

Council Member Fahey introduced the following

LOCAL LAW I OF 2021

LOCAL LAW REPEALING PARTS 4 (RESIDENTIAL OCCUPANCY PERMIT) AND 5 (RENTAL DWELLING REGISTRY) OF CHAPTER 231 (HOUSING) OF THE CODE OF THE CITY OF ALBANY AND ENACTING A NEW PART 4 OF SUCH CHAPTER ENTITLED “RENTAL OCCUPANCY PERMIT AND RENTAL DWELLING REGISTRY” IN RELATION TO THE CITY’S RESIDENTIAL OCCUPANCY PERMIT AND RENTAL DWELLING REGISTRY PROGRAMS

Be it enacted, by the Common Council of the City of Albany as follows:

Section 1. Part 4 (Residential Occupancy Permit) and Part 5 (Rental Dwelling Registry) of Chapter 231 (Housing) of Part II (General Legislation) of the Code of the City of Albany are hereby REPEALED in their entirety, and a new Part 4, entitled “Rental Occupancy Permit and Residential Dwelling Registry,” is hereby added to read as follows:

Part 4 Rental Occupancy Permit and Rental Dwelling Registry

§ 231-128 Title.

This Part 4 shall be known as the “Residential Dwelling Registry and is supplementary and applicable to provisions of Part 2 of Chapter 231 (“the Housing Code”) of the City of Albany.

§ 231-129 Purpose and scope.

The purpose and scope of this part is to provide uniform administration and compliance with the requirements of this Part applicable to the rental dwelling registry. The purpose of this Part is to protect the health, safety and welfare of residents, to protect a diverse housing stock from deterioration and to accomplish the foregoing at the lowest cost to owners and occupants in order to keep housing costs as low as reasonably possible in a manner consistent with compliance with this Code.

The Common Council finds and declares that the registration of rental property is intended to and will ensure the protection of persons and property in all existing residential rental structures and on all premises required to be registered under this Part and ensure that rental property owners and prospective rental property owners are informed of, and adhere to, code provisions governing the use and maintenance of rental properties, including provisions limiting the maximum occupancy for which a rental dwelling unit can be certified.

§ 231-130 Definitions.

For the purposes of this Part, the following terms shall have the meanings set forth in this section, unless different meanings are clearly indicated by the context in which they appear:

EMERGENCY CONTACT

An individual who resides in Albany County or any adjacent county who shall respond either individually or through an agent to the property at all times on thirty minutes’ notice

in the event of emergencies and who, if not the owner, has the authority to act on the owner's behalf and access all areas of a rental dwelling in the event of such emergencies.

RENTAL DWELLING

Any building which contains a rental dwelling unit.

RENTAL DWELLING UNIT

Any room or group of rooms within a rental dwelling which are used or intended to be used by one or more persons for living and sleeping with or without facilities for cooking and eating which is occupied by an individual or household for living and sleeping pursuant to an agreement with a third-party which does not so occupy the room or group of rooms.

§ 231-131 Registration of rental dwellings required.

All rental dwelling units shall be registered according to the provisions in this Part except where the agreement governing the rental unit is between individuals related by lineal consanguinity or directly by marriage.

§ 231-132 Registration of rental dwellings.

- A. Registration. The City shall maintain a registry of all rental dwelling units and rental dwellings containing the following information, which shall be provided to the Department of Buildings and Regulatory Compliance by the owner thereof on forms available from the Department of Buildings and Regulatory Compliance:
- (1) Owner Information. The name, legal residence address and telephone number of the owner or owners, or in the event that the owner is a corporate entity, the names, addresses, and telephone numbers of at least one officer(s), partner(s), and/or member(s) responsible for the property, an address for service of process, and the entity's Employer Identification Number (EIN), if applicable.
 - (2) Further Owner Information. A copy of government-issued identification for, or the driver's license number or social security number of, each owner of the property, or if the owner is a corporate entity, a copy of government-issued identification for, or the driver's license number or social security number of, the officer, partner, or member responsible for the property.
 - (3) Agent Information. The name, contact address, and telephone number of any agent of the owner in control of the rental dwelling.
 - (4) Emergency Contacts. The names, telephone numbers, email addresses, and contact addresses of two emergency contacts for the rental dwelling who shall be designated primary and secondary contacts.
 - (5) Property Information.
 - (a) The address of the rental dwelling.

