

Sponsor: \_\_\_\_\_  
First Reading: 03/03/2025  
Second Reading: 03/17/2025  
Third Reading: 04/7/2025

**ORDINANCE # 007-25**

**AN ORDINANCE TO AMEND CHAPTER 18 (BUILDINGS AND BUILDING REGULATIONS), ARTICLE XI (RENTAL PROPERTIES) TO ESTABLISH NEW REGULATIONS FOR RENTAL PROPERTIES IN THE TOWN OF SMYRNA**

WHEREAS, pursuant to Section 4.2.25 of the Town Charter, the Town Council is authorized to “provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants;”

WHEREAS, the Town of Smyrna desires to allow the use of residential properties in Smyrna for rental purposes, recognizing that rental properties are an economic asset, allow for increased travel and tourism, and create a source of revenue for property owners;

WHEREAS, the Town desires to minimize public safety risks and public nuisances, such as noise, trash and parking problems; ensure that traditional neighborhoods are not turned into tourist areas to the detriment of long-term residents; and ensure that individual dwellings are not turned into pseudo hotels; and

WHEREAS, in the opinion of the Town Council of the Town of Smyrna, in an effort to further the purposes set forth heretofore, it is in the best interest of the public health, safety, and welfare to establish regulations governing residential rental properties in the Town.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that the Smyrna Town Code be and hereby is amended as follows:

**Section 1.** Amend Chapter 18 (Buildings and Building Regulations), Article XI (Rental Properties), by deleting Article XI in its entirety and replacing it with the following:

**ARTICLE XI. – RENTAL PROPERTIES**

**Sec. 18-401. Definitions.**

For the purposes of this Article XI, the following words shall be defined as follows:

*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.

*Good neighbor brochure.* A document prepared by the Town that summarizes the general rules of conduct, consideration, and respect, including without limitation provisions of the Town Code of the Town of Smyrna, Delaware, applicable to renters and residents of the Town.

*Long-term rental unit.* A dwelling unit, including a single-family dwelling, two-family dwelling, semidetached dwelling, townhouse dwelling, apartment dwelling and mobile/manufactured home, or any portion thereof, rented for dwelling, lodging, or sleeping

purposes, and which is made available by agreement for residential occupancy by a tenant in exchange for compensation for more than 31 days.

*Owner.* Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the 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.

*Short-term rental unit.* A dwelling unit, limited to single-family detached dwelling units, rented for dwelling, lodging, or sleeping purposes, and which is made available by agreement for residential occupancy by a tenant in exchange for compensation for no more than 31 consecutive nights. "Short-term rental" does not include bed and breakfast establishments as defined in Appendix A – Zoning, of the Town Code.

**Sec. 18-402. Rental license required; exceptions; application and fee.**

- (a) No dwelling unit may be leased, subleased, or occupied by any person until a rental license has been issued by the Town.
- (b) Application. Application for a rental license shall be on forms provided by the Town and signed by at least one owner of the subject property. Such forms shall require, among other information:
  - (1) The name, address, e-mail, and telephone number of the owner of the dwelling unit for which the rental license is to be issued;
  - (2) The name, address, e-mail and telephone number of the representative, if any, of the owner;
  - (3) The name, address, e-mail, and telephone number of the local caretaker and alternate caretaker as required under Section 18-402(d);
  - (4) The physical address of the dwelling unit for which the application is submitted;
  - (5) The number of bedrooms contained within the dwelling unit and the maximum occupancy, which shall not exceed the occupancy limitations outlined in the Town Code;
  - (6) Whether the application is for a rental license for a long-term rental unit or a short-term rental unit;
  - (7) Acknowledgement that all applicants have reviewed and understand all regulations pertaining to renting dwelling units; and
  - (8) Such other information as the Town Manager deems reasonably necessary to administer this article.
- (c) A rental license may be denied if (1) the owner has had a rental license suspended or revoked within the prior twelve (12) months, (2) the owner owes any outstanding taxes or fees to the Town, or (3) the dwelling unit has had three or more violations of this article within the prior twelve (12) months. The denial of a rental license may be appealed in accordance with the provisions of Sec. 18-407.
- (d) Caretaker requirements. The caretaker and alternate caretaker shall be persons charged, by the owner, with responsibility and authority to deal with occupants of the dwelling unit on behalf of the owner, to make repairs to the rental unit, to maintain the premises and the common areas thereof, and to accept service of process on behalf of the owner. The owner

shall notify the Town in writing of any changes in the name, address, and/or telephone number of the caretaker or alternate caretaker. Failure to do so shall constitute a violation of this article.

- (e) Fee. The annual fee for a rental license shall be as set forth in the fee schedule per unit per calendar year, payable in advance at the time of application. Rental license fees are payable by the first day of each calendar year. Licenses applied for and paid for in December of any year shall be issued for the following calendar year.
- (f) Exceptions. The provisions of this article shall not pertain to hotels, motels, campgrounds, inns, bed and breakfasts establishments, or tourist homes.

