

**ORDINANCE NO. 1480
OF THE
TOWN OF HIGHLAND, INDIANA**

**AN ORDINANCE OF THE TOWN OF HIGHLAND, INDIANA,
REGULATING RENTAL DWELLINGS AND DWELLING UNITS**

WHEREAS, IC 36-1-3-2 confers upon all local units the powers that they need for the effective operation of government as to local affairs;

WHEREAS, IC 36-1-3-6(b)(1) prescribes that any such exercise of power shall be authorized through enactment of an ordinance passed by the legislative body; and

WHEREAS, the Town of Highland is a municipal government which may pass and codify ordinances for the operation of the government, all pursuant to IC 36-1-4 and IC 36-1-5; and

WHEREAS, it is in the interests of the Town of Highland, Indiana ("Town") to protect the public from the threat of danger to health and safety from public nuisances and/or sub-standard housing; and

WHEREAS, it is in the interests of the Town to maintain the aesthetics of the community; and

WHEREAS, it is in the interests of the Town to make periodic inspections of rental dwellings and units to assure compliance with building codes, property maintenance standards, and zoning ordinances; and

WHEREAS, it is in the interests of the Town to take reasonable steps to protect the public welfare; and

WHEREAS, it is in the interests of the Town to exercise its home rule power to insure that its building codes and property maintenance standards are met, and that rental dwellings and units are safe and fit for occupancy; and

WHEREAS, it is in the interests of the Town to require that owners who rent a dwelling or dwelling unit have the right to exercise their discretion to terminate a lease where the tenant, or those for whom he is responsible, threatens the health or safety of other residents, or is a threat to other residents or the neighborhood in which the tenant resides.

NOW, THEREFORE, BE IT ORDAINED AND ADOPTED by the Town Council of the Town of Highland, Lake County, Indiana, as follows:

Section 1. Rental Permit Required.

Every owner of residential property within the Town renting or intending to rent a dwelling or dwelling unit shall apply for and secure a rental permit or conditional rental permit.

No owner of residential real property located within the Town shall rent to or continue to rent to a tenant any dwelling or dwelling unit within the real property for any form of consideration, on or after January 1, 2011, unless he, she or it holds a valid rental permit or conditional rental permit issued by the Building Department ("Building Commissioner") of the Town, or its designee, issued in the name of the owner and for the specific dwelling or dwelling unit for rent.

Section 2. Application for Rental Permit. This ordinance shall apply to those rental dwellings and dwelling units for which there is a written lease, installment land contract, articles of agreement for purchase, month to month tenancies, and any and all agreements, written or oral, where the possession of said real property or a part of it is divested from the owner of record.

Section 3. Exceptions for Requirements. This ordinance shall not apply to an owner occupied unit, dwelling units in hotels or motels, accommodations in licensed health care facility or graduated care, not for profit shelters and school dormitories, and units in cooperatives occupied by holders of proprietary leases.

Section 4. Application for Permit. An owner or its designated representative shall apply for a rental permit by filing a written application with the Building Commissioner, which application shall contain not less than the following information.

- (A) Name of property owner or its designated representative.
- (B) Address, telephone/cell number and e-mail address of owner.
- (C) Address of dwelling or dwelling unit to be inspected.
- (D) Name of tenant, date of birth, telephone/cell number and e-mail address (if known at time of inspection)

Section 5. Inspection.

(A) Prior to issuing a rental permit or conditional rental permit, the Building Commissioner shall require an inspection of the dwelling or dwelling unit by the Building Commissioner within fifteen (15) business days after receipt of the application for inspection.

(B) The Building Commissioner shall inspect the dwelling or dwelling unit for compliance with the building codes and property maintenance standards enacted by the Town and the State of Indiana and applicable zoning ordinances. The owner shall be notified of the date and place of inspection, and the owner, or his or her or its representative, shall be in attendance at the inspection.

(C) The Building Commissioner, in his sole discretion, and from time to time, may perform inspections over a period of time. In such event the Building Commissioner shall notify the owner that the inspection is delayed, the future period when the inspection will be made, and the obligations of the owner during the interim period. The fact that the rental occupancy is continuing without a rental permit until the Building Commissioner schedules an inspection shall not of itself be deemed a violation of ordinance.

Section 6. Issuance of Permit. Upon completion of the inspection, the Building Commissioner shall issue a rental permit to an owner who:

(A) Files a written application.

(B) Pays the permit fee required for inspection.

(C) Schedules and attends the required inspection.

(D) Is in compliance with all applicable building codes, building maintenance standards and applicable zoning ordinances.