- (b) The tax map parcel number of the rental dwelling.
 - (c) The number of rental dwelling units in the rental dwelling.
 - (d) A list of units in the rental dwelling as they are referred to at the premises.
- (6) Certification. Certification by the property owner that the registered rental dwelling units are, to the best of the owner's knowledge, safe, habitable, and in compliance with all relevant New York State building codes and the City of Albany Code.

B. Inspection.

- (1) All residential rental dwelling units shall be inspected and certified by the Department of Buildings and Regulatory Compliance (hereinafter "the Department"), which shall determine compliance with, administer and enforce all applicable provisions of this Code and the NYS Fire Prevention & Building Code. The Chief Building Official or their designee may accept such inspections and certifications from uninterested and qualified third-party inspectors where sufficient proof of such inspection is provided. Residential occupancy permits shall be valid for 24 months from the date of issuance.
- (2) Nothing contained herein shall be construed or operate to invalidate an otherwise legally effective permit or certificate issued prior to the effective date of this Part, except that such permit or certificate shall be valid only until the permit or certificate's expiration date, or two years from the effective date of this Part, or a change in the tenancy of the residential rental dwelling unit to which the permit or certificate relates, whichever occurs first.
- (3) Except as otherwise provided herein, it shall be unlawful and a violation of this Part to rent, lease, or otherwise allow the occupancy of any residential rental dwelling unit without the inspection and certification as required herein.
- (4) If, upon inspection, said premises are found not to comply with applicable provisions of this Code or the Uniform Code, the specific reasons for noncompliance shall be specified in writing in a notice and order, in the manner set forth in Chapter 133A of this Code. Occupants or proposed occupants of dwellings shall have the right to inspect the certificate of occupancy of the residential rental dwelling unit, apartment or multiple residence in which they have an interest at no cost.
- (5) When inspecting a dwelling unit within a multiresidential complex, as defined in section 313-12 of this Code, the Department shall inspect and certify compliance with the provisions of section 313-14 of this Code requiring the establishment of solid waste private collection and source separation facilities in such complexes. No residential occupancy permit for a dwelling unit under this Part 4 shall be issued

unless the multiresidential complex is in compliance with section 313-14 of this Code.

- C. **Renewal and Update.** It shall be the obligation of the rental dwelling owner to register the rental dwelling with the Department of Buildings and Regulatory Compliance and it shall be the obligation of the current or succeeding owner or owner's agent to update registration information with the Department of Buildings and Regulatory Compliance within thirty days of any change. There shall be no cost associated with such an update.
- D. **Continuing Compliance.** Upon registration, it shall be the obligation of the rental dwelling owner to ensure that the rental dwelling and all rental dwelling units contained therein comply with all relevant New York State building codes and the City of Albany codes. In the event of such non-compliance a rental dwelling unit may be deregistered and have its residential occupancy permit suspended according to Albany City Code.
- E. Except as otherwise provided herein, it shall be unlawful and a violation of this chapter to rent, lease or otherwise allow the occupancy of any rental dwelling unit without said rental dwelling unit having been registered in accordance with this Part. No owner, agent or person in charge shall collect rents during any period of noncompliance with the provisions of this part which would otherwise be due and owing for the rental of premises unless and until he or she shall have complied with the provisions herein. Nothing herein shall be construed to prevent a landlord, upon receipt of the residential occupancy permit, from receiving the equitable value of the occupancy of the premises from the earliest date of occupancy, but in no event shall a landlord recover in excess of the agreed rent in the form of late fees or other penalties.
- F. All rental dwelling units within a given rental dwelling must have the same registration expiration date. When it becomes necessary to do so, the Department of Buildings and Regulatory compliance may extend the registration period for the purpose of ensuring all rental dwelling units in a rental dwelling have the same registration period so long as the registration fee is pro-rated over the extended registration period or, in the event that there is a delay in registration caused by noncompliance, the registration termination date for a rental dwelling unit shall be the same as that of the already registered rental dwelling units in the rental dwelling.
- G. The passage of an inspection pursuant to this part or the issuance of a residential occupancy permit shall not constitute a waiver of any rights or immunities accorded the City of Albany as a municipal corporation pursuant to the laws of the State of New York or other provision of the Code of the City of Albany, in particular, Chapter 24 of this Code, nor shall the passage of an inspection pursuant to this part constitute a representation that any rental dwelling or rental dwelling unit is free of danger or entirely free of NYS Uniform Fire Prevention and Building Code or Albany City Code violations.

