

ORDINANCE NO. 65-2009

**TITLE: REPEAL OF ORD. NO. 164-1990 AND ORD. NO. 188-1990
(CHAPTER 1495 OF THE BARBERTON CODIFIED ORDINANCES)
ADOPT NEW RENTAL REGISTRATION PROGRAM**

AN ORDINANCE REPEALING ORDINANCE NO. 164-1990, "ENACTING NEW CHAPTER 1495 RENTAL PROPERTIES OF THE BARBERTON CODIFIED ORDINANCES," AND ORDINANCE NO. 188-1990, "ESTABLISHING FEE SCHEDULE FOR RENTAL INSPECTIONS"; AND AMENDING THE BARBERTON CODIFIED ORDINANCES BY ADOPTING A NEW RENTAL PROPERTY REGISTRATION PROGRAM.

WHEREAS, in order to protect the health, safety, and welfare of Barberton residents, it has been determined that a new Rental Property Registration Program and fees should be established; and

WHEREAS, it is believed that the Rental Property Registration Program will assist the Building Department in code enforcement functions and will provide a stable house stock within the City of Barberton.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton, State of Ohio:

SECTION 1. That Council hereby repeals Ordinance No. 164-1990, "Enacting New Chapter 1495 - Rental Properties of the Barberton Codified Ordinances," and Ordinance No. 188-1990, "Establishing Fee Schedule for Rental Inspections," (Chapter 1495 of the Barberton Codified Ordinances).

SECTION 2. That Council hereby adopts the new Rental Property Registration Program and fees, as listed herein.

RENTAL PROPERTY REGISTRATION PROGRAM

I. DEFINITIONS

A. For the purpose of this Ordinance, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

1. "Barberton Development Code" means the development code adopted by ordinance, and any amendments.

2. "Dwelling" means any dwelling, dwelling unit, building, structure, rooming house, rooming unit, hotel, or other living quarters used, intended to be used, or designed to be used, in whole or in part, for living or sleeping by human occupants. Temporary housing is not a dwelling.

3. "Dwelling Unit" means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, intended to be used, or designed to be used for living, sleeping, cooking, and eating.

4. "ICC International Property Maintenance Code" means the ICC International Property Maintenance Code adopted by ordinance, and any amendments.

5. "Occupant" means any person over one (1) year of age living, sleeping, cooking, or eating in, or having actual possession of, a dwelling or rooming unit.

6. "Ohio Building Code" means the Ohio Building Code, as adopted pursuant to Chapters 119, 3781, and 3791 of the Ohio Revised Code, and any amendments.

7. "Ohio Residential Code" means the Ohio Residential Code, as adopted pursuant to Chapters 119, 3781, and 3791 of the Ohio Revised Code, and any amendments.

8. "Operator" means any person who, alone or jointly or severally with others, has charge, care, or control of any premises, or part thereof, in which there are one (1) or more rental dwelling units or rental rooming units whether as owner, manager, agent of the owner, or due to conduct that demonstrates the person's position of responsibility concerning the dwelling or rooming unit.

9. "Owner" means any person who, alone or jointly or severally with others, has legal title to any rental dwelling or rental dwelling unit with or without accompanying actual possession thereof, or is the vendor or vendee under a land contract, whether recorded or not, or is the executor, executrix, administrator, administratrix, trustee, or guardian of the estate of either the person with legal title or the land contract vendor or vendee.

10. "Person" means an individual, partnership, association, company, firm, trust, corporation, government corporation, department, bureau, agency, or any entity recognized by law.

11. "Premises" means not only the dwelling and any other buildings of any kind or nature located on the lot, but also the entire parcel surrounding the buildings, including, but not limited to fences, walkways, walls, and appurtenances.

12. "Property Maintenance Inspector" means the Building Commissioner of the City or the Building Commissioner's authorized Property Maintenance Inspector.

13. "Purchaser" means any person who, alone or jointly or severally with others, has entered into a contract to become the owner of any dwelling unit, with or without accompanying actual possession thereof.

14. "Rental Inspection" means the rental inspection as required in this ordinance.

15. "Rental Registration" means the rental registration as required in this ordinance.

16. "Rental Unit" means a dwelling unit, rooming unit and/or vacant structure not occupied by the person with legal title.

