

ORDINANCE 2021-03

An Ordinance Repealing and Replacing in its entirety

Fairmont City Code, Chapter 27 Rental Housing

WHEREAS, the City of Fairmont has determined that there is a need to update the City Code, Chapter 27 – Rental Housing.

NOW THEREFORE, the City of Fairmont does Ordain that Fairmont City Code, Chapter 27 – Rental Housing is hereby repealed in its entirety and replaced to read as follows:

Said Ordinance shall be effective February 1, 2022.

Sec. 27-1. Purpose.

The purpose of this chapter is to establish a program for identifying rental housing units within the City of Fairmont. This chapter is adopted to protect the public health, safety and general welfare of the citizens of the City of Fairmont by:

- Promoting safety from fires and accidents;
- Providing a means for the fair administration and enforcement of this Code for all residential rental housing units;
- Providing minimum standards for basic equipment and facilities;
- Reducing environmental hazards to health; and
- Assisting in controlling criminal activities in rental housing.

Sec. 27-1-1 Scope

This chapter applies to rental housing units described herein that are rented or leased in whole or in part, including apartment buildings, town homes, single family and multifamily housing, guest and caretaker houses, and condominiums. It also includes any accessory structures of the rental housing units, such as garages and storage buildings, and appurtenances such as sidewalks, driveways, and retaining walls, which are on the property of the rental housing unit. This chapter does not apply to on-campus college or university housing units; Minnesota Department of Health licenses rest homes; convalescent care facilities; licensed group homes; nursing homes; hotels; motels; or owner-occupied units.

Sec 27-1-2. Definitions

For the purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (a) Rental Housing Unit. Any building, structure, or portion thereof, which is designed, built remodeled, rented, leased, let or hired out to be occupied, or which is occupied as a home or residence of a person or persons other than the owner or purchaser of record.
- (b) Rent, lease, let, or sublet means the leasing of a rental housing unit to a non-owner for a fixed or non-fixed period of time and shall include installment sales, purchases, and other similar arrangements whereby nonpayment of a periodic payment means the occupants may be evicted without the necessity of either a statutory mortgage foreclosure procedure, a statutory termination of contract for deed procedure, or a statutory repossession procedure.
- (c) Local Property Manager. A person residing within 50 miles of the city of Fairmont who is authorized by the property owner to make decisions for the owner about the rental, occupancy, and maintenance of the rental housing unit, or a licensed, or bonded, and/or insured company engaged primarily in providing such services for hire.

Sec. 27-2. Maintenance of records.

All records, files and documents pertaining to rental housing unit registration, complaints and complaint inspection information, shall be maintained in the office of the City Clerk and made available to the public as allowed, permitted or required by state law or city code.

Sec. 27-3. Health and safety.

- (a) The owner shall be responsible for maintaining the rental property in compliance with the requirements of the Minnesota codes regulating residential structures, as they are currently written and as might be amended in the future, including, but not limited to: the State Building Code Minn. Stat. §§ 326B101-194; the State Fire Code Minn. Stat. Chapter 299F; and Minnesota Administrative Rules Chapter 1300.
- (b) Garbage. The owner of each rental housing unit shall provide garbage collection containers, dumpsters or other garbage management options adequate to accommodate all garbage and recyclables generated by each rental housing unit. Owners and tenants of single-family or multi-family units, shall comply with Fairmont City Code section 22-18.
- (c) Lawn care. The owner shall be responsible for lawn care and for the removal of ice and snow according to Fairmont City Code section 17-2 and section 23-3, respectively.
- (d) Mold, rodents and insect infestations shall be promptly eliminated by the owner and the rental housing unit shall then be kept mold and infestation free by the tenant.

Sec. 27-4. Registration and licensing of rental housing units.

- (a) No person shall, and it shall be unlawful, for any person to conduct or operate or cause to be operated either as owner, lessee, agent or in any other capacity within the city any Rental Housing Unit, as defined in sec 27-1-2 above, without having first obtained a license to do so as hereafter provided. It shall be unlawful for an owner, designated agent, or operator, after notice has been sent by first class mail, to continue operation of a rental

housing unit without submitting an application for a license under this chapter, along with the necessary fee. The following properties shall be excepted from this requirement:

1. An unoccupied Rental Housing Unit that that has been issued a vacant building registration pursuant to Chapter 28 of this code.
2. A property being sold on a contract for deed, provided the contract has been recorded in conformance with Minnesota law.

