force and effect as to any and all Rental Units not involved in the revocation, suspension or disciplinary proceedings.

§251-43 Fines and Penalties. Any person, firm, association or corporation violating any of the provisions of this chapter shall, upon conviction, be subject to the penalty provisions set forth in §251-57, including those additional enhanced penalties for repeat violations as specified in said subsections and subparagraphs.

§251-44 Penal and Administrative Penalty. The foregoing penalties shall be in addition to any other penalty provided in this Chapter and shall be in addition to those penalties set forth in N.J.S.A. 46:8-35. Specifically, the penal penalties shall be in addition to the administrative penalties set forth in this article and shall not be in place thereof.

ARTICLE V

POSTING OF BOND AGAINST CONSEQUENCES OF TENANTS.

§251-45 Findings. N.J.S.A. 40:48-2.12n, *et seq.* authorizes municipalities to enact an ordinance holding landlords of rentals to standards of responsibility in the selection of tenants and supervision of the rental premises. The City Council has determined that there is a need for such an ordinance in the City of Absecon.

§251-46 Definitions. Unless the context clearly indicates a different meaning, the following words or phrases when used in this chapter shall have the following meaning:

- A. *Hearing Officer* shall mean a person designated pursuant to subsection b. of section 3 of P.L. 1993, c. 127 (C.40:48-2.12p) to hear and determine proceedings under P.L.1993, c. 127 (C.40:48-2.12n et seq.).
- B. *Landlord* means the person or persons who own or purport to own a building in which there is rented or offered for rent housing space for living or dwelling under either a written or oral lease which building contains no more than four dwelling units. In the case of a mobile home park, "landlord" shall mean the owner of an individual dwelling unit within the mobile home park.
- C. *Substantiated complaint* means a complaint which may form the basis for proceedings in accordance with subsection a. of section 4 of P.L. 1993, c.127 (C. 40:48-2.12q).

§251-47 Duty and Responsibility of Landlord. Landlords of rentals shall be held to standards of responsibility in the selection of tenants and supervision of the Rental Premises. Under certain circumstances, a Landlord shall be required to post an adequate bond against the consequences of disorderly behavior of their tenants as hereinafter provided; and in the case of subsequent violations forfeit such bond, in whole or in part, in consequences of such behavior.

§251-48 Substantiated Complaints; Number Required; Procedure. If in any twenty-four-month period a specified number, which shall be two (2) or more complaints, on separate occasions, of conduct upon or in proximity to any rental premises, and attributable to the acts or incitements of any of the tenants of those premises, have been substantiated by prosecution and conviction in any court of competent jurisdiction as a violation of any provision of Title 2C of the New Jersey Statutes or any municipal ordinance governing disorderly conduct, the municipal governing body or any officer or employee of the municipality designated by the governing body for the purpose, may institute proceedings to require the landlord of those premises to post a bond against the consequences of future incidents of the same character.

§251-49 Procedure upon Filing of Complaint. Upon the filing of such written complaint, the City Clerk shall promptly:

- A. Consult with the City Solicitor and the Hearing Officer to determine a date when the required hearing shall be held which shall not be sooner than 30 days from the date of mailing as hereinafter provided;
- B. Send a copy of the filed complaint to the landlord / Owner-Licensee and the Managing Agent, if any, together with a copy of the Notice of the Date, Time, and Place of the Hearing. Such hearing shall be held in the Municipal Building, Municipal Court or other public place within the City of Absecon. Said hearing shall be held no sooner than thirty (30) days from the date upon which the notice is served or mailed.
- C. The Complaint and Hearing Notice shall be sent certified mail with return receipt requested and simultaneously by regular first-class mail to the landlord / Owner-Licensee and the Managing Agent, if any, at the address indicated on the Rental License Application. Such notices shall also be sent to the Owner-Licensee at the address appearing on the City tax records provided that such address is different from the address appearing on the Rental License Application.
- D. A copy of the complaint and notice of hearing date shall be provided to the Hearing Officer, City Solicitor and the City Administrator.
- E. In addition to the complaint and notice of hearing date, the Owner-Licensee or landlord, and Managing Agent, if any, shall be informed of the particulars of the substantiated complaints upon which the proceedings are based.

§251-50 Hearing. At the hearing convened pursuant to this Article the hearing officer shall give full hearing to both the complaint of the municipality and to any evidence in contradiction or mitigation that the landlord, if present or represented and offering such evidence, may present.

The hearing officer may consider, to the extent deemed relevant by the hearing officer, prior complaints about the residents of the property, even if those complaints did not result in a conviction. At the conclusion of the hearing the hearing officer shall determine whether the landlord shall be required to post a bond in accordance with the terms of the ordinance.

§251-51 Requirement for Bond. Any bond required to be posted shall be in accordance with the judgment of the hearing officer, in light of the nature and extent of the offenses indicated in the substantiated complaints upon which the proceedings are based, to be adequate in the case of subsequent offenses to make reparation for (1) damages likely to be caused to public or private property and damages consequent upon disruption of affected residents' rights of fair use and quiet possession of their premises, (2) securing the payment of fines and penalties likely to be levied for such offenses, and (3) compensating the municipality for the costs of repressing and prosecuting such incidents of disorderly behavior; but no such bond shall be in an amount less than \$500 or more than \$5,000. The municipality may enforce the bond thus required by action in the Superior Court, and shall be entitled to an injunction prohibiting the landlord from making or renewing any lease of the affected premises for residential purposes until that bond or equivalent security, in satisfactory form and amount, has been deposited with the municipality.