17. "Rooming House" means any dwelling, or that part of any dwelling, containing one or more rooming units, including hotels, in which space is let by the owner or operator to three or more persons who are not husband, wife, son, daughter, mother, father, sister, or brother of the owner or operator.

18. "Rooming Unit" means any room or group of rooms forming a single habitable unit used, intended to be used, or designed to be used for living and sleeping but not for cooking or eating purposes.

19. "Temporary Housing" means any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not affixed to the ground, to another structure, or to any utilities system on the same premise for more than 30 (thirty) consecutive days.

B. Whenever the words "dwelling," "dwelling unit," "rooming unit," and "premises," are used in this ordinance, they shall be construed as though they were followed by the words "or any part thereof."

II. CONFLICT AND INVALIDITY

Where a provision of this Ordinance is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the City existing on the effective date of this Ordinance, the provision which establishes the higher standard for the promotion of the health and safety of the people shall prevail. Where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance or code of the City existing on the effective date of this Ordinance, which establishes a lower standard for the promotion and protection of the health and safety of the people, the provisions of this Ordinance shall prevail, and the other ordinance or code shall be repealed to the extent that it may be found in conflict with this Chapter.

III. WARRANTIES AND LIABILITY

The provisions of this Ordinance shall not be construed to warrant, insure, or guarantee that there are no violations of the ICC International Property Maintenance Code, the Barberton

Development Code, the Ohio Residential Building Code, or the Ohio Building Code at a premises, or that the premises is in a clean, sanitary, safe, or fit condition. Inspections by the Building Department are made for the purpose of preserving and improving the housing stock and enforcing the ICC International Property Maintenance Code, the Barberton Development Code, the Ohio Residential Code, and the Ohio Building Code and are not made on behalf of the occupant, operator, owner, or purchaser of a premises, or any other person.

IV. APPLICATION OF OTHER CODES

A. The ICC International Property Maintenance Code, the Barberton Development Code, the Ohio Residential Code, and the Ohio Building Code, and any amendments thereto, are hereby adopted as part of the requirements of this Ordinance for the purpose of providing guidance and standards in the application and enforcement of this Ordinance and in determining whether the conditions of the premises are maintained in an approved manner.

B. Where differences occur between the provisions in this Ordinance and the provisions that this section adopts, the provisions that impose the higher standards shall control.

V. ENTRY AND INSPECTION

A. The Property Maintenance Inspector is authorized and directed to make inspections to determine the condition of dwellings, rooming houses, and premises located within the City. For the purpose of making the inspections, the Property Maintenance Inspector is authorized to enter, examine, and survey, at all reasonable times, all dwellings, dwelling units, rooming units, and premises. The owner or occupant of every dwelling or rooming house or the person in charge thereof, on request of the Property Maintenance Inspector, may give the Property Maintenance Inspector free access to the dwelling or rooming house and its premises, at all reasonable times, for the purpose of inspection, examination, and survey. If entry is refused or not obtained, the Property Maintenance Inspector shall conduct the inspection only as provided by law. This Ordinance shall not be construed to require an occupant, operator or owner to consent to a warrantless inspection of a dwelling, rooming house or premises except as provided by law.

B. Every occupant of a dwelling or rooming house shall give the owner thereof, or the owner's agent or employee, access to any part of the building or its premises, at all reasonable times, for the purpose of making the repairs or alterations as are necessary to effect compliance with the provisions of this Ordinance, or with any lawful rule or regulation adopted or any lawful order issued pursuant thereto.

VI. NOTICE OF VIOLATION

A. Whenever the Property Maintenance Inspector determines that there has been a violation of any of the provisions of this Ordinance, notice/order of the violation shall be given to the person responsible to order compliance pursuant to the ICC International Property Maintenance Code and/or the Barberton Development Code.

B. Whenever a person violates or fails to comply with any of the provisions of the Ordinance, the Property Maintenance Inspector shall have the authority to impose an administrative or criminal penalty. The Property Maintenance Inspector shall consider the following criteria in assessing an administrative penalty:

1. the extent to which the person has benefited by the violation of this Ordinance;
2. the degree of harm to the public health, safety, welfare and aesthetics as a result of the violation of this Ordinance;
3. the recidivism of the person, including previous notices and orders to comply and previous enforcement action;
4. good faith efforts of the person to remedy the violation of this Ordinance; and
5. the duration of the violation after a notice and order to comply was served pursuant to this section or section 110.0 of the ICC International Property Maintenance Code.

