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TOWNSHIP OF UPPER CAPE MAY COUNTY ORDINANCE

ORDINANCE NO. 008-2023

RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER IV OF THE CODE OF UPPER TOWNSHIP TO ADD SECTION 4-6 ENTITLED RENTAL HOUSING

WHEREAS, the Township Committee of the Township of Upper desires to adopt an ordinance amending Chapter 4 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, by adding a new Chapter 6 with respect to the requirements and regulations regarding rental housing.

BE IT ORDAINED by the Township Committee, in the Township of Upper, County of Cape May and State of New Jersey, as follows:

SECTION 1. CHAPTER 4 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Add SECTION 4-6 – RENTAL HOUSING - as follows:

SECTION 4-6 Rental Housing

4-6.1 Purpose

The purpose of this chapter is as follows:

- a. To protect the health, safety and welfare of residential tenants by ensuring that both the interior and exterior of all rental properties are maintained in a safe and sanitary condition.
- b. To protect the welfare of residential tenants by assuring that maximum occupancy limits are not exceeded in rental units.
- c. To protect the real estate values of properties located in close proximity to rental housing by requiring the upkeep and maintenance of building exteriors and outside property areas.

4-6.2. Applicability; exceptions.

- a. This chapter shall apply to all residential uses with the exception of owner-occupied, single-family dwellings. No rental unit shall hereafter be rented unless the rental unit is registered in accordance with this chapter.
- b. This chapter shall not apply to units within any motel, hotel, campground or condominium campground. This chapter shall not apply to a short-term use and occupancy agreement between the buyer and seller of real property where the agreement permits the buyer to occupy the real property before closing or permits the seller to occupy the real property after closing.

4-6.3 Short term Rentals

- a. The Township Committee of the Township of Upper (“Township Committee”) finds and declares that the short-term rental of limited residential dwelling units within the Township benefits the local community by affording owners of such units the ability to garner

additional income from their real property (also referenced as "property") in order to diminish the financial burden of carrying costs and maintenance expenses related to the property, as well as providing travelers with an alternative option for accommodations in the Township. Notwithstanding those benefits, the Township Committee also finds and declares that certain transitory uses of residential property tend to affect the residential character of the community and, if unregulated, can be injurious to the health, safety, and welfare of the community.

b. The intended purposes of this section are to

1. balance the rights of the owners of residential dwelling units proposed for short-term rental use and the Township's business community affected by the allowance and existence of short-term rentals within certain sections of the Township;
2. protect the public health, safety and general welfare of individuals and the community at large;
3. provide for an organized and reasonable process for the short-term rental of certain defined classifications of residential dwelling units in the Township;
4. monitor and provide a reasonable means for mitigation of impacts created by such transitory uses of residential properties within the Township;
5. preserve and protect the long-term housing market stock in the Township;
6. implement rationally based and reasonably tailored regulations to protect the integrity of the Township's residential neighborhoods; and
7. ensure that the short-term rental property inventory in the Township satisfies basic property maintenance standards, in order to protect the safety of occupants and the citizens of the Township.

c. The Township Committee has therefore determined that it shall be unlawful for any owner of any property outside the geographic bounds of the Waterfront Town Center, Marmora Town Center, Resort Residential and Resort Commercial Zoning Districts in Township to rent or operate a short-term rental. However, owners of any property inside the geographic bounds of the Resort Residential and Resort Commercial Zoning Districts in Township, shall be able to rent or operate a short-term rental in accordance with the procedures and regulations established in this section, or applicable State statute.

4-6.3. Enforcement authority.

Any of the violations referred to in this chapter may be enforced, as applicable, by the Housing Officer, Code Enforcement Official, Zoning Official, Construction Code Official, Municipal Housing Liaison, Local Department of Health or other such person designated by the Township Committee.

4-6.4. Definitions

Agent – The individuals designated by the owner as the person(s) authorized by the owner to perform any duty imposed upon the owner by this chapter. If the owner provides no such designation, the owner shall be considered the agent. In any event, the owner shall be responsible for any acts or omissions by the designated agent. The term does not necessarily mean a licensed real estate broker or salesman of the State of New Jersey as those terms are defined by N.J.S.A. 45:15-3; however, such term may include a licensed real estate broker or salesman of the State of New Jersey if such person designated by the owner as his agent is so licensed.

Apartment – Any apartment, cottage, bungalow or other dwelling unit consisting of one or more rooms occupying all or part of a floor or floors in a building of one or more floors or stories, whether designed with or without housekeeping facilities for dwelling purposes and notwithstanding whether the apartment is designed as a residence, office or for the operation of any industry or business or any other type of independent use.

Basement – That portion of a building which is partly or completely below grade.