§ 231-133 Fees.

- A. To offset the administrative costs of preparing and maintaining the Rental Dwelling Registry there shall be, except for owner-occupied rental dwellings containing not more than one rental unit owned by one or more natural persons, all of whom are aged 65 years or older, a fee of \$50 for each unit or \$100 for a residential unit which has not had an active Residential Occupancy Permit for more than forty-five days at the time the new Residential Occupancy Permit is applied for.
- B. The following schedule of fees shall apply with respect to the inspection and certification of residential dwelling units:
- (1) There shall be no fee for an initial inspection to determine compliance with the applicable provisions of this Code, or for a first re-inspection.
 - (2) Any and all subsequent re-inspection(s) necessary to determine compliance with required corrective action or repairs shall be subject to a fee of \$50 per unit inspected.
 - (3) Failure to appear within 15 minutes of a scheduled inspection (“no show”) shall result in a fee of the lesser of \$50 per unit or \$300.
 - (4) Cancellation of a scheduled inspection less than 24 hours before that scheduled inspection (“late cancellation”) shall result in a fee of the lesser of \$50 per unit or \$100.
 - (5) Cancellation of a scheduled inspection less than 24 hours before the scheduled inspection for the unit more than once or after a “no show” (“second cancellation”) shall result in a fee of the lesser of \$75 per unit or \$300.
- C. Fees prescribed under this section for failure to appear at, and cancellation of, a scheduled inspection may be waived at the discretion of the Commissioner or their designee for good cause shown.
- D. Unpaid fees shall be subject to the placement and recording of a lien by the City of Albany against the inspected property.
- E. The fees set forth in this Part may be increased at the discretion of the Department of Buildings and Regulatory Compliance as may be deemed necessary by the Chief Building Official to recover the administrative cost of issuing residential occupancy permits and maintaining the rental dwelling registry provided that so such increase shall exceed five percent in a given calendar year.

§ 231-134 Residential Occupancy Permit.

- A. Upon successful registration of a rental dwelling, the Department of Buildings and Regulatory Compliance shall issue to the owner of the rental dwelling or the owner’s agent or designee a Residential Occupancy Permit.

- B. The Residential Occupancy Permit shall contain the following information:
- (1) A statement indicating that all units in the rental dwelling are subject to the Residential Occupancy Permit or, if certain units have not been registered, a statement indicating which units are not the subject of the Residential Occupancy Permit;
 - (2) The name and contact phone numbers of the building owner's agents and emergency contact(s);
 - (3) The contact information for the City of Albany Police Department, Fire Department, and Department of Buildings and Regulatory Compliance;
 - (4) Contact information for available tenant advocacy resources as determined by the Chief Building Official;
 - (5) The statement: "Retaliation against a tenant by a landlord for a tenant's 'good faith complaint, by or in behalf of the tenant, to a governmental authority of the landlord's alleged violation of any health or safety law, regulation, code, or ordinance' is illegal under New York State Real Property Law § 223-b. Any tenant concerned about such retaliation should consult an attorney.";
 - (6) The statement: "Pursuant to section 231-132 (a) of the Albany City Code it shall be unlawful and a violation of Albany City Code to rent, lease or otherwise allow the occupancy of any rental dwelling unit without said rental dwelling unit having been registered on the City of Albany Rental Dwelling Registry. No owner, agent or person in charge may collect rents while a rental dwelling unit is unregistered."; and
 - (7) The rental dwelling's Rental Dwelling Registration expiration date.
- C. The Residential Occupancy Permit shall be posted conspicuously adjacent to the primary egress point in the rental dwelling to which said Residential Occupancy Permit applies or, if there is no such common egress point, at all common egress points.

