

Ordinance No.09052017-01

AN ORDINANCE FOR “REGISTRATION AND INSPECTION FOR RENTAL DWELLINGS & COMPLEXES AND RENTAL BUILDINGS “OF THE CODE FOR THE CITY OF POTEET; TO ADD DEFINITIONS; TO ADD REQUIREMENTS RELATED TO A CERTIFICATE OF OCCUPANCY TO ALLOW THE CITY COUNCIL TO SET THE FEES AND TO PROVIDE FOR PERIODIC INSPECTIONS BY THE LANDLORD AND TENANT; TO ADD LANGUAGE REGARDING THE PROBATIONARY STATUS. SUSPENSION OR REVOCATION FOR REGISTRATION AND PROVIDING FOR AN APPEAL; TO ADD A REQUIREMENT TO ATTEND A CRIME FREE HOUSING COURSE AND TO INCLUDE CRIME FREE PROVISIONS IN EACH LEASE; TO PROVIDE FOR CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN INSPECTIONS; TO REQUIRE THE TENANT TO PROVIDE PROOF OF AN ACTIVE ELECTRIC SERVICE ACCOUNT TO THE LANDLORD AND REQUIRING THE LANDLORD TO PROVIDE A TAMPER PROOF METER BOX; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a significant percentage of the population of Poteet resides in rental dwellings with pets and creates a greater number of animals living in close proximity to humans and other animals thereby creating the necessity to have all animals licensed and vaccinated to prevent the spread of disease and allow an easier return of lost pets, specifically dogs and cats; and

WHEREAS, publishing the current and previous inspection scores of rental dwellings would promote better upkeep and maintenance of properties for marketing to new and future residents; and

WHEREAS, a significant increase of occurrences of property damage and personal injury or death could be caused by utility tampering and landlords not being required to be shown proof of utility service prior to tenant move in or provide routine monitoring; and

WHEREAS, theft of electricity and utility tampering create serious safety problems at many rental dwellings in the City of Poteet; and

WHEREAS, it is the desire of the City Council that residents of rental dwellings live in a safe, and crime free environment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF POTEET, TEXAS:

SECTION 1. Definitions

Chief of Police means the Chief of the Police Department or the Chief's duly authorized representative.

Crime Free Lease Addendum means a form to be made a part of a Lease agreement between a Landlord and a resident in which the resident agrees and acknowledges the resident's legal obligation to refrain from committing or permitting the commission of certain enumerated criminal acts or categories of criminal acts on the leased premises.

CEO means the Code Enforcement Officer and the Officer's authorized representatives.

Lease means a contract or rental agreement granting use or occupation of property at a rental dwelling during a specified period, subject to various terms and conditions, in exchange for a specified rent.

Unit means a dwelling unit as defined by the Minimum Building Standards Code.

SECTION 2. Certificate of Occupancy

- (A) No rental dwelling shall be used or occupied, and no change in the existing occupancy classification as defined by section 111 of the International Building Code or ownership of a rental dwelling, or any portion thereof, shall be made until the Landlord has obtained a certificate of occupancy.
- (B) Change of ownership or any event causing a certificate of occupancy to be revoked. Within thirty (30) days after the change of ownership of a rental dwelling or the revocation of the certificate of occupancy of the dwelling, the Landlord must obtain a new certificate of

occupancy in order to continue operating. The dwelling, including all occupied and all vacant dwelling units, shall be subject to a complete ordinance inspection by the building official and the CEO before a new certificate of occupancy will be issued. If a certificate of occupancy will be issued. If a certificate of occupancy is not obtained for all buildings in the complex within thirty (30) days, the complex shall be vacated until such time as a certificate of occupancy is issued.

- (C) Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the Minimum Building Standards Code, this article, or of other ordinances of the city. Certificates presuming to give authority to violate or cancel the provisions of the Building Code and other applicable ordinances shall not be valid. Changes in the character or use of a building shall not be made except as provided in the Building Code.
- (D) The certificate of occupancy for all rental dwellings shall be posted in a conspicuous place on the premises of the complex, and shall not be removed except by the building official or CEO.
- (E) A landlord commits an offense if the Landlord knowingly operates a rental dwelling in violation of this section.
- (F) If the building official and/or CEO determines that the dwelling fails the ordinance inspection, all vacant unit(s) shall be posted for non-occupancy, and the landlord shall not allow the occupancy of dwelling(s) until the dwelling(s) passes final inspection and is issued a certificate of occupancy.
- (G) The director may grant an extension if the Landlord can demonstrate that no condition constituting an immediate fire or safety hazard exists and that the owner is working toward obtaining a certificate of occupancy in a timely fashion. A request for an extension of time must be made in writing to the Code Enforcement Officer. The CEO must respond within (10) days of receiving the request for an extension. Should the request be denied the landlord may within ten (10) days file an appeal with the appellate board.