Building – Any structure or part thereof used for human habitation, use or occupancy, and includes any accessory structures and appurtenances belonging thereto or usually enjoyed therewith.

Dwelling – Any building containing one or more dwelling units.

Dwelling Unit – Any building or portion of a building used or intended to be used for residential purposes for a single household.

Habitable Space – A room or enclosed floor space occupied or designed to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers, closets, corridors and storage space.

Occupant – Any individual who lives or sleeps in, or has actual possession of, a dwelling unit.

Owner – Any person, agent, operator, firm, corporation, or other entity having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person having possession of real property.

Rental Unit – Any “apartment,” “dwelling,” “building,” “dwelling unit,” or “habitable space,” as defined by this chapter, that is rented, offered for rent or occupied (other than by the owner of the property or his/her/their family members) for the purpose of residential occupancy, regardless of the consideration for occupancy, including but not limited to money paid, services rendered or an accommodation incident to employment.

Short Term Rental Unit – Any rental unit that is occupied for a period of less than 31 days.

4-6.5. Registration

- a. All rental units shall hereafter be registered annually with the Housing Officer or his designee on forms which shall be provided for that purpose.
- b. The registration term shall commence April 1 of each year and such registration shall be valid until March 31 of the following year at which time it shall expire and a new registration shall occur.
- c. Application.
 1. Initial. The initial registration shall be made in writing and shall be signed by the owner on a form provided by the Housing Officer or designee. Said application shall state
 - i. the name and physical address of the owner;
 - ii. owner's phone number and email address;
 - iii. the name, address, and telephone number of the registered agent (which may be the same as the owner);
 - iv. the location of the building and a description of the portion of the building that is to be used as one or more rental units;
 - v. the number of dwelling units;
 - vi. for rentals in excess of 30 consecutive days, the proposed number of occupants, and their ages, in each dwelling unit;
 - vii. the number of rooms in each dwelling unit and the proposed use of each such room and the dimensions of each such room;

viii. Such application shall be accompanied by a floor plan, drawn approximately to scale, indicating the location, use and accurate dimensions of each room covered by the application.

2. Renewal. Application for a renewal registration shall be made in writing and shall be signed by the owner on a form provided by the Housing Officer or designee. Said application shall state and changes to the previously submitted registration.

3. Prior to change in occupancy of a rental unit for stays longer than 30 days, the applicant shall furnish to the Township a list of the names and ages of all occupants occupying the premises.

4. The license and registration for a rental unit may be transferred after a change in ownership of the property upon submission of a license transfer application by the new owner.

4-6.6. Inspections

a. Prior to every change of tenancy and every year each rental unit shall be inspected by the Housing Officer or designee, and if all requirements of this chapter are complied with, said inspecting officer shall so notify the owner.

b. If the inspecting officer finds noncompliance with any requirements of this chapter, he shall furnish the owner with a written statement specifying the same. The owner may thereupon do any of the following:

1. Remedy the defect(s) and request a re-inspection.

2. Appeal the decision of the inspecting officer to the Township Committee in the manner hereinafter provided.

3. Apply to the Township Committee for a waiver of the defect in the manner hereinafter provided.

c. Modification of rental property during license period. Any modification or alteration in the rental unit that would result in change of the number of occupants desired to be approved during the term of an existing license shall require a new application, as provided in Subsection 5 above. If the license is amended to allow an increase in the number of occupants, the amended license shall be issued upon compliance with all terms of this chapter and payment of any additional fees required.

d. Free Access. The Township and its agents are hereby authorized to make inspections to determine the condition of a rental unit in order that they may perform their duty of safeguarding the health, safety and welfare of the occupants of the rental unit and of the general public. For the purpose of making such inspection, the inspecting officers are hereby authorized to enter, examine and survey a rental unit at all reasonable times during normal working hours by appointment with the owner. The owner or occupant of every rental unit shall give the inspecting officer free access to the rental unit at all reasonable times during normal working hours by appointment for the purpose of such inspections, examinations and surveys. Every occupant shall give the owner of the rental unit access to any part of such rental unit at all reasonable times during normal working hours for the purpose of making such repairs or alterations that are necessary to effect compliance with the provisions of this chapter or any lawful order issued pursuant hereto. The owner shall provide such provisions in any such lease between said owner and occupant.

e. Complaints. Within ten (10) working days of the receipt of a written complaint alleging a reported violation of this section, an inspecting officer shall conduct an inspection as hereinbefore provided. If the complaint is found to be valid and such causes a violation notice to be issued, then the owner shall be liable for any inspection and re-inspection fees necessary.