**Sec. 18-403. Rental certificate of occupancy; inspections; exceptions; fee.**

- (a) *Rental certificate of occupancy required before re-occupancy.* A rental license shall not be issued until a rental certificate of occupancy has been issued for the dwelling unit. Additionally, no dwelling unit shall be occupied after a vacancy by any person other than the owner unless a rental certificate of occupancy has been issued by the Town as herein provided.
- (b) *Inspection; rental certificate of occupancy.* No rental certificate of occupancy shall be issued until the Town has conducted an inspection to ensure that the dwelling unit is in substantial compliance with the building, plumbing, housing, electrical, fire, and property maintenance codes of the Town. After notification of vacancy by the owner, the Town will conduct the inspection prior to re-occupancy of the dwelling unit. A dwelling unit shall be deemed to be not in substantial compliance if:
  - (1) There are one or more violations which pose a serious and substantial threat to the health, safety, or welfare of the occupants; or
  - (2) There is an extensive number of minor violations which, cumulatively, pose a significant threat to the health, safety, welfare or morale of the occupants.

It is the intent of this article, and the Town officials shall be guided accordingly, that the greater the cumulative number of violations observed in a rental unit, the less serious any of them must be to result in a determination that a unit is not in substantial compliance; and conversely, the more serious the violations, the fewer there need be to result in a determination that a rental unit is not in substantial compliance.

- (c) *Exception.* An inspection shall not be required for any dwelling unit for which a certificate of occupancy has been issued within the past 12 months following construction or substantial reconstruction of such dwelling unit.

Anything in this article to the contrary notwithstanding, where any dwelling unit otherwise excepted from the requirement of a rental certificate of occupancy and inspection is determined to be in significant violation of any of the Town's building, housing, electrical, plumbing, fire or property maintenance codes, such dwelling unit shall not thereafter be reoccupied after the first vacancy following such determination until a rental certificate of occupancy shall be issued following an inspection as provided herein. "Significant violation" for purposes hereof shall mean violations which because of their seriousness or because of their extensive number, in the aggregate, pose a significant threat to the health, safety, welfare or morale of the occupants.

- (d) *Inspection fee.* The fee shall be \$55.00 for the inspection prior to issuance of a rental certificate of occupancy.

When an inspection is scheduled with the town, it is the responsibility of the property owner to make sure the dwelling unit is ready by the time the inspector arrives on site. A minimum of one hour's notice is required to cancel or reschedule an inspection. All inspections require 24 hours' advance notice.

If an inspector arrives on-site and the dwelling unit is not ready and the inspection was not cancelled at least one hour in advance, a \$50.00 fee must be paid at the town hall before the inspection may be rescheduled. An additional fee of \$80.00 shall be charged for each follow-up inspection required because of uncompleted or unsatisfactorily completed items found by the inspector on a previous inspection.

**Sec. 18-404. – Rental Requirements and Conditions.**

- (a) *Rental requirements.* The following terms and conditions shall apply to all long-term rental units and short-term rental units:

- (1) The owner shall use reasonable business practices to ensure that the dwelling unit complies with all applicable codes concerning fire, building, health and safety, and all other relevant laws.
- (2) The owner shall use reasonable business practices to ensure that the occupants and guests of the dwelling unit do not create unreasonable noise disturbances, engage in disorderly conduct, or violate provisions of the Town Code or any applicable law of the State of Delaware.
- (3) During the rental term, the caretaker or alternate caretaker shall be available 24 hours per day, seven days per week, for the purpose of: (i) receiving telephone calls or other communications from the Smyrna Police Department or other Town official relative to complaints about the residential rental; and (ii) responding to the complaint by telephone or in person when directed by the Smyrna Police Department or other Town official.
- (4) When a complaint warrants the notification of the caretaker or alternate caretaker, the caretaker or alternate caretaker shall be promptly notified of the complaint and requested to assist with the resolution of the same.
- (5) Failure of the owner, caretaker, or alternate caretaker to cooperate with Town Police or Town officials in responding to a notification of a complaint concerning the condition, operation, or conduct of occupants or guests of the dwelling unit in a timely and appropriate manner shall be grounds for imposition of penalties as set forth in this article. The caretaker or alternate caretaker shall not be required to act as a peace officer or place himself or herself in an at-risk situation in responding to any notice provided pursuant to this article.
- (6) The owner shall post a copy of the rental license and a copy of the conditions set forth in this section in a conspicuous place within the dwelling unit.
- (7) The owner has the responsibility to not knowingly allow any illegal or criminal activity on the property nor permit the occupants to create a public nuisance.

- (8) The owner shall provide the occupants of a dwelling unit with the following information prior to occupancy of the unit and post such information in a conspicuous place within the dwelling unit:
  - a. The name, e-mail, and a telephone number of the caretaker and alternate caretaker;
  - b. The collection days for refuse, yard waste, and recyclables and applicable rules and regulations pertaining to storing waste materials on the exterior of the property;
  - c. Notification that the Town may pursue legal remedies for creating a disturbance or for violating other provisions of this article;
  - d. The requirements of the Town's Noise Ordinance;
  - e. Notification that failure to conform to the occupancy requirements of the dwelling unit is a violation of this chapter; and
  - f. The Good Neighbor Brochure.
- (9) The Town Manager shall have the authority to impose additional conditions applicable to the rental of dwelling units as necessary to achieve the purpose and objectives of this article. A list of all such additional conditions shall be maintained and on file at Town Hall.
- (10) The standard conditions may be modified by the Town Manager upon request of the owner based on property-specific circumstances and for the purpose of allowing reasonable accommodations for renting a dwelling unit. All requests must be in writing and shall demonstrate that the standard conditions create an unreasonable hardship such that, if the requirement is not modified, would effectively prohibit reasonable use of the property for a rental dwelling unit. Any hardships identified must relate to physical constraints of the property and shall not be self-induced or economic.