SECTION 3. Registration required.

- (A) The Landlord of a rental dwelling shall annually register the complex with the Code Enforcement Officer.
- (B) A registration is valid for one year from the date the completed registration form is filed in the office of the CEO, and payment of the registration fee has been made, unless the ownership of the dwelling changes.
- (C) If a change of ownership of the dwelling occurs during the period that a registration is otherwise valid, the Landlord of the dwelling shall have thirty (30) days from the date of the change of ownership occurred to file a new registration with the CEO, and pay a new registration fee.
- (D) The registration shall be on a form prescribed by the CEO, and shall at a minimum contain the following information about the dwelling:
 - (1) The trade name, physical address, and business address;
 - (2) The names, addresses and telephone numbers of the owner, property manager, resident manager, registered agent, and all federal, state, and local funding agencies (if any); and the type of business entity which owns the dwelling(s);
 - (3) The names and physical addresses of designated employees or authorized representatives who shall be assigned to respond to emergency conditions, and a telephone number where said employees, can be contacted during any twenty four hour period. Emergency conditions shall include fire, natural disaster, flood, burst pipes, collapse hazard, and violent crime. A post office box shall not suffice for the address requirements of this subsection.
 - (4) If any change in the information required by this section occurs, the owner shall notify the CEO within 30 days of the change, in a manner prescribed by the CEO.

SECTION 4. Fees.

- (A) The landlord of a rental dwelling shall pay the city fees to offset the city's cost of administration, registration and inspection.
- (B) Fees shall be in accordance with a schedule approved by the City Council to include:
 - (1) A registration fee based upon the number of rental units which shall be:
 - (a) Submitted annually with the registration form required by section 3 above and
 - (b) Submitted with a new registration upon change of ownership of the unit.
 - (c) A re-inspection fee shall be assessed for each follow up inspection.
 - (d) An administrative fee for a dwelling on probationary status or suspension or revocation which shall be assessed on a monthly basis, however no separate fee shall be charged for re-inspection as long as the complex remains in probationary status or suspension.

(C) The fee requirements described above shall not include a dwelling unit on a college, university, or seminary occupied by a student or a student and the student's family and in which the dwelling unit is owned by the respective college, university, or seminary.

SECTION 5. Inspection by Code Enforcement Officer

- (A) The CEO may conduct:
- (1) Inspections for issuance of certificate of occupancy in conjunction with the development board.
 - (2) Inspections based on indications of Code violations, including complaints filed with the CEO.
 - (3) Periodic Inspections; and
 - (4) Follow up inspections.
- (B) The following areas of a rental dwelling shall be subject to inspection by the CEO:
- (1) All building exteriors;
 - (2) All exterior and interior areas;
 - (3) Vacant dwelling units;
 - (4) Occupied dwelling units upon the consent of the tenant or when subject to a valid warrant issued by the court.
- (C) The CEO may inspect portions of a rental dwelling as frequently as the Code enforcement officer deems necessary. The CEO shall schedule periodic inspections no less frequently than once every (2) years.
- (D) The Landlord of a rental dwelling shall make all units available to the CEO for inspections at all reasonable times.
- (E) A rental dwelling fails inspection if it does not score at least one hundred points, out of a possible (125) points, according to the periodic inspection report within thirty (30) days unless a longer period of time or an extension has been granted by the code enforcement officer.
- (F) The CEO is authorized to make follow up inspections of a rental dwelling to inspect all areas included in the periodic inspection as well as occupied dwelling units, in such frequency as scope as the CEO deems necessary to determine compliance with this ordinance and with the Minimum Building Standards Code.
- (G) The Landlord of a rental dwelling must correct all violations identified in an inspection report.
- (H) In addition to the other authority granted by this section, the CEO is authorized to inspect a rental dwelling with greater frequency than provided above if the CEO has cause to believe that the dwelling is not in compliance with the Minimum Building Standards Code or this ordinance.
- (I) In additions to other authority granted by this section, the CEO has all rights and authority granted by Article 18.05 of the Texas Code of Criminal Procedure. Inspections shall comply with all federal, state, and local laws, regulations, and ordinances.
- (J) When considering a violation created by a tenant the CEO may consider the timeliness of the Landlord's response to the violation, actions taken by the Landlord to address a tenant's activities that may have caused the condition that was a violation, and actions taken by the Landlord to prevent or reduce similar violations in the future.
- (K) The CEO is authorized to publish the results of inspections.

