

## ORDINANCE #6 OF 2024

**AN ORDINANCE OF AVOCA BOROUGH, LUZERNE COUNTY, REQUIRING OWNERS OF RESIDENTIAL RENTAL UNITS OCCUPIED BY OTHER THAN THE OWNER PROVIDING FOR INSPECTION AND NOTICE REQUIREMENTS; PROVIDING FOR ISSUANCE AND DISPLAY OF CERTIFICATES OF COMPLIANCE; PRESCRIBING PENALTIES FOR VIOLATIONS; AND SETTING FEE SCHEDULES**

**WHEREAS**, the Borough of Avoca has experienced an increase in tenant occupied residential properties with the Borough; and

**WHEREAS**, in the interest of the health safety and welfare of the citizens and residents of the Borough of Avoca, the Borough Council wishes to implement requirements on landlords, owners and tenants within the Borough of Avoca; and

**WHEREAS**, this Ordinance is intended to create a mechanism of control and enforcement on behalf of the citizens, residents, taxpayers, landlords, owners, tenants and guests to protect the aforesaid safety of those same individuals and/or entities; and

**NOW THEREFORE**, be it ordained as follows:

### **SECTION 1 – TITLE**

This Ordinance shall be known as the Avoca Borough Rental Property Inspection and Occupancy Ordinance.

### **SECTION 2 – PURPOSE**

It is the purpose of this Ordinance and the policy of the Council of Avoca Borough, in order to protect and promote the public health, safety and welfare of its citizens, to establish rights and obligations of owners and occupants to maintain and improve the quality of rental housing within the community. It is also the policy of the Borough that owners, managers and occupants share responsibility to obey the various codes adopted to protect and promote public health, safety and welfare. As a means to those ends, this Ordinance provides for a system of inspections, issuance of certificates of compliance and sets penalties for violations. This Ordinance shall be liberally construed and applied to promote its purposes and policies. In considering the adoption of this Ordinance, the Avoca Borough makes the following findings.

In recent years, many formerly private single-family homes have been turned into residential rental properties. In some cases, the owners of the properties live long distances from Avoca Borough. Tenants, because they have no ownership interest in the real estate, are often not concerned about following Codes adopted by Avoca Borough.

### **SECTION 3 – DEFINITIONS**

Whether or not capitalized, the following word terms and phrases used herein shall have the following meaning:

AGENT – Any person, corporation, co-partnership, association or fiduciary who, for monetary consideration, aids in the rental of property as defined herein. When used in this Ordinance in a clause prescribing any activity or imposing a penalty, the term, as applied to partnerships and associations shall mean each partner and as applied to corporations, the officers thereof.

BOROUGH – The Borough of Avoca which is located within the confines of Luzerne County, Pennsylvania.

CODE – Any code or ordinance adopted, enacted and/or in effect in and for Avoca Borough concerning fitness for habitation or the construction, maintenance, operation, occupancy, use of appearance of any premises ore residential rental property.

CODE ENFORCEMENT OFFICER – The duly appointed Code Enforcement Officer having charge of the Office of Code Enforcement of Avoca Borough and any assistants, agents or designees.

COUNCIL – Avoca Borough Council, Luzerne County, Pennsylvania.

FIRE DEPARTMENT - The Fire Department of Avoca Borough or any properly authorized member or officer thereof having jurisdiction within Avoca Borough.

LANDLORD – One or more persons, jointly or severally, in whom is vested all or part of legal title to the premises or all or part of the beneficial ownership and a right to the present use and enjoyment of the premises, including a mortgage holder in possession of a residential rental property. (same as owner).

PROPERTY MANAGER – An adult individual designated by the owner of a residential rental property.

OCCUPANT – An individual who resides in a residential rental unit with whom a legal relationship with the owner/landlord is established by a lease or by the laws of the Commonwealth of Pennsylvania. (same as tenant).

OWNER – Any person, agent, operator, firm, corporation, partnership, association, property management group or fiduciary, jointly or severally, having legal, equitable or other interest in any real property; or recorded in the official records of the state, county or municipality as being vested all or part in 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 such person's estate and including a mortgage holder in possession of a residential rental property . When used in this Ordinance in a clause prescribing any activity or imposing a penalty, the term, as applied to partnerships and associations shall mean each partner and as applied to corporations, the officers thereof.

