

BOROUGH OF AVALON

ORDINANCE NO. 1272

AN ORDINANCE OF THE BOROUGH OF AVALON, ALLEGHENY COUNTY, COMMONWEALTH OF PENNSYLVANIA, TO BE KNOWN AS THE TENANT FIRE SAFETY INSPECTION ORDINANCE; REQUIRING OWNERS, LANDLORDS, MANAGERS AND AGENTS OF RESIDENTIAL RENTAL UNITS TO OBTAIN A FIRE SAFETY RENTAL OPERATING LICENSE; ESTABLISHING REGULATIONS FOR THE ISSUANCE OF FIRE SAFETY RENTAL OPERATING LICENSES; SETTING FORTH AN APPLICATION PROCEDURE; REQUIRING PERIODIC INSPECTIONS OF RESIDENTIAL RENTAL UNITS AND ESTABLISHING RENTAL INSPECTION FEES; REQUIRING THE BUILDING INSPECTOR TO OBTAIN AN ADMINISTRATIVE SEARCH WARRANT IF CONSENT TO CONDUCT A FIRE SAFETY INSPECTION IS REFUSED OR IF REASON TO BELIEVE A VIOLATION EXISTS BASED UPON A COMPLAINT RECEIVED; PROVIDING PENALTIES; REPEALING ORDINANCE NO. 1262 AND ALL OTHER INCONSISTENT ORDINANCES.

SECTION 1: ENACTING CLAUSE.

Be it ordained and enacted by the Council of the Borough of Avalon and it is hereby ordained and enacted by the authority of the same, that from and after the effective date of this Ordinance, the following Ordinance shall be in full force and effect in the Borough of Avalon.

SECTION 2: SHORT TITLE.

This Ordinance shall be known as the Borough of Avalon Tenant Fire Safety Inspection Ordinance.

SECTION 3: AUTHORITY.

This Ordinance is adopted pursuant to the Borough Code of the Commonwealth of Pennsylvania, the Act of February 1, 1966, P.L. (1965), — No. 581, § 1202, as amended, 53 P.S. § 46202, et seq., and the provisions hereof and all sections contained herein shall be construed as having been adopted in the interests of the health, safety, and general welfare of the people of the Borough of Avalon, Allegheny County, Pennsylvania.

SECTION 4: PURPOSE.

A. To promote, protect and facilitate the public health, safety and the general welfare of the community and to protect and to promote the safety of residential tenants and other inhabitants in the Borough from fire and the hazards of fire.

B. To prevent one or more of the following: loss of health, life or property from fire, explosions, noxious gases and other dangers or hazards of fire.

C. To provide protection against fire, explosion and other fire hazards in the interest of the public health, safety, and general welfare.

D. To define and limit the powers and duties of the of those officers and bodies that are assigned responsibilities under this ordinance.

E. To require prompt fire safety inspections even without a warrant if emergency conditions exist.

SECTION 5: CONFLICT WITH OTHER ORDINANCES OR REGULATIONS.

Borough of Avalon Ordinance No. 1262 ordained and enacted into law on February 15, 2000, as well as all other Ordinances or parts of Ordinances conflicting herewith are hereby repealed; however, such repeal shall not affect any act done or any liability or violation accrued under any such prior ordinance herein repealed or superseded and all such liabilities or violations shall continue and may be enforced in the same manner as if such repeal or supersession had not been made; and any offense or violation committed and any penalty or forfeiture incurred under such Ordinance herein repealed or superseded may be prosecuted in the same manner as if this Ordinance had not been approved; excepting only that any refusal to permit a lawful inspection under Borough Ordinance No. 1262, Section 12 (C) is repealed in its entirety and no such violations shall accrue.

SECTION 6: RULES OF CONSTRUCTION.

In the construction of this Ordinance, the rules and definitions contained in this Section shall be observed and applied, except when the context clearly indicates otherwise:

- A. Words used in the singular shall include the plural, and the plural the singular.
- B. Words used in the present tense shall include the future tense.
- C. Words used in the masculine gender shall include the feminine and neuter.

D. The word "person" includes corporations, associations and partnerships and other similar entities.

E. The word "shall" is always mandatory and not discretionary.

F. The word "may" is permissive.

G. This Ordinance shall be liberally construed to accomplish its purpose to protect the public's health, safety and welfare.

H. That the Borough intends to favor the public interest as against any private interest.

SECTION 7: DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein:

AGENT FOR AN OWNER: Any person who provides written proof that he is authorized to act on behalf of a property owner.