All Rental Housing Units shall be current on any real estate taxes, assessments, fines, penalties, or other financial claims due to the city at the time of application for a rental license.

- (b) Inspection of a rental housing unit shall be completed prior to issuance of an initial rental housing license, prior to rental housing license renewal and upon the filing of a complaint with the city of rental housing conditions that are subject to the standards herein.
- (c) The legal owner of each rental housing unit shall make application to the City for a license on a form to be supplied by the city and containing information necessary to administer and enforce the provisions of and to ensure compliance with the provisions of this chapter, and the minimum standards of uniform housing code.
- (d) Application for a rental license must be made prior to any initial occupancy, and thirty (30) days prior to any license renewal. Licenses are valid for 36 months from the date of issuance.
- (e) Each application for rental license must be on a form provided by the city and must contain:
 - (1) Legal owner name, address, telephone number and email address.
 - (2) Local property manager name, address, telephone number and email address. Said local property manager shall reside within 50 miles of Fairmont.
 - (3) The street address of the rental property.
 - (4) The number of rental housing units contained within the rental property.
 - (5) Verification that the property taxes are current on the rental property.
 - (6) Proof of fire and liability insurance on the rental property.
 - (7) Accompanied by the payment of the rental registration fee and inspection fee.
- (f) Transfer of ownership. In the event of the transfer of ownership of a rental housing unit by sale or otherwise:
 - (1) The owner(s), within ten (10) days after the transfer, shall provide to the city the name, address and telephone number of each transferee.
 - (2) The transferee shall register the unit with the city under the transferee's name and pay all applicable fees within thirty (30) days after the date of transfer; and

- (3) If the rental license for the unit is valid and current and if the transferee so registers the unit and pays the fees, the rental license shall be transferred to the transferee.

Sec. 27-5. Rental housing unit inspection.

- (a) The city has the authority to inspect any Rental Housing Unit upon receipt of a rental housing license application or upon receiving a complaint of code violations. The owner or tenant shall provide access to the Rental Housing Unit upon request of the City. Refusal to reasonably grant access shall be grounds for rejection or suspension of a rental registration.
- (b) A rental housing unit inspection will be scheduled with the owner, or local property manager, upon receipt of the rental housing license application by the city. If the owner or local property manager fail to respond and coordinate a date, an inspector may enter the building to inspect on 48 hours' written notice to the property owner. The cost of the inspection will be paid with the rental housing application.
- (c) The inspection may be completed by Fairmont City staff designated to complete inspections or a contractor hired by the city to complete rental inspections
- (d) The applicant for license shall assist the city in making the inspection of the premises. This includes notifying the occupants of the building of the time when the inspection will be conducted and requesting their cooperation in the inspection. The owner may be present for the inspection.
- (e) Properties inspected by another state or federal agency are exempt from three-year inspections.
- (f) Upon inspection, a property found to meet the City's Rental Property Safety Inspection Checklist, and is otherwise in compliance with this code, shall be issued a license. If the inspector finds deficiencies, they shall list the deficiencies, note necessary corrections, and give these findings to the building owner or local property manager and no license shall be issued until the deficiencies are corrected. Upon reinspection of the licensed premises, if the inspector finds violations of the applicable codes, the owner, or local property manager, shall be notified of the violations and ordered to correct them within a reasonable time. Failure to correct the violations as ordered may be grounds for revocation of the license.

Sec. 27-6. Rental housing unit complaint procedure.

- (a) The City will inspect rental housing units and common areas upon receipt of a written complaint filed with the city regarding a violation of state law or local ordinance.
- (b) The identities of any person filing a complaint about violations of state law or local ordinance concerning the use of real property, and any information that would identify such person, is classified as confidential information under Minnesota Statute 13.44. No

employee or agent of the City shall release or reveal such information except by court order.

