

ORDINANCE NO. O-17-07

Providing for Inspections and Certificate of Occupancy for Residential Rental Units

Whereas, the Alabama Uniform Residential Landlord and Tenant Act, Act No. 2006-316, codified as Sections 35-9A-101 *et seq.*, 1975 Code of Alabama, becomes effective on January 1, 2007; and

Whereas, Section 35-9A-102(b) states that one of the purposes of the Act is to encourage landlords and tenants to maintain and improve the quality of housing;

Whereas, Section 11-40-10(b) authorizes a municipality to enforce police or sanitary regulations within the city limits and to prescribe fines and penalties for violations of the regulations; and

Whereas, Section 11-45-8(c) authorizes a municipality to adopt ordinances, rules and regulations as a code for the construction, erection, alteration or improvement of buildings, the installation of plumbing or plumbing fixtures, installation of gas or gas fixtures, fire prevention, health and sanitation, mechanical, housing, elimination and repair of unsafe buildings, and other like codes; and

Whereas, Section 35-9A-204(a)(1) requires a landlord to comply with the requirements of applicable building and housing codes materially affecting health and safety; and

Whereas, Section 35-9A-301(1) requires a tenant to comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety; and

Whereas, pursuant to Section 11-45-1, a municipality is authorized to adopt ordinances not inconsistent with the laws of the state to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the inhabitants of the municipality; and

Whereas, in Opinion No. 2007-009, dated October 31, 2006, the Attorney General issued an opinion to Mayor Ronald K. Davis of the City of Prichard that a municipality has the authority to adopt an ordinance (1) requiring the annual inspection of apartments and rental houses to ensure compliance with the local building code, (2) charging a reasonable fee to defray the expense of performing the inspections, and (3) charging a reasonable fine or revoking the

certificate of occupancy of any apartment or rental house failing to comply with the local building code; and

Whereas, the City of Gadsden now seeks to adopt an ordinance of the type approved by the Attorney General to provide for the safety and to preserve the health of persons residing in rental housing;

Now, Therefore, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GADSDEN, ALABAMA, as follows:

Section 1. The City Code is amended by adding two new sections to Article I of Chapter 18, Buildings and Building Regulations, as follows:

Sec. 18-1. Rental property inspection.

(a) All rental housing units which are or become vacant after June 1, 2007, must be inspected for compliance with building codes and a certificate of occupancy issued if the unit is in substantial compliance, prior to occupancy by a new tenant. Thereafter, whenever a rental housing unit becomes vacant, the property shall be inspected for compliance and a new certificate of occupancy issued.

(b) The cost of inspection is \$50 for the initial inspection and one follow-up inspection. Any additional follow-up inspection shall cost \$15 each. The owner of the unit shall be responsible for contacting the building department to schedule inspections. After the initial inspection following the adoption of this ordinance, if the unit has been occupied without a certificate of occupancy having been issued, the cost of the inspection shall be as follows: (1) \$100 for the first occupancy without a certificate; (2) \$250 for the second occupancy within one year without a certificate; or (3) \$500 for the third occupancy within one year without a certificate.

(c) For purposes of this section, a rental housing unit is defined as a structure or the part of a structure, including a manufactured home, that is rented as a home, residence, or sleeping place by one or more persons. The following arrangements are not covered by this definition:

(1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

- (2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the interest of the purchaser;
- (3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
- (4) transient occupancy in a hotel, motel, or lodgings;
- (5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;
- (6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;
- (7) occupancy under a rental agreement covering premises rented by the occupant primarily for agricultural purposes;
- (8) continuation of occupancy by the seller or a member of the seller's family for a period of not more than 36 months after the sale of a dwelling unit or the property of which it is a part;
- (9) occupancy under a rental agreement with the Greater Gadsden Housing Authority.

(d) If, upon inspection of the residential rental unit, the building official determines that the unit is in violation of any building code and informs the owner of the violations, no certificate of occupancy may be issued until the condition of the unit is brought up to code standards. Under such circumstances, it shall be unlawful for a person to lease or occupy the unit until a certificate of occupancy is issued.

(e) If, during an annual inspection of a residential rental unit, the building official determines that the unit is in violation of any building code and is not suitable for habitation until needed corrections are made to bring the condition of the unit up to code standards, it shall be unlawful for the tenant to remain in the unit. The tenant must be relocated until the condition of the unit is brought up to code standards.

(f) In lieu of an inspection by the city building department and in order to obtain a certificate of occupancy, the owner of the rental housing unit may submit to the building department a copy of the current credentials of the inspector and the full report of an inspection demonstrating compliance with applicable city codes, performed by a person currently licensed and in good standing with any of the following: (1) a home inspector licensed with the Building

Commission, pursuant to The Alabama Home Inspectors Registration Act, §§34-14B-1 et seq., 1975 Ala. Code; (2) an architect registered with the Alabama Board for Registration of Architects, pursuant to §§34-2-1 et seq., 1975 Ala. Code; (3) a professional engineer with the Alabama Board of Licensure for Professional Engineers and Land Surveyors, pursuant to §§34-11-1 et seq., 1975 Ala. Code; (4) a residential building inspector, residential combination inspector or certified building official by the International Code Council, Inc.; or (5) authorized to inspect residential construction by the United States Veterans Administration or the United States Department of Housing and Urban Development. In such a case the only fee required shall be \$10.00 for issuance of the certificate of occupancy.

Section 18-2. Penalty.

Any violation of this ordinance shall be punished as provided in Section 1-7 of the City Code. The minimum fine shall be \$100. For a second offense within one year, the minimum fine shall be \$250. For a third or subsequent offense within one year, the minimum fine shall be \$500.

Section 2. The provisions of this ordinance shall be effective as of the first day of the second month following publication. The provisions of Section 18-1(b) shall be effective as of June 1, 2007.

Section 3. The provisions of this ordinance are severable so that if any provision is declared unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect the validity of any other provision. The council declares that it is its intent that it would have adopted this ordinance without such invalid or unconstitutional provisions.

I certify that the City Council of the City of Gadsden, Alabama, duly adopted this ordinance at a public meeting held on February 20, 2007.

Iva Nelson, City Clerk

APPROVED on February _____, 2007

Sherman Guyton, Mayor