SECTION 6. Landlord/Tenant Inspections

- (A) The Landlord of a rental dwelling shall inspect each dwelling unit prior to leasing and shall comply with the following:
- a. The inspection of a dwelling unit shall be conducted by the Landlord and the Unit's Tenant:
 1. A minimum of once annually; and
 2. When the occupancy of the Unit changes;
 - b. The landlord shall sign each inspection report, and shall require a tenant to sign the report for the tenant's dwelling unit. If the tenant disagrees with any notion made by the Landlord on the report, the Landlord shall permit the tenant to make written comments on the report prior to signing it. The tenant shall also note any discrepancies they have identified with the unit upon move in and the Landlord shall initial those noted items. The Landlord shall provide the tenant with a copy of the report after it is signed.
 - c. The CEO shall determine which standards established by the Minimum Building Standards Code shall be covered by the inspection.
 - d. The failure of a Landlord to make inspections as required by this subsection, to maintain records of the inspections, and to permit inspection of those records pursuant to subsection (b) shall cause the dwelling to fail inspection.

(B) A landlord shall maintain reports of the inspections conducted pursuant to subsection (A) for all rental dwellings.

- a. The reports shall either be on a form provided by the CEO or on a form that complies with the requirements of the CEO.
- b. A report shall include places for marking whether the dwelling unit complies with the standards set by the director to be included within the scope of the inspection, and shall include the names of all persons occupying the dwelling (other than overnight guests).
- c. A report shall include:

1. The names of designated employees or other authorized persons who shall be assigned to respond to emergency conditions, and a telephone number where employees said can be contacted during a 24 hour period. The telephone number may be for an answering service that has the capability to contact the designated employee immediately. Emergency conditions shall include fire, natural disaster, flood, collapse hazard, burst pipes, or violent crime; and

(C) The CEO shall develop and maintain a rental handbook and shall provide each rental dwelling with a copy of the handbook upon registration.

- (1) The handbook shall be entitled, "The Poteet Rental Handbook".
 - (2) The handbook shall include:
 - (3) Grounds for eviction of tenant;
 - (4) Who may issue and who may deliver an eviction notice
 - (5) A tenant's rights to challenge an eviction notice;
 - (6) The name and phone number of any agencies a tenant may contact for information or assistance to challenge an eviction notice;
 - (7) The telephone number of the code enforcement department.
- (a) A landlord shall duplicate the handbook and shall provide a copy to each tenant, whether at the time the tenant signs the Lease or at the time the Landlord conducts an inspection of the tenant's dwelling unit as provided by this section.
- (b) A Landlord may provide a tenant with an alternative publication upon prior written approval issued to the Landlord by the CEO.

(D) A Landlord commits an offense if the Landlord knowingly violates this section.

SECTION 7. Probationary Status, suspension, and revocation of registration.

(A) Probationary status.

In addition to any other authority granted by this section or any provision of the Code of the City of Poteet, the Code Enforcement Officer may place the registration of a rental dwelling on a probationary status if:

- (i) A Landlord fails to correct a violation of the city code or applicable state statute within the time specified in a notice of violation or
- (ii) Any inspection reveals a repeat violation of the same provision of the city code applicable state statute which had been identified within the preceding twelve (12) month period.

The duration of the probationary status shall begin upon the mailing of a notice by the CEO at the initiation of the probationary status and shall continue until both of the following conditions have been met:

- (i) All previously identified code violations at the complex have been corrected by the Landlord and noted and approved by the CEO, and
- (ii) No additional code or statutory violations are identified at the complex for ninety (90) days after correction of the last violations as approved by the CEO.

The CEO shall impose a monthly administrative fee on the Landlord for as long as the rental dwelling remains on probationary status.

(B) Suspension of Registration.

In addition to other authority granted by this section or any other provision of the Code of Poteet, if a rental dwelling fails to complete its probationary status within 180 days, the CEO may place the registration of such dwelling on suspended status. While under suspension, no unoccupied rental dwelling may be occupied by new tenant(s) until the complex has been in full compliance with the City Code and all applicable laws for a minimum of 30 days. The registration shall remain suspended until the complex has been in full compliance with the city code and all applicable laws for a minimum of 180 days.

If a complex has been on a suspended status at a previous time within the previous 36 months, no dwelling may be occupied by new tenants until it has been in full compliance for 90 days. The dwelling shall remain on suspension until it has been in full compliance with the city code and all applicable laws for 180 days.