f. Notice of Violation

1. Whenever an inspecting officer determines that there has been a violation of this chapter, he shall serve a written notice of the violation on the owner, which shall include a statement of the reasons why it is being issued.
2. If a violation is not corrected within the time allocated within the notice, the inspecting officer may serve an order upon the owner that his license is revoked and occupancy prohibited, effective five days from the service thereof. Said order shall state that the owner may appeal the order to the Township by submitting a written request to the Township within five days of receipt of the order for a hearing. Thereupon, the Township shall fix a date for a hearing and give the owner notice thereof. Such hearing shall be conducted by the Housing Hearing Officer. Such an appeal shall stay the effective date of the order pending the outcome of the hearing. The inspecting officer(s) who inspected the rental unit in question shall be present at such hearing. At the hearing, the owner shall be given an opportunity to be heard and to show cause why the order should be modified or withdrawn.
3. Notwithstanding the correction of any one or more violations of this article, the Housing Officer may request that Housing Hearing Officer conduct an administrative hearing in the manner provided above to consider suspension or revocation of a license on the grounds herein stated. If, as a result of such hearing, the Housing Hearing Officer shall determine that the subject rental unit has been a source of repeated or continuing violations of this section and that the operation of said rental unit has been a detriment to the health and/or safety of the occupants or the public health and/or safety or has constituted a public nuisance, the Housing Hearing Officer may suspend such license for such period as they shall determine or may permanently revoke such license.

4-6.7. Fees

The Township Committee shall, by resolution, set forth any and all fees they deem appropriate in order to achieve the intended purposes of Chapter 4-6. To the extent such fees are set, upon the filing of a registration or the issuance of a license, the owner of the property shall pay to the Housing Officer the applicable fee.

4-6.8. Rental Housing Standards

No rental unit shall be registered or allowed to remain in effect unless the following standards are complied with:

- a. Egress. Every dwelling unit shall have safe and unobstructed means of egress which shall lead to a safe and open space at ground level accessible to a street. A room located below the level of the ground and used for sleeping purposes shall be provided with safe and unobstructed means of egress leading directly to an outside area accessible to a street. Where a dwelling is occupied on the third story or higher, the owner shall supply a fire escape which shall be constructed and maintained in accordance with the specifications of the Bureau of Housing Inspections of the State of New Jersey and in accordance with all applicable building codes.
- b. Basement occupancy. No basement area or portion thereof may be occupied unless the minimum requirements for habitable space in accordance with the State Uniform Construction Code are met and maintained. Basements may be used for sleeping purposes, provided that the entire basement complies with all requirements of this section, the State Uniform Construction Code, applicable fire regulations, and any other applicable codes; that all furnaces or other heating or hot-water facilities are so located, insulated and separated from living areas by resistive partitions of two-hour fire rating; and that the floors, ceilings and walls are impervious to leakage of underground and surface runoff water and are insulated from and free from dampness and moisture.

- c. Lighting. Every portion of each bathroom, staircase, hall, landing, furnace room, utility room and all similar non habitable rooms and spaces shall have either natural or artificial light available at all times, with an illumination of at least two lumens per square foot (two footcandles) throughout. Such light shall be measured 36 inches from the floor in the center of the room.
- d. Security/Locks. All entrance doors shall be supplied with a medium-duty dead latching lockset with automatic dead locking plunger or with a dead bolt separate from the latch set. All entrance doors shall be constructed with a solid core. Keyed locksets shall be prohibited on all interior non-egress doors.
- e. Utility service. If a dwelling unit shares electrical service or other utilities (i.e., heat or hot water) with another unit then the cost of such utility payments shall be borne by the landlord. Electric service must meet the minimum requirements for each dwelling unit per the requirements of the State Uniform Construction Code
- f. Water supply. The minimum rate of flow of hot or cold water issuing from any faucet or fixture shall be not less than one gallon per minute.
- g. Kitchens. Every dwelling unit in which the regular preparation of meals is to be accomplished must be equipped with the following facilities:
 - 1. A kitchen sink of nonabsorbent and easily cleanable material in good working condition and properly connected to an approved water supply system which provides at all times an adequate amount of heated and unheated water under pressure and which is connected to an approved sanitary disposal system.
 - 2. A stove or similar device for cooking of food, which stove or device is properly installed with all necessary connections for safe, sanitary and efficient operation. Stoves must be provided with anti-tipping mechanisms installed.
 - 3. A refrigerator or similar device for the safe storage of food at temperatures less than 50° F. but more than 32° F. under ordinary maximum sanitary conditions, which is properly installed with all necessary connections for safe, sanitary and efficient operation.
 - 4. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.
- h. Exterior. Every rental unit shall be clean and free from garbage or rubbish and hazards to safety. Lawns, hedges and bushes shall be kept trimmed and shall not be permitted to become overgrown and unsightly. Fences shall be kept in good repair. Trash cans and recycling containers shall be restricted from being stored or kept in front yards and shall otherwise be stored in a safe location.
- i. Limitation on Occupancy.
 - 1. Every dwelling unit shall contain a minimum habitable floor area of not less than 175 square feet for the first occupant, and 125 square feet for each additional occupant or a minimum of 650 gross square feet.
 - 2. In every dwelling unit, every room occupied or intended to be occupied for sleeping purposes by one occupant shall have a minimum usable floor area of 70 square feet and every room occupied or intended to be occupied for sleeping purposes by more than one occupant shall have a usable floor area of at least 70 square feet plus 50 square feet for each additional occupant thereof.
 - 3. Every bedroom shall have access to at least one water closet and one lavatory without passing through another bedroom.