PERSON – A natural person, partnership, corporation, unincorporated association, limited partnership, trust or any other entity.

POLICE – The Police Department of Avoca Borough or any properly authorized member or officer thereof or any other law enforcement agency having jurisdiction within Avoca Borough.

PREMISES – Any parcel or real property in the Borough, including the land and all buildings and appurtenant structures or appurtenant elements, on which one or more rental units are located.

RESIDENTIAL RENTAL PROPERTY/ UNIT – Any structure within Avoca Borough which is occupied by someone other than the owner of the real estate as determined by the most current deed for which the owner of the said parcel of real estate received any value, including but not limited to money, or the exchange of services. Each apartment within a building is a separate structure requiring inspection and a license.

RESIDENTIAL RENTAL UNIT REGISTRATION NUMBER – Means the distinct registration number assigned by Avoca Borough to a Residential Rental Unit.

STRUCTURE – Any human made object, the use of which requires an ascertainable stationary location on land, whether or not it is affixed to the land.

TENANT – An individual who resides in a rental property/unit with whom a legal relationship with the owner/landlord is established by a lease or by laws of the Commonwealth of Pennsylvania. (same as occupant).

Singular words shall include plural and masculine words shall include feminine and neuter. The words "and" and "or" shall mean "and /or" whenever reasonably applicable.

#### **SECTION 4 – APPOINTMENT OF PROPERTY MANAGER**

Every Owner/Landlord residing further than twenty (20) miles from the boundaries of Avoca Borough must designate a Property Manager or person responsible for the care of all rental property within sixty (60) days of enactment of this Ordinance. The Property Manager or person responsible for taking care of the rental property must reside or have an office within twenty (20) miles of the boundaries of Avoca Borough. The Property Manager shall be the designated recipient of all correspondence and violation notices from Avoca Borough. The Property Manager shall be the direct point of contact for disruptive conduct, emergencies, and any other occurrence that may be of a time sensitive nature. The Property Manager shall be the agent of the property Owner/Landlord and by his, her or its appointment shall be authorized and empowered to accept service of all correspondence, violation notices, citations, complaints and pleadings on behalf of the Owner/Landlord. The appointed Property Manager shall remain in effect and shall be considered as legally binding until revoked and notice of revocation provided by the Owner/Landlord to Avoca Borough.

The Owner/Landlord must provide Avoca Borough with the Property Managers name, address, and all pertinent contact information. The Owner/Landlord of the property shall be responsible for all of the duties of the Property Manager in the event that Avoca Borough is unable to communicate with the Property Manager.

## **SECTION 5 – PROHIBITION OF OCCUPANCY**

No Residential Rental Unit shall be occupied by other than the Owner thereof unless a Certificate of Compliance has been obtained in accordance with the provisions of Section 7, herein. The Certificate of Compliance shall be displayed, in a conspicuous location, at the structure in which the Residential Rental Unit is located.

Residential Rental Units legally existing as of the effective date of this Ordinance, must obtain a Certificate of Compliance in accordance with the provisions of Section 7 herein within six (6) months of the effective date of this Ordinance or be subject to penalties as contained in Section 16 of this Ordinance.

## **SECTION 6 – INSPECTION**

(a) Each Residential Rental Unit shall be inspected by the Code Enforcement Officer or the Code Enforcement Officer's designee at least one (1) time in a two (2) year period and for such purpose and for any re-inspection required hereunder; the Owner and/or Property Manager shall provide access to the Code Enforcement Officer and any other Borough employees deemed necessary in the sole discretion of the Code Enforcement Officer.

(i) As for any Residential Rental Unit unoccupied or occupied by the Owner on or after the effective date hereof, the Owner must obtain a Registration License and Certificate of Compliance prior to the occupancy of such Residential Rental Unit by anyone other than the Owner. Subsequent inspections shall occur as set forth in subparagraph (a)(ii).