The CEO shall impose a monthly administrative fee on the Landlord for as long as the dwelling remains on suspension status.

(C) Revocation of Registration.

In addition to other authority granted by this section or any other provision of the Code of the City of Poteet, the CEO may revoke the registration of a rental dwelling if:

- (i) The dwelling is found to have one or more violations that constitute a danger to the health or safety of its tenants or the public at large and the Landlord fails to correct such violation(s) within the time specified in a notice of violation, or
- (ii) The dwelling has more than one fire, life and/or safety violation during any 12 month period.

A dwelling whose registration has been revoked may not do business until such registration has been reinstated. A dwelling whose registration has been revoked must be vacated within 30 days of such revocation. A Landlord commits an offense each day or portion of a day the dwelling continues to offer a unit for rent while its registration is revoked and each day any unit remains occupied after the expiration of 30 days from the date of revocation.

(D) Appeal of probationary status, suspensions, or revocation of registration.

A landlord may appeal the probationary status, suspension, or revocation of registration to the Appeals Board by filing a written request for appeal not later than 5:00 p.m. on the 5th business day following the date of notice. The appeal shall be heard by the Poteet Appeal Board. The appeal shall be by a preponderance of evidence that, on the date of revocation, that the dwelling had one or more code violations that constituted a danger to the health and safety of its tenants or the public at large and the Landlord had failed to correct such violation(s) within a reasonable time after receiving written notice of such violations. The decision of the Poteet Appeals Board can be appealed to City Council. The requirement that the dwelling be vacated shall be suspended during the pendency of the appeal and for 15 days after the decision of the Appeals Board.

SECTION 8. Crime Prevention Standards.

The Landlord of a rental dwelling shall provide the following crime prevention measures:

- (1) **Lighting, exterior illumination** shall be provided at appropriate points adjacent to all building entrances. A Landlord shall repair all inoperable exterior lighting fixtures within a reasonable period of time after being notified that the fixture is not working. In no instance shall a reasonable period of time be deemed to mean more than 7 days.
- (2) **Vacant buildings:** All openings in vacant buildings and/or dwellings shall be closed and secured from unlawful entry by the installation and maintenance of appropriate locking devices and intact doors and windows which are proportioned to securely and completely fit the openings. Alternatively, with the approval of the Code Enforcement Officer, openings may be temporarily secured by means of the installation of proportioned wood materials in good condition. The surfaces of such materials exposed to the weather shall be protected with the application of exterior grade paint, or a similar weather resistant finish, which blends with the background color of the building.
- (3) **Graffiti abatement:** A Landlord shall remove graffiti from the rental dwelling as soon as possible.
- (4) **Occupancy limits:** A Landlord shall not permit a dwelling unit to be occupied other than by a family, as that term is defined within this code, and shall not permit the number of persons occupying a dwelling unit to exceed the occupancy load of the unit based on the standards set in the Minimum Building Standards Code.
- (5) **Tenant responsibility:** Even the best security plans, devices and systems cannot completely prevent crime. The best safety measures a tenant of a rental dwelling can utilize are those performed out of common sense and habit. Such measures include locking doors and windows, not opening doors to strangers, and promptly reporting malfunctioning security devices and exterior lighting to the Landlord.
- (6) The Landlord of a rental dwelling shall require the prospective tenant to execute a lease. The lease shall include one of the following provisions for each new lease or lease renewal for a unit which is executed after January 1, 2018:
 - (a) A standardized lease promulgated by the Texas Apartment Association containing a prohibition of criminal conduct on or about the premises;

- (b) A standard lease promulgated by the Texas Association of Realtors containing a prohibition of criminal conduct on or about the premises;
- (c) A lease with an equivalent provision to (a) or (b) containing a prohibition of criminal conduct on or about the premises; or
- (d) A Crime Free Lease Addendum to read as follows:

In consideration of the execution or renewal of a Lease of the dwelling unit identified in the Lease, Owner and Resident agree as follows:

1. Resident shall not engage in any activity on or near the dwelling unit premises that would subject the resident to a penalty of a Class C misdemeanor that involves possession of drug paraphernalia, assault or disorderly conduct; Texas Penal Code Class A or B misdemeanor; Texas Penal Code Felony or Texas Health and Safety Code violation or engage in any hazardous conduct that otherwise jeopardizes the health, safety and welfare of the Landlord, his agent or other tenant or involving imminent or actual serious property damage. Nothing in this provision shall be construed as requiring or encouraging the eviction or termination of a Lease of a victim of domestic violence.
2. Resident shall not permit any household member or guest to engage in any activity on or near the dwelling unit premises that would subject the resident to a penalty of a Class C misdemeanor that involves possession of drug paraphernalia, assault or disorderly conduct; Texas Penal Code Class A or B misdemeanor; Texas Penal Code Felony or Texas Health and Safety Code violation or engage in any hazardous conduct that otherwise jeopardizes the health, safety and welfare of the Landlord, his agent or other tenant or involving imminent or actual serious property damage. Nothing in this provision shall be construed as requiring or encouraging the eviction or termination of a Lease of a Victim of Domestic Violence.

VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL VIOLATION OF THE LEASE AND GOOD CAUSE FOR IMMEDIATE TERMINATION OF THE TENANCY. A single violation of any provisions of this addendum shall be deemed a serious violation and a material non-compliance with the terms of this Lease. It is understood that a single violation shall be good cause for the immediate termination of the Lease. Unless otherwise provided by law, proof of a violation of law prohibited by this addendum shall not require a criminal conviction, but shall be by a preponderance of the evidence.

In case of conflict between the provisions of this addendum and any other provisions of the Lease, the provisions of the Addendum shall govern. This Lease Addendum is incorporated into the lease executed or renewed this day between Owner and Resident.

3. A Landlord commits an offense if the Landlord knowingly violates any provision of this section or fails to comply with any provision of this section.

SECTION 9. Operational Standards

(A) Pet requirements: The landlord of a rental dwelling in which tenants or guests are allowed to own, keep, or harbor cats, dogs, miniature swine, or any animal subject to a separate municipal or state registration requirement must provide each tenant, at the time of leasing and upon each renewal of a lease, with a form to register the pet with the city animal control officer. The form shall be as promulgated by the Code enforcement officer. The Landlord must advise the tenant to complete and return the form to the Landlord within 14 days of the date that the tenant first occupies the premises. The Landlord must advise the tenant to complete and return the form to the Landlord within 14 days of the date that the tenant first occupies the premises. The Landlord must forward the form to the CEO within 30 days of the date the tenant first occupies the premises. Nothing in the pet requirements is intended nor shall be construed as requiring or encouraging a Landlord to restrict service animals or impairing the right of a tenant, resident, or guest to keep a service animal consistent with the Americans with Disability Act.

(B) Electric Service: A tenant must provide to the Landlord, within 30 days of the earlier of executing a Lease of taking occupancy of a rental unit, documentation of a current account to provide electric service to the tenant's unit, excepting however when the electric service is provided by the Landlord. The Landlord must maintain a copy of the documentation of the tenant having opened

an account for electric service on file and available for inspection by the CEO during normal business hours. A landlord has a duty to regularly conduct visual inspections of the above ground electrical feed and meters at the rental dwelling to detect tampering or vandalism. Any tampering or vandalism must be reported to both the utility provider and to the CEO as soon as practicable but no later than 24 after detection. If an inspection by the city reveals two or more instances in which the electrical feed or meters have been tampered with or vandalized, and such vandalism or tampering was not reported to the electric provider and the CEO, the Landlord shall be presumed to have failed to report as required herein and additionally the landlord must thereafter securely lock or enclose the meters, in compliance with all applicable building standards, so as to effectively prevent future vandalism or tampering.

SECTION 10. Criminal Enforcement

A violation of this article is a misdemeanor punishable by a fine not to exceed two thousand dollars (\$2,000.00). Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense. The failure to perform an act required by this ordinance is a violation of this ordinance.

SECTION 11.

This Ordinance shall be cumulative of all other ordinances of the City of Poteet and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

SECTION 12.

That all rights or remedies of the City of Poteet, Texas, are expressly saved as to any and all violations of the City Code, or any amendments thereto that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 13.

That it is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutionality phrase, clause, sentence, paragraph or section.

SECTION 14.

That any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation exists shall constitute a separate offense.

SECTION 15.

That the Secretary of the City of Poteet, Texas is hereby directed to publish this ordinance for two (2) days in the official local newspaper as authorized by V.T.C.A. Local Government Code Subsection 52.013.

SECTION 16.

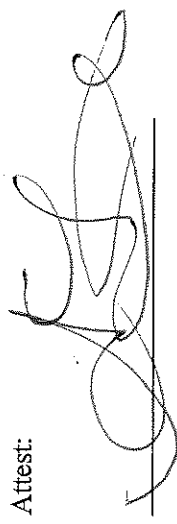
This ordinance shall take effect after adoption and publication as required by law.

Passed and Approved on this 5th day of September 2017.



Albert Trevino, Mayor

Attest:



Abigayle Frautschi, City Secretary