APARTMENT: A part of a house, apartment house or other dwelling occupied by a tenant, while the rest is occupied by another or others.

APARTMENT HOUSE: A building arranged in several suites of connecting rooms, each suite designed for independent housekeeping, but with certain mechanical conveniences such as heat, light, or elevator services in common to all tenants occupying the building.

BOROUGH: The Borough of Avalon.

BOROUGH SECRETARY: The Secretary of the Borough of Avalon.

BUILDING INSPECTOR: The Building Inspector of the Borough of Avalon.

DWELLING, MULTI-FAMILY, INCLUDING GARDEN

APARTMENTS: A building or portion thereof containing or designed to contain three (3) or more separate dwelling units with or without common access facilities.

DWELLING UNIT: A single unit providing complete, independent living facilities for one or more tenants including permanent provisions for living, sleeping, eating, cooking and sanitation. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit.

FIRE SAFETY INSPECTION: A critical examination by the Building Inspector to determine compliance with the BOCA National Fire Prevention Code, Ninth Edition, 1993, including means of egress, general precautions against fire and fire protection systems, a checklist of which is attached hereto and made a part hereof as Exhibit A.

FIRE SAFETY RENTAL OPERATING LICENSE: A certificate or document issued by the Building Inspector after conducting a fire safety inspection and granting permission to a landlord to rent or lease a dwelling unit, a rental unit, a rooming unit, an apartment, a single-family dwelling, a

multiple dwelling or a townhouse to a tenant.

LANDLORD: A person who receives rent and leases a dwelling unit or a rooming unit in a boarding, lodging or tourist home to a tenant for a period of time.

LEASE: Any agreement which gives rise to the relationship of landlord and tenant.

MANAGER: A person who has charge of a dwelling unit or a rooming unit in a boarding, lodging or tourist home.

OWNER: Every person who has a property right in a multi-family dwelling, apartment house or rooming house and every person who owns, has, keeps, rents, leases or maintains a multi-family dwelling or rooming house, including a boarding, lodging or tourist home charging rent to tenants.

PERSON: Shall mean an individual, proprietorship, partnership, corporation, association, or other legal entity.

RENT: Consideration paid for use or occupation of property. A stated return or payment for the temporary possession or use of an apartment or dwelling unit. To get temporary possession and use of an apartment or dwelling unit in return for a stated payment usually at fixed intervals.

ROOMING HOUSE, INCLUDING A BOARDING, LODGING OR

TOURIST HOME: A building other than a multi-family dwelling containing not more than one dwelling unit occupied by a tenant and providing, for compensation or other consideration, rooming units for lodging in addition to the owner.

ROOMING UNIT: A room or rooms constituting a separate, independent housekeeping unit that is physically separated from any other room, dwelling unit, or rooming unit in the same structure. The rooming unit shall contain living and sleeping facilities, but not cooking or eating facilities, and shall be occupied by no more than one family.

TENANT: A person who pays rent and leases a dwelling unit or a rooming unit in a boarding, lodging or tourist home from a landlord for a period of time.

TOWNHOUSE or ROW HOUSE: Dwelling units attached to each other by party or common walls, with each unit having individual access and rear common or private garden orientation.

SECTION 8: FIRE SAFETY RENTAL OPERATING LICENSE REQUIRED.

No person shall rent or lease a dwelling unit, a rental unit, a rooming unit, an apartment, a single-family dwelling, a multiple dwelling or a townhouse or a row house in the Borough of Avalon to any tenant unless he holds a current, unrevoked fire safety rental

operating license issued by the Building Inspector in his or her name, for the specified dwelling unit, rental unit, rooming unit, single family dwelling, multiple dwelling or townhouse.

SECTION 9: APPLICATION FOR FIRE SAFETY RENTAL OPERATING LICENSE AND AGREEMENT TO COMPLY.

Every owner, landlord, manager or agent for an owner who rents or leases any dwelling unit, rental unit, apartment in any multi-family dwelling, single family dwelling, or any rooming unit in any rooming house, including a boarding, lodging or tourist home, in the Borough of Avalon to any tenant for a period of time in excess of thirty (30) days, shall apply for a fire safety rental operating license and shall agree to comply with all provisions of the BOCA National Fire Prevention Code, Ninth Edition, 1993, or such other more recent BOCA National Codes duly adopted by the Borough of Avalon. The application form shall be accompanied by a check or money order payable to the Borough of Avalon in the specified amount of the fire safety rental operating license.