(b) The following terms and conditions shall apply to all short-term rental units:

- (1) A short-term rental unit may only be rented out if the owner of the dwelling unit is a permanent resident of the Town of Smyrna and the short-term rental unit also serves as the owner's primary residence.
- (2) Weddings, graduation parties, corporate events, commercial functions, large gatherings, or other special events shall not be held at a short-term rental unit unless a special event permit has been granted by the Town for a specific date and time to be held at the short-term rental unit.

**Sec. 18-407. Penalties; enforcement remedies.**

(a) *Penalties.* Any violation of this article shall constitute a civil offense. Any person who violates this article shall pay a civil assessment of \$250. Each day the violation remains shall be deemed a separate civil offense.

- (1) Any civil assessment not paid within 15 calendar days of the date of the assessment or, if an appeal has been filed, within 15 calendar days of the decision

of the Town Council, shall accrue interest at the rate of 1.5% per month.

- (2) Anything herein to the contrary notwithstanding, any citation issued for violations of this article may provide for a reasonable compliance date or time of less than 15 calendar days from the date the citation is given if, due to the nature of the violation, a shorter compliance period is necessary or appropriate, as determined in the reasonable judgment of the Town official issuing the citation.
- (3) If three separate and distinct violations of the article occur within twelve (12) months, a rental license may be suspended or revoked by the Town, and a new rental license shall not be issued for the following annual rental period.
- (4) The remedies provided for in this section are in addition to, and not in lieu of, all other legal remedies, criminal or civil, which may be pursued by the Town to address any violation of this chapter.
- (5) *Order to vacate.* Whenever a Town official determines that a dwelling unit has been occupied in violation of this article, a Town official may provide the occupant(s) of such rental unit with a written notice and order to vacate, ordering the occupant(s) in possession of such rental unit to vacate the rental unit within 60 days for a long-term rental unit, or within 5 days for a short-term rental unit, unless the Town subsequently provides such persons with notice that such violations have been corrected. A copy of such notice shall be emailed to the owner and sent, certified mail, return receipt requested, to the owner at the owner's last known address as shown on the Town's assessment records unless the owner has provided the Town with written notice of another preferred address.
- (6) *Appeals procedures.* Any owner, occupant, or other person receiving a civil assessment, order to vacate, or having a rental license suspended, revoked, or denied may file an appeal, in writing, to the Town Council within 15 calendar days of the date of the action being appealed. At an upcoming Council Meeting, the appellant shall be given the chance to present the appeal to the Town Council, after which the Town Council shall issue a decision on the appeal.
- (7) *Termination of town utilities.* In addition to or in lieu of seeking the imposition of civil penalties against the occupants, the Town may enforce compliance with this article by terminating electric, water, and/or sanitary sewer service to the rental unit where any occupant has failed to comply with a notice and order to vacate as herein provided.

**Sec. 18-408. Conflict with state or federal laws or regulations.**

Whenever any provision of this article is in irreconcilable conflict with any provision of state or federal law or regulations adopted pursuant thereto, the provisions of the federal or state law or regulations shall control and supersede the provisions of this article.

**Section 2. Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that the Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions,

standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

**Section 3. Effective Date.** This Ordinance shall become effective upon the date of its adoption.

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SYNOPSIS

This ordinance establishes updated regulations for renting dwelling units in the Town. Rental licenses are required for all rental units, and the license application requirements are outlined in this ordinance. Reasons for denying a rental license are established, along with the requirements for identifying a caretaker and alternate caretaker for the rental unit. The rental license application fee is to be set forth in the Town's fee schedule, and exceptions to the rental license requirements are identified. Inspections and certificates of occupancy are required prior to renting dwelling units, and this ordinance outlines the inspection requirements. Requirements for renting dwelling units are identified in this ordinance, such as preventing unreasonable disturbances from renters, following health and safety codes, not allowing illegal activity at the rental unit, etc. Short term rentals may only be rented if the owner of the dwelling is a permanent resident of the Town who resides at the dwelling, and special events are not permitted at short term rentals without a special events permit. This ordinance includes enforcement procedures. The Town's crime-free lease requirements are removed from the Town Code as part of this ordinance.

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This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on April 7<sup>th</sup>, 2025.

ATTEST:

  
\_\_\_\_\_  
Council Secretary

  
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Mayor

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This shall certify that the title and synopsis of this Ordinance was published in a newspaper of general circulation within the Town on March 12<sup>th</sup>, 2025 and posted at the Town Hall on February 24<sup>th</sup>, 2025.

So Certifies:

  
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Town Clerk