§251-52 Duration of Bond Requirements; Discharge; Extension or Renewal. The bond or other security deposited in compliance with this section shall remain in force for a period of three (3) years. Upon the lapse of the specified period, the landlord shall be entitled to the discharge thereof, unless prior thereto further proceedings leading to a forfeiture or partial forfeiture of the bond or other security shall have been had in which case the security shall be renewed, in an amount and for a period that shall be specified by the Hearing Officer.

§251-53 Proceedings for Forfeiture. If during the period for which a Landlord is required to give security pursuant to this section, a substantiated complaint is recorded against the property in question, the City Council or any of the persons authorized herein may institute proceedings against the Landlord for the forfeiture or partial forfeiture of the security, or for an extension for the period for which such security is required, or for an increase in the amount of security required, or for any or all of these purposes.

§251-54 Proceedings Before Hearing Officer. Any forfeiture or partial forfeiture of security shall be determined by the hearing officer solely in accordance with the amount deemed necessary to provide for the compensatory purposes set forth in subsection d. of section 4 of P.L.1993, c. 127 (C.40:48-2.12q). Any decision by the hearing officer to increase the amount or extend the period of the required security shall be determined in light of the same factors set forth in subsection d. of section 4 of P.L.1993, c. 127 (C.40:48-2.12q), and shall be taken only to the extent that the nature of the substantiated complaint or complaints out of which proceedings arise under this section indicates the appropriateness of such change in order to carry out the purposes of this act effectually. The decision of the hearing officer in such circumstances shall be enforceable in the same manner as provided in subsection d. of section 4 of P.L.1993, c. 127 (C.40:48-2.12q).

§251-55 Recovery by Landlord from Tenant. A landlord may recover from a tenant any amounts of security actually forfeited as described this Article.

§251-56 Hearing Officer Qualifications; Appointment; Term; Recusal.

- A. *Qualifications.* The City Council is hereby authorized to appoint a Hearing Officer who is qualified pursuant to the requirements of N.J.S.A. 40:48-2.12p, as amended and supplemented. Such Hearing Officer shall be a licensed attorney of New Jersey who shall not be an owner or lessee of any property within the City, nor hold any interest in the assets of or profits arising from the ownership or lease of such property.
- B. *Appointment.* The appointment of the Hearing Officer shall be by resolution of the City Council. The appointment shall be for a term specified by the City Council, but in no event to exceed one (1) year. The Hearing Officer shall be eligible for reappointment. The services of the Hearing Officer may be terminated without cause upon the giving of thirty (30) days' notice. The services of the Hearing Officer may be terminated for cause immediately.
- C. *Compensation.* The Hearing Officer may be compensated by salary or a Professional Services Contract in the discretion of the City Council.
- D. *Recusal.* In the event that the Hearing Officer should deem it necessary to recuse him/herself, for whatever reason, the City Council shall, by resolution, appoint another independent hearing officer to preside in the matter. Any substitute Hearing Officer shall possess all of the qualifications specified herein and required by State statute.

ARTICLE VII

PENALTIES & FEES

§251-57 Penalties. Any Person violating any of the provisions of this article shall, upon conviction, be subject to one (1) or more of the following:

A. *First Offense:*

1. A fine in the minimum amount of Two Hundred Fifty (\$250.00) Dollars and not to exceed the sum of One Thousand (\$1,000.00) Dollars; and/or
2. Incarceration for a term not to exceed Ninety (90) Days; and/or
3. A period of community service for a period not exceeding Ninety (90) Days.

B. *Second or Subsequent Offense:*

1. A fine in the minimum amount of Five Hundred (\$500.00) Dollars and not to exceed the sum of Two Thousand Five Hundred (\$2,500.00) Dollars; and/or
2. Incarceration for a term not to exceed Ninety (90) Days; and/or
3. By a period of community service for a period not exceeding Ninety (90) Days.

C. *Violations Occurring Within One Year.* Any Person convicted of violating this Ordinance within one (1) Year of the date of a previous violation and who was fined for the previous violation, may be sentenced by the Court to an additional fine as a repeat offender. The additional fine imposed by the Court upon a Person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the

Ordinance, but shall be calculated separately from the fine imposed for the violation of the Ordinance. (See N.J.S.A. 40:49-5)

D. *Additional Penalties.* The foregoing penalties shall be exclusive of, and in addition to, any other penalty or penalties provided in this chapter and the penalties set forth in N.J.S.A. 46:8-35, of the "Landlord Registration Act"; including but not limited to:

Any Administrative Penalties contained in:

1. the Uniform Fire Safety Act;
2. the Uniform Construction Code (UCC);
3. the International Property Maintenance Code (IPMC); or
4. any other code now in force in the City or which may hereinafter be adopted by the City.

§251-58 Fees. The following fees shall apply:

A. <i>Rental Property Registration...</i>	\$100.00
B. <i>Inspection.....</i>	included
C. <i>Re-inspection.....</i>	\$ 25.00
D. <i>Transient Accommodation License</i>	\$500.00

DATED: September 3rd, 2020

SIGNED: _____
Kimberly Horton, Mayor

ATTEST: _____
Carie A. Crone, RMC, Municipal Clerk

Passed on first reading at a regular meeting of the Municipal Council held on August 20th, 2020. Laid over and advertised for public hearing and final adoption on September 3rd, 2020. Notice is hereby given that the foregoing Ordinance was approved for final adoption by the Municipal Council of the City of Absecon at a regular meeting held on September 3rd, 2020.