(ii) As for any Residential Rental Unit occupied by other than the Owner as of the effective date hereof, and for all subsequent inspections, inspections required by this Ordinance shall be completed and a Certificate of Compliance issued and displayed not later than December 31 of the year for which inspections is required. In no event shall such an inspection be conducted prior to January 1 of the year for which inspection is required.

(iii) No Residential Rental Unit which would otherwise be subject to the inspection requirements of this Ordinance shall be required to be inspected under this chapter within the two (2) calendar years following and subsequent to the year in which any Certificate of Occupancy is issued for the new construction of such unit.

(b) This inspection shall be for the purpose of determining compliance with the provisions of the ordinances as in effect in Avoca Borough on the date of the inspection as required hereunder.

(c) Failure of the Owner and/or Property Manager to permit access to conduct such inspection shall be deemed in violation of this Ordinance.

(d) For the purpose of enforcing this Ordinance, the Code Enforcement Officer or the Code Enforcement Officer's designee, may seek to obtain a search warrant issued by a competent authority for the purpose of compelling an inspection of a Residential Rental Unit.

### **SECTION 7 – CERTIFICATE OF COMPLIANCE**

If the inspection of Residential Rental Unit discloses no code violations, the Code Enforcement Officer shall issue a Certificate of Compliance to the Owner and/or Property Manager within fourteen (14) days of the inspection. The Certificate of Compliance shall be in such form as approved from time to time by the Code Enforcement Officer. The Certificate of Compliance shall be displayed in plain view within the Residential Rental Unit.

### **SECTION 8 – CERTIFICATE OF NON-COMPLIANCE**

If the inspection of the Residential Rental Unit discloses code violations, the Code Enforcement Officer or designee shall issue a Certificate of Non-Compliance within fourteen (14) days of said inspection. The Certificate of Non-Compliance shall set forth the following:

- (a) Street address or appropriate description of the subject property;
- (b) Date of inspection;
- (c) Identity of the inspector;
- (d) List of the code violations;
- (e) Number of days in which the Owner and/or Property Manager is to accomplish repairs, including a provision allowing for a reasonable time extension upon the Owner's and/or Property Manager's showing of good faith compliance to the satisfaction of the Code Enforcement Officer;

(f) Notice that, if the conditions are not repaired within the time specified, the Residential Rental Unit may be placarded as "Unfit for Human Occupancy" in accordance with the Codes adopted by Avoca Borough.

### **SECTION 9 – REINSPECTION**

(a) Upon the expiration of the time specified to accomplish repairs or upon notice from the Owner and/or Property Manager that the repairs have been accomplished, whichever occurs first, the Code Enforcement Officer or designee shall re-inspect the subject Residential Rental Unit.

(b) In the event that such re-inspection discloses that the Owner and/or Property Manager accomplished the repairs, the Code Enforcement Officer or designee shall issue a Certificate of Compliance to the Owner and/or Property Manager in accordance with Section 7 of this Ordinance.

(c) In the event that such re-inspection disclose that the Owner and/or Property Manager failed to accomplish the repairs, the Code Enforcement Officer or designee shall issue a new Certificate of Non-Compliance, in accordance with Section 8 of this Ordinance. Further, the Owner shall pay a re-inspection fee in an amount equal to the initial application fee as set forth in Section 10 of this Ordinance.

### **SECTION 10 – INSPECTION FEE SCHEDULE**

Upon application for a Certificate of Compliance and the payment to Avoca Borough a fee of **Fifty (\$50.00) Dollars** per Residential Rental Unit, the Code Enforcement Officer or designee shall review the pertinent Borough records and inspect the subject premises in accordance with Section 7 of this Ordinance. All Inspection fees shall be paid prior to the inspection regardless of the number of units. Failure to pay inspection fees shall be deemed a failure and/or refusal to comply with the provisions contained herein, and will be subject to the penalty contained in Section 16.

### **SECTION 11 – NON-LIABILITY OF BOROUGH**

The issuance of a Certificate of Compliance is not a representation by Avoca Borough that the Residential Rental Unit and/or building in which it is located is in full compliance with the Codes of Avoca Borough. The issuance of a Certificate of Compliance is an indication the Residential Rental Unit did not have any dangerous conditions as of the date of inspection. However, neither the enactment of this Ordinance nor the issuance of a Certificate of Compliance shall impose any liability upon the Borough for any errors or

omissions which resulted in the issuance of such Certificate, nor shall Avoca Borough bear any liability not otherwise imposed by law.

