

## **CITY OF LYNN**

**Notice:** Lynn City Council Public Hearing on Tuesday, September 29, 2020 at 5:15PM in the Council Chambers on the following Ordinance: **REQUIRING ALL RENTAL UNITS TO BE INSPECTED EVERY FIVE YEARS.**

### **Section 1:00 Inspection and Re-Inspection of Rental Units.**

The purpose of this Ordinance is to implement a proactive rental inspection program that maximizes the effectiveness of City resources in rental property code enforcement. It identifies all rental units in the City and their owners on a continuous and recurring basis in order to accommodate the transient nature of the rental market, and prioritizes notorious problem properties in order to economically target City resources toward chronic and priority offenders.

### **Section 2:00 Definitions and Regulations.**

**“Authorized inspector”** shall mean any ISD inspector or an inspector contracted with by ISD or his/her employer or any other person who (i) is a Commonwealth of Massachusetts Registered Sanitarian or a Commonwealth of Massachusetts Certified Health Officer or a Commonwealth of Massachusetts Certified Home Inspector, or has proof of training acceptable to ISD, and (ii) has demonstrated a proficiency in the application of the State Sanitary Code.

**“Commissioner”** shall mean the Chief of the Inspectional Services Department or a designee.

**“Chronic offender”** shall mean any property where the property owner has failed to register the property in compliance with the Ordinance after notice or any property that fails to remediate more than one violation of the Building or Sanitary Code or a provision of the City of Lynn Zone Ordinance within the time prescribed by a duly issued Order of the Inspectional Services Department. For purposes of this definitions, only failures register or to remediate committed within the past twelve (12) months shall be considered.

**“Days”** shall mean consecutive calendar days

**“Owner”** shall mean a for profit or not-for-profit individual or corporation, an agent of a for profit or not-for-profit individual or corporation, or any person having legal charge of or authority over a private dwelling, tenement, lodging house, or other residential rental property dedicated to residential use.

**“Problem property”** shall mean a property that meets the following criteria and is designated as such following recommendation by the City of Lynn’s Problem Properties Task Force: (i) the Lynn Police Department has been called to the property not fewer than four (4) times within the preceding twelve (12) month period for any incident involving any arrestable offense including but not limited to disturbing the peace, trespassing, underage drinking or assault; or (ii) the Lynn Police Department has received not fewer than four (4) sustained complaints for noise within the preceding twelve (12) month period; or (iii) the Inspectional Services Department or the Public Health Division thereof has received not fewer than four (4) sustained complaints within the preceding twelve (12) month period for noxious, noisome or unsanitary conditions; or (iv) any other reason as enumerated in the Ordinance Establishing a Problem Property Task Force in the City of Lynn.

**“Rental unit”** shall mean a non-owner occupied room or group of related rooms within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating. A rental unit shall also mean a non-owner occupied condominium unit. Dwelling units that have current Lodging House Licenses issued by the Licensing Commission for the City of Lynn shall not be considered as rental units for the purposes of this section, and will continue to be annually licensed and inspected pursuant to M.G.L. 140 sections 22 and 25.

b. **Inspections Required.** All owners of private residential rental housing units ("Owners"), including condominium units, in the City of Lynn shall register no later than July 1st of each year (or an initial registration within sixty (60) days of the effective date of this Ordinance) with the Inspectional Services Department ("ISD") identifying the property by street address and the number of units that they own at each address. An owner of a rental unit, who does not reside within the subject dwelling, shall post and maintain or cause to be posted and maintained on such dwelling adjacent to the mailboxes for such dwelling or elsewhere in the interior of such dwelling in a location visible to the residents a notice constructed of durable material, not less than twenty (20) square inches in size, bearing her/his name, address and telephone number.

If the owner is a realty trust or partnership, the name, address and telephone number of the managing trustee or partner shall be posted. If the owner is a corporation, the name, address and telephone number of the president of the corporation shall be posted. Where the owner employs a manager or agent who does not reside in such dwelling, such manager or agent's name, address and telephone number shall also be included in the notice. P.O. boxes do not satisfy the address requirement of this section. All owners must register each rental unit annually with ISD, and must attest to and affirm that they are familiar with their obligations to comply with this section, the State Sanitary Code (105 CMR 410), the State Building Code (780 CMR), the City of Lynn Zoning Code, Federal, State and Local fair housing regulations, and all other regulations applicable to residential dwellings, and that they intend to comply with said regulations, by signing a form provided by and approved by the Commissioner of ISD. An owner owning multiple units in the same building may submit one form representing all said units. Any owner residing outside of the Commonwealth of Massachusetts must designate a locally based resident agent authorized to accept service on the owner's behalf. All rental unit registrations shall be recorded in an electronic database of all owners for an initial registration fee of twenty-five dollars (\$25.00), and annual renewal fees of fifteen dollars (\$15.00) for each rental unit. Registration fees may be adjusted at the sole discretion of the Commissioner and should be reviewed on an annual basis. The Commissioner shall work to employ technology to the maximum extent possible in order to optimize the fairness and effectiveness of the registration process in accordance with paragraph (o).