Section 7. Tenant Names Required To Be Furnished. The owner shall furnish to the Building Commissioner the name of the tenant, and his telephone/cell number, and if not known, owner shall furnish the name within seven (7) days of the date of the tenant's occupancy. Failure to do so will result in the revocation of the rental permit or conditional rental permit, and a fine of \$500.00.

Section 8. Duration of Permit and Inspection.

(A) A rental permit shall be valid:

(1) For a period of three (3) years from the date of issuance of the permit, or

(2) Until the dwelling or dwelling unit is relet to a new tenant, at which time the owner shall provide to the Building Commissioner the information set forth in Section 4,

whichever of (1) or (2) first occurs.

(B) A conditional rental permit shall be valid for not more than thirty (30) days after the date it is issued.

(C) Notwithstanding the foregoing, a dwelling or dwelling unit shall also be inspected if a written complaint about the condition of the dwelling or dwelling unit has been filed with the Building Commissioner by any tenant occupying the dwelling or dwelling unit for which the permit was issued, or by any person occupying a dwelling or dwelling unit within 300 feet of the dwelling or dwelling units for which the permit was issued. The inspection fee for this inspection shall be \$50.00 and shall be paid initially by the complainant. After inspection, if the Building Commissioner finds that the written complaint was made in good faith and was reasonable under observable circumstances, the Building Commissioner shall refund the inspection fee to the complainant.

Section 9. Issuance of A Conditional Rental Permit.

(A) When an owner has applied for a rental permit and, upon inspection, the Building Commissioner is unable to certify that the dwelling or dwelling unit for which a rental permit is sought conforms to the requirements of this chapter or the rules, regulations and ordinances required for occupancy, the Building Commissioner shall deny the rental permit and state the reasons for the denial. The Building Commissioner may, when the nonconformity in his or her opinion does not constitute an immediate threat of danger to the health, safety or public welfare of the community, or the inhabitants or potential inhabitants of the dwelling or the dwelling unit, issue a conditional rental permit to the owner.

(B) A conditional rental permit shall set forth the reasons why the dwelling or dwelling unit does not conform to this chapter and the conditions required for occupancy. The time for the owner to secure conformity with this chapter shall not exceed thirty (30) days, except that Building Commissioner may grant additional time not to exceed thirty (30) days for good cause. When conformity is secured, a rental permit shall be issued to the Owner.

(C) If the owner has not corrected the violations or cured the conditions within the time designated by the Building Commissioner after receiving the conditional rental permit from the Building Commissioner, the Building Commissioner shall give written notice to the owner that the conditional rental permit has been revoked. Upon receipt of the notice, the owner immediately shall cease renting or cease seeking to rent the dwelling or dwelling unit and cause the dwelling or dwelling unit to be vacated.

(D) If a tenant occupies a dwelling or dwelling unit based on a conditional rental permit, the owner shall notify his, her, or its tenant or potential tenant, that until the owner receives the required rental permit, the tenant may be required to vacate the dwelling or dwelling unit.

(E) Failure to cease renting shall result in a fine of not less than \$100.00 and not more than \$500.00 for each day of violation.

Section 10. Transfer of Permit. A rental permit, as provided in this chapter, is transferable only after written notification to the Building Commissioner. When an owner transfers his, her, or its interest in or control of a dwelling or dwelling unit, he, she or it shall notify the Building Commissioner within five (5) days after the transfer. The notice shall include the name, address, telephone/cell number and e-mail address of the person who has succeeded to the ownership interest or control, and an acknowledgement by the new owner of his obligations under the ordinance.

Section 11. Disclaimer of Liability. The issuance of a rental permit or a conditional rental permit does not constitute any warranty, express or implied, from the Town that the dwelling or dwelling unit is free from defect. The Town, and its designated inspectors, assumes no liability whatsoever regarding the condition or safety of the dwelling or dwelling units.

Section 12. Penalty. Subject to the limitation of Section 6(C), an owner who rents any dwelling or dwelling unit for any form of consideration without a valid rental permit or conditional rental permit as provided herein shall be guilty of an infraction. Each day of such violation shall be considered a separate violation and shall be subject to the fine and penalties associated with such violation. A violation shall be deemed to have first occurred when (a) the Building Commissioner seeks to but cannot make an inspection, or (b) the Building Commissioner has made an inspection, noted defects or deficiencies, and the owner has not cured them within the time allowed by this Ordinance.

Section 13. Rental Property Permit Fees.

(A) Permit Fee. The triennial inspection and rental permit fee shall be \$200.00 for each dwelling or dwelling unit, payable at the time of application. If in the opinion of the Town Manager, an owner with multiple dwelling units is to have multiple dwelling units inspected at the same time, and there appear to be savings to the Town in implementing this ordinance, the Building Commissioner, with reasonable discretion, may reduce the per dwelling unit permit fee for the several inspections to reflect the reduced costs to the Town.