### **SECTION 12 – BOARD OF APPEALS/ HEARING PROCEDURES AND APPEALS**

The Owner and/or Property Manager of a Residential Rental Unit aggrieved by a decision of the Code Enforcement Officer or designee pursuant to section 8 or 9 hereof, may, within thirty (30) days or the time fixed for repair appeal the decision to the Property Maintenance Board of Appeals in accordance with the appropriate Borough Ordinances.

### **SECTION 13 – CODE VIOLATIONS**

Nothing in this Ordinance shall preclude or prohibit the Code Enforcement Officer or designee from identifying any violations of the Fire Prevention, Building, Mechanical, Property Maintenance, Electrical, or Plumbing Codes which exist and noting the same on any inspection report.

### **SECTION 14 – NOTICE REQUIREMENT**

The Code Enforcement Officer shall each year cause notice to be published in a newspaper of general circulation within the Borough. The notice shall be published in January of each calendar year. The notice shall advise of the required inspection of Residential Rental Units, that inspection may be required before a Residential Rental Unit is occupied by other than the Owner and where a copy of the Ordinance may be obtained.

### **SECTION 15 – ACTIONS BY BOROUGH OFFICIALS**

Appropriate Borough officials are authorized and directed to take such actions as are necessary to effectuate this Ordinance.

### **SECTION 16 – PENALTIES**

Any Owner or Agent who has violated or permitted the violation of this Ordinance shall be subject to the following penalties:

- (1) First Violation-Costs of prosecution and either a fine of two hundred fifty (\$250.00) Dollars, or thirty (30) days imprisonment, or both;
- (2) Second Violation-Costs of prosecution and either a fine of Five Hundred (\$500.00) Dollars, or sixty (60) days in imprisonment, or both;



(3) Third and each subsequent Violation-Costs of prosecution and either a fine of One Thousand (\$1,000.00) Dollars, or ninety (90) days imprisonment, or both.

Each Violation of this Ordinance and each day the same is continued shall be deemed a separate offense. A separate violation shall exist for each unregistered or uncertified Residential Rental and be deemed a separate offense.

(b) In addition to the placarding of the premises, and other civil remedies available to the Borough, the Borough may seek the enforcement of any order from the Court of Common Pleas of Luzerne County.

#### **SECTION 17 – REPEALER**

Any past ordinance, or part or parts thereof, conflicting with any part or parts of this Ordinance are hereby repealed to the extent that they are inconsistent herewith. In all other respects, the ordinances of the Borough of Avoca shall remain as previously enacted and ordained.

#### **SECTION 18 – SEVERABILITY**

The provisions of this Ordinance are severable. If any Section, sentence, clause, phrase of this Ordinance shall be held illegal, invalid, unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

It is hereby declared as the intent of the Borough that this Ordinance would have been adopted had such invalid or unconstitutional section, sentence, clause or phrase not been included. Furthermore, it is the intent of this Ordinance to be supplementary to, and not contrary to, any laws of the Commonwealth of Pennsylvania or regulations of any of its executive agencies.


#### **SECTION 19 – EFFECTIVE DATE**

This Ordinance shall become effective immediately upon enactment as provided by law.

**PASSED and ENACTED** on this 9<sup>th</sup> day of May, 2024, at the regular meeting of the Avoca Borough Council.

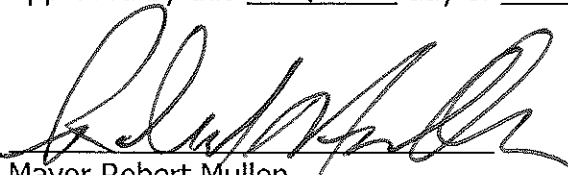
ATTEST:

AVOCA BOROUGH COUNCIL

  
Sandy Van Luvender  
Borough Manager/Secretary

  
Holly Homscheck  
President, Avoca Borough Council

Approved by this 9<sup>th</sup> day of May, 2024.

  
Mayor Robert Mullen