c. ***Exempt properties.*** The following rental units shall be exempt from the inspection requirements of this section: (i) rental units owned or operated by Federal, State, or City Government. ISD will provide exempt unit owners with education materials on all code requirements relative to their units on a regular basis. All non-exempt rental units must be inspected at least once every five (5) years. In order to develop the inspection plan for the first year, and subsequent years of the five (5) year inspections cycle, ISD shall utilize data that may include, but shall not be limited to, inspection records, court records, documented constituent complaints, and any information related to the status of the property with the Problem Property Task Force or information compiled by said Task Force to prioritize a list of properties for inspection in each neighborhood. Owners may request that ISD conduct the inspection or said owner may engage an "authorized" non-ISD employed or contracted with inspector meeting the qualifications enumerated in paragraph "a" of this Section. The procedures and fees for such inspections are set forth in paragraphs (d), (g), (h), and (i) of this Section. Annual comprehensive apartment inspections conducted by the Lynn Housing Authority leased housing program, or by other Federal, State, or City inspection programs that are accepted by ISD as being substantially equivalent, may be used to satisfy the five (5)-year inspection requirement. ISD shall cause to be performed periodic and random audit inspections of no less than five percent (5%) of the "authorized" inspections that are filed with ISD.

d. ***Notice of inspection/failed inspections/contents of inspection report/fee.*** Residential rental unit owners may fulfill the requirements of this Ordinance by requesting an inspection from ISD, within thirty (30) calendar days from issuance of an inspection notice. Every effort shall be made by the owner and/or the owner's agent to coordinate ISD conducted inspections in a single building/dwelling on the same date to the maximum extent possible.

A Non-ISD employee or contracted with inspector generated inspection reports must be submitted subject to the regulations promulgated by the Commissioner according to paragraph (o). Failed Non-ISD inspections must be accompanied by a compliance plan acceptable to ISD that will bring the subject rental unit into compliance with the minimum standards for human habitation for a residential dwelling as set forth in the Massachusetts State Sanitary Code (105 CMR 410), as it may be adopted and amended from time to time. All inspections shall include a sworn statement and shall be signed by an ISD employed and/or contracted with Inspector, Lynn Housing Authority Inspector, or an "authorized inspector". An authorized inspector shall be prohibited from charging more than one hundred thirty-three percent (133%) of the fee charged by the City of Lynn for an inspection performed under this Ordinance.

e. ***Problem properties.*** Any rental building determined to be a problem property as defined by this Ordinance or the Ordinance Establishing a Problem Property Task Force in the City of Lynn, as it may be adopted and amended from time to time, must annually request an inspection from ISD.

This annual inspection shall apply to all residential units within the building regardless of whether the violations were limited to a single residential unit therein. Each owner of a problem property shall also file with ISD an annual management plan, within thirty (30) days of its classification as a problem property, outlining the remediation of any outstanding code violations or other persistent conditions requiring the landlord's affirmative response as identified by the Task Force. Said management plan shall identify the deficiencies in the property, identify consultants and contractors engaged to proceed with any remediation work, detail any proposal made by the contractors or consultants, and set out a timeline over which the work will be completed.

f. **Chronic offenders.** Residential rental property considered a chronic offender shall be subject to additional inspection requirements. Upon meeting the definition of a chronic offender in this Ordinance, ISD shall notify owners of their classification as a "chronic offender" by mail, return receipt requested. The owner shall have fourteen (14) days to request a hearing to contest their classification as a "chronic offender". Chronic offenders are subject to fines of three hundred dollars (\$300.00), or the maximum allowed, for each subsequent violation notice received in a twelve (12) month rolling period, and may also be subject to court prosecution under the applicable codes and regulations. Chronic offenders shall be required to request an inspection of each rental unit once every three (3) years, and it shall be mandatory that ISD conduct said three (3) year inspection. Chronic offenders with no violations in a rolling thirty-sixth (36) month period shall have the chronic offender's classification removed on the last day of the thirty-sixth (36th) month following their classification.

g. **Inspection form/fees.** All inspections performed under this Ordinance shall be performed in accordance with the requirements of the State Sanitary Code and recorded on a form approved by the ISD. The Commissioner shall charge a filing fee of fifteen dollars (\$15.00) for any registration or sworn statement filed by an owner, authorized Inspector or other agent of the owner; said filing fees shall be capped at a maximum of two thousand five hundred dollars (\$2,500.00) per building or five thousand dollars (\$5,000.00) per complex. Filing fees may be adjusted at the sole discretion of the Commissioner and should be reviewed on an annual basis.

