

ORDINANCE NO. 08-12

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 117, "LANDLORD PERMITS", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 117.01, "PERMIT REQUIRED", TO CLARIFY WHEN A PERMIT IS REQUIRED; AMENDING SECTION 117.03, "APPROVAL OF APPLICATION", TO PROVIDE ADDITIONAL REQUIREMENTS; AMENDING SECTION 117.04, "DENIAL OR REVOCATION OF PERMIT APPLICATION; APPEALS", TO CLARIFY GROUNDS FOR REVOCATION; AND AMENDING SECTION 117.06, "TENANT/OCCUPANT EVICTION", TO ENSURE NOTICE AND DUE PROCESS RIGHTS ARE FOLLOWED OR ALTERNATE HOUSING IS PROVIDED; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Delray Beach, Florida, has determined that enforcement of various City ordinances can be improved by greater involvement by the owners of property; and

WHEREAS, the City Commission of the City of Delray Beach, Florida, desires to improve the quality of life for its residents; and

WHEREAS, the City Commission of the City of Delray Beach, Florida, has developed a point system whereby landlord permits may be revoked for repeated instances of warning, temporary compliance and repeated violation of nuisance ordinances in order to more effectively address violations that affect the rights of residents adjacent to residential rental property within the City of Delray Beach; and

WHEREAS, the City Commission of the City of Delray Beach, Florida, seeks to update and revise the permit process to reflect the ongoing development of public policy as it regards to interests of the residents of the City, including congestion to street parking, in residential neighborhoods, and other issues of public health and safety concern; and

WHEREAS, the City Commission of the City of Delray Beach, Florida, desires to ensure that proper eviction proceedings are followed by all landlords within the City of Delray Beach in accordance with Chapter 83, *Florida Statutes*, or other methods of due process afforded to reduce homelessness and crime in the City of Delray Beach; and

WHEREAS, the courts have stated that houses for recovering addicts are subject to Residential Landlord Tenant Act requirements pertaining to evictions. *See, Burke v. Oxford*

*House of Oregon Chapter V, 341 Or. 82, 137 P.3d 1278 (Or. 2006); and*

WHEREAS, hotels/motels are licensed by the Department of Business and Professional Regulation and are not regulated by landlord/tenant laws; and

WHEREAS, all residential tenancies that are located in residential zoning districts and are not classified as hotel/motel uses shall be regulated by this section regardless of the length of the lease or occupant contract unless such tenancies are licensed as Group Homes or Community Residential Homes per § 419.001, *Fla. Stat.*

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 117, "Landlord Permits", Section 117.01, "Permit Required", shall be amended to read as follows:

**Sec. 117.01. PERMIT REQUIRED.**

(A) No person, company or other entity may offer to or lease, sublease, rent, license, sublicense or have any other arrangement allowing occupancy of any residential units unless a landlord permit is obtained or in existence for the units. All oral rental arrangements shall be included within the scope of this Section, but the operation of a hotel shall not be included in this Section (any building which fits the definition of hotel but also fits the definition of another use which requires a landlord permit shall be interpreted to require a landlord permit), nor shall any facility licensed by the State as a Group Home or Community Residential Home or Assisted Living Facility. Whenever Chapter 117 refers to "lease(s)", "leased", "rent(s)", or "rented", it shall hereinafter include leases, subleases, rentals, licenses, sublicenses and all other arrangements for the occupancy of property.

(B) A separate permit shall be required for each leased unit. However, where a building contains a number of leased units under the same owner, or where a number of different owners in one building authorize the same person or company to act as their agent for the purposes of applying for a permit, a single permit may be obtained for all qualifying units within a single building which are under the same owner or agent, provided that the permit fee is paid for each individual unit. Any such permit issued by the City for residential unit(s) being leased for the first time shall be conditioned upon the applicant providing the City's Director of Community Improvement or his/her designee a current copy of all leases, subleases and/or agreements to occupy the building or unit(s) therein and providing updated copies of all leases, subleases and/or agreements to occupy the building or unit(s) therein within thirty (30) days of any changes. In the event of an oral agreement between the parties instead of a written lease, the terms of these agreements shall be reduced to writing, specifically including, but not limited to, duration of the lease

term, rental payment, and number of tenants, such information to be provided to the City at the time of application and within thirty (30) days of any modification thereof. Any such permit being renewed by the City shall be conditioned upon the applicant providing to the City's Director of Community Improvement or his/her designee all required information with the application. Nothing in this Section shall require a permit for any unit enrolled in Federal housing programs or under Federal [Department of] Housing and Urban Development general supervision.

(C) Leased residential dwelling units seeking such permits shall be limited to four (4) vehicles per dwelling unit, for which residential parking stickers may be obtained, provided that, upon good cause shown, specifically including availability of garage space, additional parking stickers may be issued by the Community Improvement Director, if the additional stickers will not affect the quality of the neighborhoods.