- (c) Forms. The city shall provide forms upon which complaints may be made regarding the condition or license and registration status of any rental property.
- (d) Upon receipt of a written complaint, the City shall notify the owner/representative of the existence of the complaint and allow the owner/representative 48 hours to address the issue, save and except that if a written complaint alleges an immediate safety or health concern, the city may immediately inspect the property and will use its best efforts to notify the owner/representative. Upon receiving information that the issue has not been corrected or a plan presented to correct the issue, the City shall inspect the property to verify the existence of conditions in violation of this code or any other applicable statute, ordinance, code or regulation. The owner/representative shall be provided notice of the date and time of the inspection and may be present during the inspection.
- (e) The owner/representative shall be assessed appropriate inspection fees if the complaint is found to be substantiated by this inspection.
- (f) When a city employee or agent makes an inspection as a result of a written complaint and no violations are found the city shall issue a notice of compliance to the tenant and the owner/representative. If the complaint is substantiated by the inspection, written notice of the observed violation(s) shall be given to the owner/representative and tenant. The city will work with the owner/representative to develop a timeline for the required repairs. A re-inspection will be conducted at the expiration of the time period set for repairs. If the repairs have been completed in a satisfactory manner, a notice of compliance will be issued to the owner/representative and the tenant. In the event the repairs have not been completed in a satisfactory manner further action will be taken as permitted by this Code or state law.
- (g) License and registration complaints. Upon receipt of a complaint and verification that a residential rental housing unit is not licensed or registered, the city shall inform the owner in writing that the owner has sixty (60) days to either:
 - (1) Comply with the terms of this chapter by registering the unit and by paying all applicable fees; or
 - (2) Cease rental operations.

Sec. 27-7. Posting rental license.

The owner shall arrange for a copy of the rental license to be posted continuously on an inside sidewall of the kitchen sink cabinet.

Sec. 27-8. Revoking, suspending, denying or not renewing a license.

- (a) The city may revoke, suspend, deny or decline to renew any license issued under this section. In buildings containing more than one (1) rental housing unit, the revocation, suspension, denial or non-renewal may apply to one (1) or more rental housing units

based on specific violations. The basis for such revocation, suspension, denial or non-renewal includes, but is not limited to, any of the following circumstances:

- (1) The license was procured by misrepresentation of the facts with regard to the rental dwelling unit.
 - (2) The applicant or one (1) acting on his/her behalf made oral or written misstatements pertaining to the application.
 - (3) The actions of the owner or owner's representative involving a rental unit have created a danger to the public health, safety or welfare.
 - (4) The rental dwelling unit contains conditions that endanger the safety, health or welfare of any member of the public.
 - (5) Failure to pay any required application, penalty or reinstatement fee.
 - (6) Failure to correct violations of section 27-05(f) or 27-06(f) in the time period specified in the notice of violation and correction.
 - (7) Following the third instance of disorderly conduct specified in section 27-11.
 - (8) Any violation of this chapter.
- (b) Notification. The city shall notify the owner or owner's representative in writing of the basis for the revocation, suspension, denial or non-renewal of the rental license and the date upon which the action takes effect.
- (c) The city shall notify the owner of their right to have the decision to revoke, suspend, deny or not renew the rental license reviewed by the board of zoning appeals. The owner may request a review of the licensing decision upon a form provided by the city. That request shall be filed with the city within fifteen (15) days after receiving the licensing decision. The review hearing will be set for the next regularly scheduled board of zoning appeals meeting, unless that meeting is scheduled to occur in less than fifteen (15) days from the owner's request for review is received. In that event, the review hearing will be set on the following regularly scheduled board of zoning appeals meeting.
- (d) The owner or owner's representative and the city shall be given an opportunity to be heard. The owner may be represented by counsel. Both sides may be permitted to examine the other side's witnesses and evidence. The board of zoning appeals shall hear all relevant evidence and arguments and shall review all testimony, documents, and other evidence submitted. The community development department shall record the review and keep a record of documentary evidence submitted.
- (e) Decision. The board of zoning appeals shall make findings based on the evidence and shall make a decision on the recommendation to revoke, suspend, deny, or not renew a license based on the findings. The board of zoning appeals shall issue a written decision regarding the recommendation of the city within thirty (30) days following the date of the review and shall notify the owner or owner's representative of the decision by first class mail and by the owner's preferred method of communication. The decision shall specify the rental housing unit or units to which it applies, the duration of the revocation, suspension, denial

or non-renewal, and the conditions that must be met before the license may be reissued or reinstated. No rental housing units that have had their rental license revoked, suspended, denied, or non-renewed may be occupied. Revocation, suspension, denial, or non-renewal of a license shall not excuse the owner from compliance with all terms of this chapter for as long as any rental housing units in the building are occupied.