4. Rental units shall not be occupied by more occupants than permitted by the following minimum occupancy area requirements:

	Minimum Occupancy Area in Square Feet		
	1-2 Occupants	3-4 Occupants	5 or more Occupants
Living Room	None	120	150
Dining Room	None	80	100
Kitchen	50	50	70

5. Combined living room and dining room spaces shall comply with the requirements of Subsection 4 above if the total area is equal to that required for separate rooms and if the space is so located that it functions as a combination living room/dining room.
6. Combined living room and area for sleeping purposes shall comply with the requirements of Subsection 2 and 4 above if the total area is equal to that required for separate rooms and if the space is so located that it functions as a single room.
7. In calculating occupancy, number of occupants shall be rounded down to the nearest whole number of occupants (i.e. 150 sf bedroom shall be permitted a maximum of two occupants which need minimum of 120 sf).
8. It shall be unlawful and in violation of this article for an owner or lessor of any registered rental property to allow a number of people greater than the posted maximum number of occupants, which number is to be posted on license.
- j. Waiver. The owner may appeal within 15 days of the date of any notice appeal to the Housing Hearing Officer for a waiver of any performance standards set forth above. The Township shall afford the owner a hearing if requested. Such hearing shall be conducted by the Housing Hearing Officer. The Township may, at its discretion, grant a waiver of any one or more of the performance standards if it finds that, in light of the facts and circumstances presented in a particular case, a special reason exists for the waiver and that the granting of the same will not be contrary to the intent and purpose of this article and will not be detrimental to the health, safety and welfare of the occupants or proposed occupants of the rental unit, nor to the general public. The inspecting officer(s) who inspected the premises in question shall be present at such hearing.

4-6.9. Information required to be distributed to tenants for stays longer than 30 days.

- a. A Truth-in-Renting Statement prepared by the Department of Community Affairs in accordance with the Truth-in-Renting Act (N.J.S.A. 46:8-43 et seq.) shall be distributed to all tenants living in buildings with more than two dwelling units.
- b. A copy of the registration statement filed with the Township Clerk and/or New Jersey Bureau of Housing Inspection.
- c. A copy of the New Tenant Notification Form provided by the Township. Said form shall be signed by the tenant and maintained by the owner during the term of the tenancy. For buildings with more than four units, the form shall be maintained in a log at the rental office.

4-6.10. Violations and Penalties

- a. In addition to the penalties set forth in N.J.S.A. 46:8-35, any person violating or failing to comply with any of the provisions of this article shall, upon conviction thereof, be punishable by a fine as set forth in the Section 1-5 of this Code. Notwithstanding anything stated above to the contrary, solely in cases of illegal

occupancy, overcrowding and conditions constituting unsafe ingress and egress in violation of the requirements of the Uniform Construction Code, there shall be a minimum fine of not less than \$1,000.

- b. Any evictions by landlord/owners of property that are required as a result of violations of housing standards, occupancy limits and overcrowding as set forth under N.J.S.A. 2A:18-61.1(g) shall be made in accordance with N.J.A.C. 5:11-2.3, which requires that when a landlord is cited for a violation pursuant to illegal occupancy which could potentially result in an eviction of the tenants, the following must be included by the landlord/owner as an insert sent with the violation notice:

"If, in seeking to correct the illegal occupancy for which you have been cited, it is necessary for you to evict one or more tenants to comply, you must notify those tenants of their potential eligibility for relocation assistance. Further information regarding your responsibilities as owner pursuant to regulations concerning eviction and relocation may be obtained by contacting the following:

Department of Community Affairs
Division of Codes and Standards
Office of Landlord-Tenant Information
P.O. Box 805
Trenton, NJ 08625-0805
Telephone: 609/633-6606"

SECTION 3: EFFECTIVE DATE: This ordinance shall take effect immediately upon the following publication as required by law.

SECTION 4: REPEALER: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

SECTION 5: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 6: CODIFICATION: This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

ATTEST:

JOANNE R. HERRON, Township Clerk

JAY NEWMAN, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 13th DAY OF MARCH, 2023 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 3rd DAY OF APRIL, 2023 AT 6:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

JOANNE HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER

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