SECTION 10: REQUIREMENT OF INSPECTION AND COMPLIANCE WITH BOROUGH'S CODES PRIOR TO ISSUANCE OF FIRE SAFETY RENTAL OPERATING LICENSE.

Upon application, all rental units, once every four years, shall be inspected by the Building Inspector for compliance with the provisions of the Borough's Fire Prevention Code. In the event the Borough Building Inspector refuses to issue a fire safety operating

license, the Building Inspector shall note all fire safety violations and shall leave with the owner, landlord, manager or agent for an owner, and tenant, a copy of any notice of violation.

SECTION 11: ISSUANCE OF *FIRE SAFETY* RENTAL OPERATING LICENSE.

Prior to the issuance of a fire safety rental operating license, all violations noted on a notice of violation shall be corrected, as required. Every fire safety rental operating license shall be issued for a period of four (4) years, unless sooner revoked.

SECTION 12: ADOPTION OF REGULATIONS.

The following regulations are hereby adopted for the issuance of fire safety rental operating licenses.

A. **Pennsylvania Statutes Govern.** All matters regulated by the Pennsylvania Construction Code Act or by any other laws of the Commonwealth of Pennsylvania or by regulations of departments or agencies of the Commonwealth promulgated by authority of law, as the case may be, shall control all inspections where the requirements thereof are the same as, or in excess of, the provisions of the Borough's Fire Prevention Code duly adopted by the Borough of Avalon.

B. **Inspection Mandatory.** The Borough Building Inspector shall not issue a fire safety rental operating license in the Borough of Avalon until he or she has first inspected the dwelling unit or rooming unit for the purpose of insuring compliance with the Borough's Fire Prevention Code and the law.

C. **Inspections to Be Conducted at Reasonable Times with Prior Notice to Residents; Display of Proper Credentials Required.** All fire safety inspections under this Ordinance shall be conducted at reasonable times with prior notice to the applicant, owner, landlord, manager, tenant, or agent for the owner and subject to constitutional restrictions on unreasonable searches and seizures. Prior to seeking entry to conduct a fire safety inspection, the Borough Building Inspector shall display proper credentials which shall have been approved by Borough Council.

D. **Procedure if Entry to Permit Lawful Fire Inspection Is Refused.** If entry is not obtained or upon the refusal of an applicant, owner, landlord, manager, tenant, or agent for an owner applying for a fire safety rental operating license to permit entry to conduct the fire safety inspection mandated under this Ordinance, the fire safety inspection shall not be conducted and the Building Inspector is hereby authorized to pursue recourse as provided by law.

E. **Expiration of Permits and Renewals.** Each fire safety rental operating license shall expire four (4) years after the date of issuance. A license may be renewed only by making application as provided in this Ordinance. Applications for renewal should be made at least thirty (30) days prior to the expiration date and, when made fewer than thirty (30) days before the expiration date, the pendency of the application will not prevent the expiration of the license.

F. **Correction of Violations Required Prior to Renewal of License.** If

the Building Inspector denies renewal of a license, the applicant, owner, landlord, manager or agent for an owner shall not be issued a license until all violations noted on the notice of violation are corrected, as required.

G. **Non-resident Applicants.** No fire safety rental operating license shall

be issued or renewed to a non-resident applicant unless such applicant designates in writing to the Building Inspector, the name of his agent for receipt of service of any notice of violation and for service of process.

SECTION 13: ADMINISTRATIVE SEARCH WARRANT REQUIRED TO CONDUCT FIRE SAFETY RENTAL INSPECTIONS IF ENTRY REFUSED UNLESS AN EMERGENCY SITUATION EXISTS.

A. If entry to conduct a fire safety inspection under this Ordinance is refused, the Borough Building Inspector is hereby authorized and directed to apply to an Issuing Authority having jurisdiction over such rental unit for an Administrative Search Warrant to enter and to conduct a fire safety inspection unless an emergency situation exists which requires immediate entry.

B. If an emergency situation exists demanding immediate access to the rental unit, the Borough Building Inspector may conduct a prompt fire safety inspection even if entry is refused or even if an administrative search warrant is not obtained.

SECTION 14. CONTENTS AND EXECUTION OF ADMINISTRATIVE SEARCH WARRANT; NO FORCIBLE ENTRY UNLESS EMERGENCY.

A. An Administrative Search Warrant to enter and conduct a fire safety inspection may be issued upon probable cause supported by affidavit if the Building Inspector has reason to believe, based upon a complaint that a violation exists within the premises to be searched, or, where an inspection is sought due to the lapse of time since the last inspection, the nature of the building (e.g., a multi-family apartment house) or because of conditions in the entire area within which the premises are located.