For an inspection performed by ISD, the Commissioner shall establish a fee schedule that shall take in to account the actual cost to the City or a City agent to conduct said inspections. The Commissioner shall on an annual basis review the fee schedule to ensure that the fees, at a minimum, reimburse the City for the actual costs of the inspections

h. **Notice of inspection/occupant.** Before conducting an inspection pursuant to this Ordinance of an occupied unit, reasonable advance notice shall be provided to the occupant in writing. Results of the inspection shall be provided to both the owner and the occupant. If an owner's agent is denied access by the occupant for purposes of conducting an inspection, the owner of said unit shall notify ISD of such denial within seven (7) calendar days.

Such denial shall be noted on a sworn, dated statement filed by an authorized inspector. If any person is denied access to a unit for the purposes of conducting such an inspection by the occupant, then ISD shall verify and document in writing such denial.

The owner and/or owner's agent shall have thirty (30) days from such denial to take all necessary actions, legal or otherwise, necessary to permit an inspection as required by this Ordinance. The failure by the owner to take all reasonable and necessary actions to obtain an inspection, as determined by the Commissioner and the City Solicitor, shall subject the owner to a three hundred (\$300.00) dollar per day fine. The provision of a written request to permit an inspection along with a judicial filing and prosecution seeking an Order for the same, shall be deemed sufficient actions on the part of the owner and thus shall not subject the owner to any fine under this section. Nothing in this section shall prevent the Commissioner from causing the unit to be inspected pursuant to the terms herein in the manner provided for in the State Sanitary Code.

i. **Decertification process for authorized inspectors and owners granted an inspection waiver:** All authorized inspectors shall perform all inspections in a manner consistent with this section and shall refer to Inspectional Services Department any issue involving imminent life safety or health problems.

Authorized inspectors accept the designation to perform these inspections with the understanding that the failure to adhere to the standards of good faith, fair dealing and honesty will result in the revocation of the status as authorized to perform these inspections, action against the professional license and if relevant, notification to authorities for criminal prosecution. ISD shall immediately revoke the approval of any authorized inspector, or owner who has been granted an inspection waiver, who misrepresents the condition of a unit or fails to inspect a unit with due care, misrepresents any information on the application form or any form or document submitted under this section, or for any reason demonstrating a failure to honor the requirement of good faith and fair dealing. An authorized inspector may request a hearing once aggrieved by such a revocation of approval. A hearing shall be held within thirty (30) days upon a written request from the aggrieved party.

j. **Failure to comply.** Failure to comply with any provisions of this Ordinance shall be punishable by a fine as set out in paragraph (q) of this Ordinance.

k. **Public records.** Any and all notices, statements, inspection forms, applications including supporting documentation, and any other documents concerning an inspection pursuant to this Ordinance shall be a matter of public record.

l. **Annual reports.** In an effort to evaluate the effectiveness of the inspection programs delineated herein, the Commissioner shall annually prepare a report detailing the activities of the program no later than July 31st of each calendar year, beginning June 30th, 2021. The annual written report shall include the following items:

1. The number of registration statements received by the Commissioner during the prior twelve (12) month period.
2. The number of owners issued fines or citations by ISD for (i) failing to initially file a registration statement and (ii) for failing to file a registration statement within thirty (30) days of written notice from ISD.
3. The total number of inspections performed by ISD employed or contracted with inspectors during the prior twelve (12) months, along with a categorized list of the number of inspections performed in such ward during such period.
4. The total number of inspections performed on problem properties, as defined in this Ordinance, along with a break down by district of the number of problem properties inspected in such Ward.
5. Such other information as may be requested by the Mayor and City Council

m. **Non-criminal disposition.** The provisions of this Ordinance may be enforced in accordance with the noncriminal disposition process of M.G.L. c. 40, s. 21D, provided that this Ordinance shall not preclude the City of Lynn from proceeding to restrain a violation by injunction.

n. **Transfer of ownership.** Transfer or ownership of rental units must be reported to ISD within thirty (30) days of closing. New property owners must register within thirty (30) days of closing and must submit a reasonable maintenance plan that identifies and address the any significant code deficiencies within the subject property. If the property was acquired during its inspection year and the inspections did not occur before the transfer of ownership, then the new owner must, within ninety (90) days, complete any required inspection.

o. **Written regulations promulgated by commissioner.** The Commissioner shall promulgate written rules and regulations necessary to implement and enforce the provisions of this Ordinance. The Commissioner will work to employ and implement technology to the maximum extent possible in order to optimize the fairness and effectiveness of the registration and inspection processes within these rules, which may be revised from time to time.

p. **Severability.** If any provision of Ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

q. ***Fines for violation ordinance.*** Any failure to comply with this Ordinance will result in the assessment of a fine of three hundred dollars (\$300.00) per day beginning in the first day in which the property is found not to be in compliance and continuing for each subsequent day thereafter. Each day shall be considered a separate offense.

**This meeting is closed to the public but will be televised live on the Lynn Community Television (LCTV) and also streamed on LCTV Facebook page. The public is welcome to call in “live” any questions or concerns at 781-586-6783 or 781-586-6773.**

PER ORDER:

Janet Rowe, City Clerk