- (f) License process after revocation, suspension, denial. After the board of zoning appeals revokes, suspends, denies or declines to renew a license, no license will be issued for the affected rental housing unit(s) until city determines that the applicant/licensee has remedied the conditions identified as the basis for the action. An application to obtain a license for a rental housing unit after the board of zoning appeals has revoked, suspended, denied or declined to renew a license for the same rental housing unit(s) must be accompanied by all fees required by this section.
- (g) The owner has a right to appeal the board of zoning appeal's decision as outlined in section 2-25 of Fairmont City Code.

Sec. 27-9. Effect of revocation, suspension, denial, or non-renewal.

If a license is revoked, suspended, denied or not renewed, it shall be unlawful for the owner or owner's representative to permit the occupancy of the rental housing unit(s), until such time as a valid rental license is obtained. Issuance of a new license after revocation, suspension, denial or non-renewal shall be made in the manner provided for in section 27-4.

Sec. 27-10. Posted to prevent occupancy.

Whenever any rental housing unit has been denied an initial license, had its license revoked, suspended, denied or not renewed it shall be posted by the city to prevent further occupancy. It shall be unlawful for any person, other than a representative of the city to remove or alter any posting. The city will post the date the rental housing unit shall be vacated and no person shall reside in, occupy or cause to be occupied that rental housing unit until city permits it.

Sec. 27-11. Disorderly Conduct Prohibited.

- (a) The license holder shall take such actions as are reasonably necessary to assist in the prevention of instances of disorderly conduct by tenants, members of tenant's household and guests. For the purposes of this section, rental housing unit shall include common areas in the building where the rental housing unit is located.
- (b) Disorderly Conduct. For the purposes of this section, disorderly conduct may include, but is not limited to, the following:
 - (1) Illegal activity involving controlled substances as defined in MN Stat. § 152.01, et seq., in the rental housing unit.
 - (2) Acts of violence or threats of violence including but not limited to discharge of firearms, prostitution, intimidation, assault, or any other act that otherwise

jeopardizes the health, safety or welfare of the licensee, his agents, tenants or any other person.

- (3) Violation of Minnesota Statute, Section 609.72, prohibiting disorderly conduct, when the violation disturbs the peace and quiet of the occupants of at least one unit on the licensed premises or other premises, other than the unit occupied by the person(s) committing the violation.
 - (4) Violation of Minnesota Statutes 609.74 and 609.745 Public Nuisances.
 - (5) Violation of Minnesota Statutes 609.66, Subd. 1a, 609.67 or 624.713 Unlawful use or possession of a firearm or weapon.
 - (6) Violation of Minnesota Statute 609.50 Obstructing Legal Process.
 - (7) Violation of Fairmont Code Article 4, Animals, Article 15.2, Noise, Article 17, Nuisances, and Article 22, Solid Waste.
 - (8) Violation of Minnesota Statutes 609.321-609.324, prohibiting prostitution and acts relating thereto.
 - (9) Violation of Minnesota Statutes 340A.401, prohibiting the unlawful sale of alcoholic beverages.
 - (10) Violation of Minnesota Statutes 340A.503, prohibiting the underage use of alcoholic beverages.
- (c) First instance. Upon determination by the city that a rental housing unit was the location of disorderly conduct, the city shall notify by first class mail the licensee and direct the licensee to take steps to prevent further violations.
- (d) Second instance. If a second instance of disorderly conduct occurs at a rental housing unit within twelve (12) months of the time a notice was sent for previous disorderly conduct at the same unit, the city may notify the licensee by first class mail of the violation and direct the licensee to submit, within ten (10) days of the date of the notice, a written report of all actions taken by the licensee since the first violation notice and actions the licensee intends to take to assist in the prevention of disorderly conduct. The licensee shall notify the tenant or tenants within ten days of the notice of disorderly conduct violation.
- (e) Third instance. If a third instance of disorderly conduct occurs at a rental housing unit within twelve (12) months after the first of two (2) previous notices of disorderly conduct at the same unit, the rental housing unit license may be revoked, suspended or not renewed by the city. The owner/representative has the right to appeal the decision as outlined in section 2-25 of the Fairmont City Code.
- (f) For purposes of this section, second and third instances of disorderly conduct shall be those which:
- (1) Occur at the same rental housing unit; or
 - (2) Involve tenants at the same rental housing unit; or
 - (3) Involve guests or invitees at the same rental housing unit; or