B. An Administrative Search Warrant shall be served by the Building Inspector between the hours of 6:00 a.m. and 9:00 p.m., and the entry and inspection shall be conducted within a specified period of time not to exceed 2 days from the date of issuance.

C. A Building Inspector executing the Administrative Search Warrant shall make reasonable effort to give notice of his or her identity, authority and purpose to any occupant of the premises specified in the warrant and shall not make an immediate forcible entry to inspect unless an emergency situation exists.

SECTION 15: COST OF RENTAL OPERATING LICENSES.

The cost of a rental operating license shall be as follows:

A. **Single Family Dwellings, Apartments and Townhouses with 1-3**

Units:

Annual Rental License Fee of \$35.00 per unit. Should violations be present that would endanger the safety and welfare of the inhabitants, the number of units inspected shall be increased by twenty-five (25%) percent increments. There shall be no re-inspection fee.

B. **Single Family Dwellings, Apartments and Townhouses with four (4) or more Units:**

Annual Rental License Fee of twenty-five (25%) percent of the total number of units at \$35.00 per unit and twenty-five (25%) percent of the total number of units shall be inspected annually. Should violations be present that would endanger the safety and welfare of the inhabitants, the number of units inspected shall be increased by twenty-five (25%) increments. There shall be no re-inspection fee.

C. **Rooming/Boarding Houses:**

Annual Rental License Fee of \$35.00 for every five (5) rooms. Annual inspection required of ten (10%) percent of the total rooms.

A re-inspection fee in the amount of \$35.00 shall be charged if all noted violations are not corrected and/or if the premises are not violation free and/or if the premises are not re-inspected within ten (10) business days of the initial inspection.

The above Schedule of Fees for Rental Inspection Licenses shall remain in full force and effect until modified from time to time by Resolution of Borough Council.

SECTION 16: PENALTY AND REMEDIES.

A. Any person, partnership or corporation who violates any of the provisions of this Ordinance shall upon conviction in a summary proceeding, be fined not less than Six Hundred (\$600.00) Dollars and in default of the payment of the fine and costs, shall be committed to the Allegheny County Jail for a period not to exceed thirty (30) days.

B. A person, partnership or corporation commits a summary offense if, he refuses to permit a Borough Building Inspector to have access or to gain entry to any premises specified in an Administrative Search Warrant to conduct a fire safety inspection and upon conviction in a summary proceeding, shall be fined not less than Six Hundred (\$600.00) Dollars and in default of the payment of the fine and costs, shall be committed to the Allegheny County Jail for a period not to exceed thirty (30) days.

C. Nothing contained herein shall be deemed to preclude the Borough to seek other relief or avail itself of any remedy that may be at law or in equity to prevent continuing violations of the terms of this Ordinance.

SECTION 17. ADDITIONAL RELIEF; NUISANCES.

No provision of this Ordinance shall prevent the Borough from instituting proceedings and seeking relief in the courts of equity of the Commonwealth if the Borough shall deem such action necessary to abate any violation of this Ordinance which constitutes a public nuisance.

SECTION 18: APPEAL PROCESS IF OPERATING LICENSE IS DENIED.

Any person aggrieved by an adjudication hereunder and who has a direct interest in such adjudication may appeal to the court vested with jurisdiction of such appeals as provided by the Pennsylvania Local Agency Law, 2 Pa.C.S. § 752.

SECTION 19. DUTY TO FILE ORDINANCE WITH DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT.

The Borough Manager shall file an exact copy of this ordinance with the Department of Community and Economic Development together with the name, position and phone number of the Building Inspector responsible for compliance with this Ordinance.

SECTION 20: VALIDITY.

The provisions of this Ordinance are severable and if any of its provisions or any part of any provisions shall be held unconstitutional or otherwise held to be invalid, the decision of the Court shall not affect or impair any of the remaining provisions. It is hereby declared to be the intent of the Borough Council that this Ordinance would have been enacted had such unconstitutional provisions or parts thereof not been included herein.

SECTION 21: EFFECTIVE DATE.

This Ordinance shall become effective when it is recorded in the Ordinance Book of the Borough of Avalon.

ORDAINED AND ENACTED into law this 16th day of April,

2002.

ATTEST:


Harry W. Dilmore
Secretary

BOROUGH OF AVALON


Edward Klicker
President of Council

Examined and approved by me this 22nd day of

May, 2002.


Daniel K. Bricmont, Esq., Mayor