C. Upon request of the owner of the property to the Building Department, during the process of an eviction, the owner may request a certified letter from the Building Department verifying the violation of a health, safety, or the ICC International Property Maintenance Code applicable to the statutory requirements of a legal eviction.

D. The imposition of an administrative fine shall be accomplished only after a notice/order is provided to the occupant, operator or owner. Notice of a decision imposing an administrative fine shall comply with the Notice of Violation as provided herein.

VII. BOARD OF ZONING AND BUILDING APPEALS

Any party, including the City, that is aggrieved by an alleged error in an administrative action made under this Ordinance may file an appeal thereof with the Board of Zoning and Building Appeals.

Such appeal shall comply with the Barberton Development Code Section 1310.03(c).

VIII. REGISTRATION REQUIRED

A. Registration is required on a form provided by the Building Department under the following circumstances:

1. all rental units that the owner owns or that the operator operates no later than January 1 of each year; and
2. upon the completion of transfer of title to a premises with a rental unit.

B. The registration form shall include the following information and any additional information as determined by the Building Department: the total number of rental units the owner owns or that the operator operates; the number of premises with a rental unit; the address of each premises; the number of rental units on each premises; and information concerning the owner, which shall include:

1. if the owner is one or more individuals or a sole proprietorship, the owner's name, address, date of birth, driver's license number, and phone number;
2. if the owner is a partnership, the name, address, tax identification number, and phone number of the partnership, and the name, address, date of birth, driver's license number and phone number of one of the partners;
3. if the owner is a corporation, the name, address, and phone number of the corporation, the name, address, and phone number of the corporation's statutory agent, and the name, address, date of birth, driver's license number and phone number of one of the officers; and
4. if the owner is a trust, the name, address, and phone number of the trust, and the name, address, date of birth, driver's license number and phone number of one of the trustees.

C. If the owner of a rental unit is required to have an operator, or if the owner has an operator that is not the owner, then the registration form shall include, in addition to the information required by Section B, the following:

1. if the operator is one or more individuals or a sole proprietorship, the operator's name, address, date of birth, driver's license number and phone number;
2. if the operator is a partnership, the name, address and phone number of the partnership, and the name, address, date of birth, driver's license number and phone number of one of the partners; and
3. if the operator is a corporation, the name, address and phone number of the corporation, the name and address of the corporation's statutory agent, and the name, address, date of birth, driver's license number and phone number of one of the officers; and
4. if the operator is a trust, the name, address and phone number of the trust, and the name, address, date of birth, driver's license number and phone number of one of the trustees.

D. Within thirty (30) days of any change of information that is required on a registration form, the owner or operator of a rental unit(s) shall contact the Building Department, in writing, to update the information on the registration form. A \$10.00 fee shall be charged for updating the information on the registration except in the case of the death of the property owner.

E. A registration fee of \$40.00 per unit shall be imposed for each owner or operator.

F. If a registration form is filed late, an additional late fee of \$25.00 shall be imposed.

G. If an owner or operator becomes the owner or operator of additional rental units between registration periods, a minimum fee of \$25.00 shall be imposed in addition to the fees set forth in Section VIII (E).

H. If upon the third (3rd) renewal of Rental Registration of Properties, no notices/orders or convictions set forth in Section X of this ordinance have been issued, the fee for registration shall be reduced by fifty percent (50%).

I. Money collected under this Ordinance shall be used exclusively for the improvement of the housing, infrastructure and administration within the City and shall be held in a separate account.

J. A registration form shall be valid for one year, unless:
1. false information is furnished to the Building Department in the registration form; or
2. a transfer of title to a rental unit has been completed.

K. No person, including an operator, owner, purchaser, escrow agent, real estate agent, or realtor shall participate in a transfer of title to a premises or disperse proceeds from a transfer of title to a premises without having, in escrow, a copy of registration form completed by the purchaser of the premises or a statement from the purchaser that the premises contains only one dwelling unit, and will be occupied by the purchaser for one year after the transfer of title. The escrowed document shall be forwarded to the Building Department upon transfer of title.

L. Registration is *not* required if a dwelling or dwelling unit has been substantially altered so as not meet the requirements of a habitable residential dwelling or dwelling unit, as determined by the Building Commissioner, or his/her designee.