- (4) Involve guests or invitees of the same tenant; or
- (5) Involve the same tenant.
- (g) No adverse action shall be taken against the rental license when the instance of disorderly conduct occurred during a pending eviction proceedings (unlawful detainer) or within thirty (30) days of notice given by the licensee to a tenant to vacate the rental housing unit. However, adverse license action may proceed when the licensee fails to diligently pursue the eviction process. Further, an action to deny, revoke, suspend, or not renew a license based upon violations of this section may be postponed or discontinued at any time if the licensee has taken appropriate measures which will prevent further instances of disorderly conduct which may include a failed eviction process, or if the licensee has proceeded in good faith to secure termination of the tenancy but was unsuccessful for reasons beyond the licensee's reasonable control.
- (g) In lieu of revoking, suspending or not renewing the rental license, the city may require an action plan to be completed and complied with by the licensee, manager or local agent within a designated time frame which outlines the steps necessary to be taken and complied with in order to correct identified violations and the measures to be taken to ensure ongoing compliance with the city code and other applicable laws.
- (h) Determining disorderly conduct. A determination that the rental housing unit has been the location of disorderly conduct shall be made by a preponderance of the evidence to support such a determination. It shall not be necessary that criminal charges be brought in order to support a determination of disorderly conduct, nor shall the fact of dismissal or acquittal of such a criminal charge operate as a bar to adverse license action under this section.
- (i) Enforcement. Enforcement actions provided in this section shall not be exclusive, and the city may take any action with respect to a licensee, a tenant, or the licensed rental housing unit(s) as is authorized by this chapter or state law.

Sec. 27-12. Fees and penalties.

- (a) A person who violates the provisions of this article may be charged with a misdemeanor.
- (b) The city may post the rental housing unit by appropriate signs or notices prohibiting occupancy and may act to cause the rental housing unit to be vacated or remain vacant until the Code violations are corrected.
- (c) All fees and penalties due and payable by the owner and not paid within thirty (30) days of the due date shall be considered delinquent and may be certified to the county auditor-treasurer for collection with real estate taxes.
- (d) All fees to be charged under this chapter will be set by resolution approved by the city council.

Sec. 27-13. No retaliation.

Per Minnesota State Statute Section 504B.205, Subd. 2, Emergency calls permitted.

(a) A landlord may not:

- (1) Bar or limit a residential tenant's right to call for police or emergency assistance in response to domestic abuse or any other conduct; or
- (2) Impose a penalty on a residential tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct.

(b) A residential tenant may not waive and a landlord may not require the residential tenant to waive the residential tenant's right to call for police or emergency assistance.

Sec. 27-14. No warranty by city.

By enacting and undertaking to enforce this chapter, the city council, its agents, and employees do not warrant or guarantee the safety, fitness or suitability of any dwelling in the city. Owners and occupants should take whatever steps they deem appropriate to protect their interests, health, safety and welfare.

PASSED, APPROVED AND ADOPTED, this 22nd day of November 2021.

Motion by: Council Member Randy Lubenow

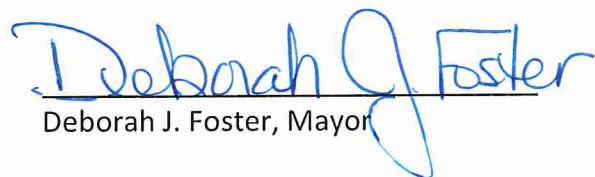
Seconded by: Council Member Britney Kawecki

All in favor: Council Members Randy Lubenow, Michele Miller, Bruce Peters, Wayne Hasek and Britney Kawecki

Opposed: None

Abstained: None

Absent: None


Deborah J. Foster, Mayor

ATTEST:


Patricia J. Monsen, City Clerk

1st Reading: September 27, 2021

2nd Reading: October 11, 2021