(B) Return Reinspection Fee. The return reinspection within a thirty (30) day period shall be an additional \$100.00 if defects or deficiencies have not been cured by the owner at the time of reinspection.

(C) Failure of the Owner to Be Present at the Scheduled Inspection Fee. When an owner or his, her or its representative fails to meet with the Building Commissioner for the scheduled inspection and/or reinspection of the dwelling or dwelling unit, an additional fee of \$100.00 shall be added payable by the owner prior to the next scheduled rental permit application.

Section 14. Addition of Reasonable Attorney Fees and Costs. Whenever the Town is required to employ the services of an attorney (including the Town Attorney) to enforce the terms of this ordinance against an owner or tenant, and the Town prevails in its enforcement, the owner or tenant, or both if both responsible, shall be responsible for the attorney fees, expenses of enforcement and costs incurred which amount shall be payable to the Town.

Section 15. Lease Provisions. Each lease between the Owner or his designated representative, and the tenant shall contain the following provisions or addenda to the lease which provide, in substance:

A. The Owner shall have the discretion to terminate this lease, instanter, when the tenant, or member of his household, or a guest or other person under the tenant's control, is or has been engaging in criminal activity, including but not limited to illegal drug related activity, on or off the leased premises, and whether or not the tenant knew or should have known, about this criminal activity.

B. The Owner or its designated representative, and/or its authorized municipal representative, may enter the leased premises at reasonable times upon reasonable prior notice to the tenant to inspect the dwelling or dwelling unit as to its physical condition and/or its compliance with local ordinances or state laws.

Section 16. Limitation on Access to Dwelling or Dwelling Units. In addition to Section 15(B), the Building Commissioner is authorized to enter the dwelling or dwelling units at reasonable times for purposes of inspection, subject to constitutional restrictions on unreasonable searches and seizures. If entry to the dwelling or dwelling unit is refused or not obtained, the Building Commissioner is authorized to pursue such recourse as is otherwise provided by law.

Section 17. Exception From Public Disclosure. As to any owner or tenant who is a customer of the Town's water utility, the following personal information from the owner and/or tenant's application is excepted from disclosure as a public record:

- A. Telephone/cell number.
- B. Address.
- C. Social security number, if any.
- D. E-mail address.

Section 18. Building Commissioner Establish Budget Annually. For determination of the permit and violation fees to be charged to the parties in order to enforce and/or implement this ordinance, the Building Commissioner, from time to time, shall estimate the costs to be incurred by the Town on an annual basis to enforce and/or implement this ordinance, and shall estimate the charges from issuance of the rental permits which will provide sufficient revenue to cover these estimated costs.

Section 19. Severability and Repeal.

(A) Severability. If any sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any other of the remaining provisions, sentences, clauses, sections or parts of this chapter. It is hereby declared as the intent of the Town that this chapter would have been adopted at such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

(B) All ordinances or parts of ordinances which are inconsistent with this chapter are hereby repealed.

Section 20. Appeal. Any act or action taken by the Town which is unfavorable or adverse to the owner or tenant with respect to the issuance of a rental permit, or the results of an inspection may be appealed in the following manner. The owner or tenant shall file his, her or its appeal within twenty (20) days following the act or action deemed to be unfavorable or adverse. The appeal shall be filed with the Building Commissioner of the Town, and the Building Commissioner shall cause a hearing to be held within ten (10) days after receipt of the notice of appeal. The owner or tenant may appear in person and with legal representation. The Building Commissioner shall decide the appeal within ten days following the conclusion of the hearing. For administrative purposes, the decision of the Building Commissioner shall be final. The owner or tenant may seek any further review by filing a complaint or petition in a court of competent jurisdiction within Lake County, Indiana.

Section 21. Codification. That it is intended that this Ordinance be included in the Code of Ordinances of the municipality. The Clerk-Treasurer shall be authorized to assign appropriate section numbers in support of the codification of the particular provisions of this Ordinance.

Introduced and filed on the 18th day of October, 2010. Consideration on same day or at same meeting of introduction was not permitted pursuant to the terms of IC 8-1.5-3-8.1 and Section §190.07(I).

DULY ORDAINED AND ADOPTED this ____ day of _____, 2010, by the Town Council of the Town of Highland, lake County, Indiana, having been passed by a vote of ____ in favor and ____ opposed.

TOWN COUNCIL OF THE
TOWN OF HIGHLAND, INDIANA

MARK A. HERAK, President

ATTEST:

MICHAEL W. GRIFFIN, IAMC/MMC/CPFA
Clerk-Treasurer