Section 2. That Chapter 117, "Landlord Permits", Section 117.03, "Approval of Application", shall be amended to read as follows:

**Sec. 117.03 APPROVAL OF APPLICATION.**

(A) The Community Improvement Director or his/her designee, shall grant approval for the lease of units within the City for residential purposes upon the filing of an application on forms designated by the City and a determination:

- (1) That the applicant has an interest in the property or is the agent or acting under the permission of one with a sufficient interest in the property to obtain a landlord permit;
- (2) That the units comply with the requirements of the Housing Code as set forth in Section 7.4.1 of the Land Development Regulations of the City of Delray Beach with regard to those facilities necessary to make the rental unit habitable specifically including, but not limited to, numbers of bedrooms and bathrooms required for the number of persons who will occupy the dwelling;
- (3) That the rental of the units is in compliance with applicable zoning code regulations as enumerated in Chapter 4 of the Land Development Regulations as well as all other applicable regulations within the City's Code of Ordinances and Land Development Regulations;

- (4) That no more than three (3) unrelated persons shall reside in any unit as further defined in the definition of “family” as provided in Appendix “A” of the Land Development Regulations;
- (5) That an annual permit fee in accordance with Section 117.02 is paid;
- (6) That the applicant and applicant’s property are not in violation of this article;
- (7) That proof of payment of state sales tax is provided on an annual basis at renewal for all leases that are less than six (6) months in duration in accordance with Section 212.03, *Fla. Stat.*;
- ~~(8) That a local business tax receipt has been obtained for all leases that are rented more often than six (6) times in any one (1) year; and~~
- ~~(9)~~ (8) That the applicant has certified that they will provide each tenant with a copy of:
  - a. Chapter 83, *Florida Statutes*, Part II, entitled “Residential Tenancies”;
  - b. Chapter 117 of the Code of Ordinances, entitled “Landlord Permits”; and
  - c. A pamphlet provided by the City containing guidelines for rentals.
- (9) If the applicant is not otherwise required to follow Chapter 83, *Florida Statutes*, then the applicant shall provide proof of availability of an alternative temporary dwelling unit in the event of an eviction, in compliance with Section 117.06 of the Code of Ordinances of the City of Delray Beach; and
- (10) All tenants shall be in compliance with Chapter 136 of the Code of Ordinances of the City of Delray Beach regarding Sexual Offenders and Sexual Predators.

(B) Any permit shall be conditioned upon receipt of the documents required by Section 117.01(B).

Section 3. That Chapter 117, "Landlord Permits", Section 117.04, "Appeals", shall be amended to read as follows:

**Sec. 117.04 DENIAL OR REVOCATION OF PERMIT APPLICATION; APPEALS.**

- (A) A Permit application may be denied for the following reasons:
  - (1) The application for permit is not fully completed and executed, with the Landlord Permit Affidavit;
  - (2) The applicant has not tendered the required application fee with the application;
  - (3) The application for permit contains a material falsehood or misrepresentation;
  - (4) The use is not allowed in the zoning district;
  - (5) The applicant had their landlord permit revoked within the last twelve (12) months as set forth in Section 117.04(B) below.
  
- (B) Permits may be revoked for the following reasons:
  - (1) Violations of the City's Ordinances or state laws where the violation takes place at a unit regulated by ~~this Section~~ Chapter 117 of the Code of Ordinances of the City of Delray Beach shall be grounds for applicable fines and the commencement of permit revocation proceedings as follows:
    - (a) For each civil citation for a violation of a City ordinance, one (1) point will be assessed on the landlord permit for that individual unit.
    - (b) After two (2) points are assessed on a landlord permit for an individual unit, the City Manager or his/her designee will send a written warning to the permittee or agent. The warning will specify which ordinance or ordinances have been violated and will state that further citations or violations could lead to a revocation of the permit.
    - (c) Accumulation of three (3) or more points on a landlord permit for an individual unit during a 12-month period from the date of

the first citation shall constitute a violation of Chapter 117 of the Code of Ordinances of the City of Delray Beach. ~~this section and the certifications of the applicant described above, subjecting the permittee to revocation of the permit for the individual unit.~~

(2) The representations made in the permit application are no longer true and correct.

(3) The lease, sublease and/or agreement and a written statement regarding all lease arrangements to occupy the dwelling or unit(s) therein is not updated within thirty (30) days of any changes.

(C) Appeals of a denial or revocation of a landlord permit shall be made to the Permit Review Committee which shall consist of the City Manager, the Community Improvement Director and the Planning and Zoning Director or their respective designees. The City Attorney's Office shall act as counsel to the Permit Review Committee. Requests for appeal must be made in writing and received by the Community Improvement Director within thirty (30) days of formal notice of denial or revocation with the date of the notice of denial being the first day. Decisions of the Permit Review Committee may be appealed to the City Commission, whose decision shall be final subject to any appeal of such decision to the Circuit Court of Palm Beach County.

Section 4. That Chapter 117, "Landlord Permits", Section 117.06, "Tenant Eviction", of the Code of Ordinances of the City of Delray Beach, Florida, shall be enacted to read as follows:

**Sec. 117.06. TENANT/OCCUPANT EVICTION.**

(A) All applicants granted a landlord permit to lease residential units within the City's Residential Zoning Districts must provide notice prior to evicting a tenant or occupant in accordance with Chapter 83 of the *Florida Statutes*.

(B) All residential uses requiring a landlord permit that are not otherwise required to follow Chapter 83, Florida Statutes, shall provide either forty-eight (48) hours notice of eviction in writing to the tenant/occupant or provide an alternative temporary dwelling unit for the tenant/occupant for at least forty-eight (48) hours to avoid increased homelessness and crime and to ensure that tenant/occupant's due process rights are not violated.

(C) All applicants granted a landlord permit to lease residential units within the City's Residential Zoning Districts that are otherwise not required to follow Chapter 83, Florida Statutes, must provide proof of available alternative temporary dwelling unit(s) to the Community Improvement Director when submitting an application for landlord permit under Section 117.03 of the Code of Ordinances of the City of Delray Beach.

Section 5. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 6. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 7. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
City Clerk

First Reading\_\_\_\_\_

Second Reading\_\_\_\_\_