§ 231-135 Registration renewal and de-registration.

- A. Rental dwelling units shall be re-registered in accordance with this Chapter every twenty-four months or after New York State building codes or Albany City Code compliance has been achieved following de-registration.
- B. Where the Department of Buildings and Regulatory Compliance determines that a rental dwelling and/or rental dwelling unit is in violation of the New York State building codes, the rental dwelling units may be de-registered according the following procedure:

- (1) The Department of Buildings and Regulatory Compliance, after discovering a violation, shall notify the responsible party of the alleged violation(s) in writing.
- (2) If the violation has not been corrected within thirty-days, or fourteen days in the event of violations imposing a threat to the health and safety of building occupants or public at large as determined by the Department of Buildings and Regulatory Compliance, of mailing of said notice, the rental dwelling unit containing the violation or all rental dwelling units affected by the violation may be de-registered by the Chief Building Official or their designee subject to the following conditions:
 - (i) Where the Chief Building Official or their designee determines that a lack of compliance is attributable to a tenant's refusal to allow a rental dwelling owner or their designee sufficient access to an area under the exclusive control of the tenant which must be accessed in order to obtain compliance, the compliance period shall be extended to the fourteenth day of consecutive access after the date the rental dwelling owner secures such access provided that reasonable action is taken to ameliorate the effect of such a violation on tenants other than the tenant denying access. Where the code violation is attributable to the actions of a tenant and affects only the offending tenant, deregistration shall not occur until fourteen days after these conditions no longer obtain.
 - (ii.) If the Department of Buildings and Regulatory Compliance is not able to confirm compliance due to a tenant's explicit or implicit refusal to allow re-inspection of the affected area, the period of compliance shall be extended to the date the Department is granted the ability to perform a re-inspection.
 - (iii.) Where the rental dwelling owner has made a good faith effort to comply within the time allowed, has taken concrete steps towards compliance, and where the underlying violation is not a threat to health and safety, the Department may extend the compliance period for up to sixty additional days.
- (3) Upon the correction of the violation, the rental dwelling unit(s) shall be re-registered on the Rental Dwelling Registry by the owner. If a court of law determines that the rental dwelling unit was de-registered in error, the rental dwelling unit(s) shall be re-registered on the Rental Dwelling Registry by the Chief Building Official or their designee. The expiration of rental dwelling registration following de-registration pursuant to this section shall be same as the period as that of the rental dwelling unit's most recent registration or, if that date has expired, determined according to section 231-132 (F) of this Code. There shall be no fee for re-registration following a determination in a court of law that no violation occurred.

§ 231-136 Penalties for offenses.

Any person who shall knowingly and willfully violate or assist in the violation of this Part, or who fails to comply with a notice and order issued by the Department under this Part shall, upon conviction, be punished as set forth in Chapter 133A of this Code.

Nothing contained in this Part shall preclude the City from enforcing violations of New York State building codes and the Code of the City of Albany independently pursuant to Chapter 133A of this Code.

Section 2. This local law shall take effect upon final passage, public hearing, and filing with the Secretary of State.