IX. TRANSFER OF REGISTRATION

A registration form may not be transferred to the purchaser of a premises with a rental unit and shall be void upon completion of transfer of title to the premises, except as provided in Section VIII (D).

X. MANDATORY INSPECTION REQUIRED

A. A mandatory inspection is a semiannual, interior and exterior inspection of the premises. Mandatory inspections occur during a four (4) year period to determine compliance with the applicable codes. A mandatory inspection is required when any of the following apply:

1. if within any one (1) year period, three (3) or more notices/orders to comply have been issued to the owner or operator pursuant to this Ordinance concerning the same premises, the premises that was the subject of the notices/orders to comply may be subject to semiannual mandatory inspections;
2. if within any two (2) year period, two (2) or more notices/orders to comply have been issued to the owner or operator pursuant to this Ordinance concerning the same premises, and such orders have not been complied within the time set forth in the notices/orders, the premises that was the subject of the notices/orders to comply may be subject to semiannual mandatory inspections;
3. if the owner or operator has been convicted of a violation of this Ordinance, *all* premises with a rental unit that the owner owns or the operator operates may be subject to mandatory inspections;
4. if the owner or operator has had a premises ordered razed by the Board of Zoning and Building Appeals, *all* premises with a rental unit that the owner owns or that the operator operates shall be subject to mandatory inspection.

B. A mandatory inspection fee \$125.00 per rental unit shall be imposed and shall include the first two inspections semiannually.

C. The re-inspection fee, per rental unit, for each re-inspection after the first two semiannual inspections, per rental unit is \$50.00.

D. Money collected under this section shall be used exclusively for the improvement of the housing, infrastructure and administration within the City and shall be held in a separate account.

XI. OPERATOR REQUIRED

The owner of a rental unit who does not reside in, have a place or business in, or have a street mailing address in Summit County or a contiguous county, shall have an operator who resides in, has a place of business in, or has a street mailing address in Summit County or a contiguous county.

XII. PENALTY

A. Administrative Penalties. In addition to any criminal penalties that may be imposed pursuant to this Ordinance, any person, occupant, operator, owner, or purchaser who violates or fails to comply with any of the provisions of this Ordinance shall be subject to the following administrative penalties in accordance with the criteria of Section VI (A) and (B).

1. For a first offense, an administrative fine of up to \$100.00.
2. For a second offense, an administrative fine of up to \$500.00.
3. For a third offense, an administrative fine of up to \$1,000.00.

Such fines shall be paid within thirty (30) days of issuance.

B. If a person, occupant, operator, owner or purchaser fails, neglects, or refuses to pay an administrative penalty within the time ordered pursuant to this Ordinance, then the Building Commissioner shall so notify the Director of Finance. The Director of Finance shall certify the administrative penalty to the County Fiscal Officer. In addition to the administrative penalty, an interest rate equal to the current rate of interest charged by the City on special assessments shall be imposed by the City for the life of the administrative penalty, added to the administrative penalty, and collected as provided in this section. The Director of Finance shall then certify the amount of administrative penalty, including interest, to the County Fiscal Officer. The County Fiscal Officer shall enter the amount on the tax duplicate of the county as a special assessment against the person's real estate at issue.

C. Money collected under divisions (A) and (B) of this section shall be used exclusively for the improvement of housing, infrastructure, and administration within the City.

D. Criminal Penalties. In addition to any administrative penalties that may be imposed pursuant to Section (A) above, any person, occupant, operator, owner or purchaser who violates or fails to comply with any of the provisions of this Ordinance shall be guilty of a misdemeanor of the third degree and shall be fined not more than \$500.00 and/or imprisoned not more than sixty (60) days.

E. Application of Prior Convictions. A conviction or convictions obtained prior to the effective date of this Ordinance shall constitute a conviction or convictions for purposes of enforcement of the minimum mandatory penalties required by this section. Each separate count of which a person has been convicted shall constitute a separate violation of a section of the ICC International Property Maintenance Code, the Barberton Development Code, the Ohio Residential Code, or the Ohio Building Code.

F. Continuing Violations. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

G. Strict Liability. The provisions of this Ordinance are specifically intended to impose strict liability.

SECTION 3. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 4. That this ordinance shall be in full force and effect from and after the earliest period allowed by law.

Passed _____ 2009

Clerk of Council

President of Council

Approved _____ 2009

Mayor