**APPROVED AS TO FORM THIS
19TH DAY OF MARCH, 2021**

Corporation Counsel

To: Danielle Gillespie, City Clerk

From: Robert Magee, Esq., Deputy Corporation Counsel
Laura Gulfo, Esq., Assistant Corporation Counsel
Brett Williams, Esq., Senior Assistant Corporation Counsel

Re: Request for Common Council Legislation
Supporting Memorandum

Date: March 19, 2021

Sponsor: Council Member Fahey

LOCAL LAW I of 2021

TITLE

A LOCAL LAW REPEALING PARTS 4 (RESIDENTIAL OCCUPANCY PERMIT) AND 5 (RENTAL DWELLING REGISTRY) OF CHAPTER 231 (HOUSING) OF THE CODE OF THE CITY OF ALBANY AND ENACTING A NEW PART 4 OF SUCH CHAPTER ENTITLED “RENTAL DWELLING REGISTRY” IN RELATION TO THE CITY’S RESIDENTIAL OCCUPANCY PERMIT AND RENTAL DWELLING REGISTRY PROGRAMS

GENERAL PURPOSE OF LEGISLATION

This local law updates the City of Albany’s rental dwelling registry and residential occupancy permit programs.

This legislation updates the existing residential dwelling permit and rental dwelling registry program based on what we have learned, institutionally, from the program over nearly two decades. They will make it easier for tenants, landlords, and the City to track program compliance and make the program more useful for all parties. Finally, it will empower the Buildings Department to impose better-tailored negative consequences on bad actors.

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW

§ 231-130 Definitions: This section is drawn from §231-138 of the current law. It includes a more specific definition of dwelling unit which clarifies that an apartment with three unrelated occupants is not required to obtain three ROPs. Additionally, it eliminates several definitions which are no longer useful or were never meaningfully used and adds a definition for “emergency contact” as it is later used in the section on what is to be included on an ROP application.

§ 231-131 Registry of Rental Dwellings Required: This requires all units that are rented to obtain an ROP, except where the landlord and tenant are immediate family.

§ 231-132 Registration of Rental Dwellings, Registration: This section specifies what a rental dwelling unit owner must provide in their ROP application. In addition to what was required previously §231-143, this proposal requires that the owner provide a copy of government issued id or a NYS driver’s license number, or social security number. For corporate owners, this

information must be provided by at least one principal along with the corporation's EIN. It also requires that the applicant provide two emergency contacts, though one contact may be the owner if they meet the definition of an emergency contact per §1. Finally, it requires that the applicant certify that the units are safe and habitable.

§ 231-133(2) *Registration of Rental Dwellings, Inspection*: It modifies the original language to allow the Chief Building Official to accept third party inspections for rental occupancy permits from qualified third-party inspectors to address changes in the law since the original passage of the residential occupancy permit/rental dwelling registry ordinance. It includes a provision to encourage the uniform registration of units in large buildings.

§ 231-134 *Fees*: This section increases the fee for ROPs which are issued for the first time to the unit or are applied for more than 45 days after the last ROP expired to from \$50 to \$100. This creates a late fee intended to encourage timely renewal. It maintains fees associated with excess ROP inspections, though it reduces the potential cost of cancelled or no-show inspections by capping fees for those at \$100 for late cancellations and \$300 for failure to show-up at a scheduled inspection or repeated untimely cancellations. It permits the Chief Building Official to increase these fees by 5% per year.

§ 231-135 *Residential Occupancy Permit*: This proposal requires that an ROP be posted at the property and include the property's emergency contact information, the building department's contact information, a statement regarding tenants' rights against retaliation, and contact information for available tenant services organizations as determined by the Chief Building Official.

§ 231-136 *Registration renewal and de-registration*: This proposal reduces the registration period from 30 to 24 months. It also provides the Chief Building Official with the authority to revoke an ROP where a notice of violation has not been complied with, involves violations that present a threat to health and safety, and the owner has failed to make a good faith effort to address the violations.

FISCAL IMPACT

This will increase ROP revenues insofar as it decreases the active ROP period and provides for late fees.