

Dated: Oct. 23, 2019

VILLAGE OF BABYLON
Proposed LOCAL LAW 8 of 2019

AMENDMENT TO THE VILLAGE CODE
CHAPTER 281 RENTAL PROPERTY

BE IT ENACTED by the Board of Trustees of the Incorporated Village of Babylon as follows:

Chapter 281 Rental Property of the Code of the Village of Babylon is hereby deleted in its entirety and replaced with the following:

Rental Property

- §281-1. Legislative Intent.
- §281-2. Definitions.
- §281-3. Applicability; conflict with other provisions.
- §281-4. Rental occupancy permit required.
- §281-5. Application for rental occupancy permit.
- §281-6. Fees.
- §281-7. Review of application.
- §281-8. Term of permits.
- §281-9. Register of permits.
- §281-10. Smoke detectors.
- §281-11. Inspections.
- §281-12. Search warrant authorized
- §281-13. Revocation of permit; written notice; appeal.

§281-14. Rental registration required.

§281-15. Collection of rent.

§281-16. Broker's responsibility prior to listing.

§281-17. Offers to rent.

§281-19. Penalties for offenses.

§281-20. Severability.

§281-21. When effective.

§281-1. Legislative intent

The Village Board has determined that there exist in the Village of Babylon serious conditions arising from the rental of dwelling units that are substandard or in violation of the Village Code and New York State Uniform Fire Prevention and Building Code, are inadequate in size, are overcrowded and dangerous, create blight, tend to overburden municipal services, pose a danger to life, limb and property and promote or encourage deterioration of the housing stock of the Village. The Board of Trustees finds that new Code provisions will serve to halt the proliferation of such conditions and that the public health, safety, welfare and good order and the governance of the Village will be enhanced by enactment of the regulations set forth in this article.

§281-2. Definitions

As used in the article, the following terms shall have the meanings indicated:

BUILDING INSPECTOR

The Building Inspector of the Village of Babylon or his or her delegates or assistants.

DWELLING UNIT

A structure or building or part thereof, or any area, room, or rooms therein, occupied or to be occupied by one or more persons as a home or residence.

OWNER

The owner or any other person or persons or entity or entities who or which have the right to possession of a dwelling unit, except a public housing authority organized as such under the laws of the State of New York, and such other similarly situated entity as may be determined by the Village Clerk. Under this definition, a tenant can be an owner in relation to a subtenant.

RENT

A return, in money, property or other valuable consideration (including payment in kind or services or other thing of value), for use and occupancy or the right to the use and occupancy of a dwelling unit, whether or not a legal relationship of landlord and tenant exists between the owner and the occupant or occupants thereof.

RENTAL OCCUPANCY

A.

The occupancy or use of a dwelling unit by one or more persons as a home or residence under an arrangement whereby the occupant or occupants thereof pay rent for such occupancy and use. There shall be a rebuttable presumption that any occupancy or use of a dwelling unit is a rental occupancy if the owner of the building containing the dwelling unit does not reside in the same building. A rental occupancy shall also occur where the owner of any residential building or dwelling unit allows another to occupy such residential building or dwelling unit where the owner is not also a resident.

B.

The presence or existence of any of the following shall create a rebuttable presumption that a premises is rented:

- (1) The property is occupied by someone other than the owner, and the owner of the property represents in writing or otherwise, to any person or establishment, business, institution or government agency, that he resides at an address other than the rental property.
- (2) Persons living in premises represent that they pay rent to the owner of the premises.
- (3) Utilities, cable, phone or other services are in place or requested to be installed or used at the premises in the name of someone other than the record owner.
- (4) Testimony by a witness that it is common knowledge in the community that a person other than the record owner resides in the premises
- (5) There is more than one mailbox at the premises.
- (6) There is more than one gas meter at the premises.
- (7) There is more than one electric meter at the premises.

- (8) There are separate entrances for segregated parts of the dwelling.
- (9) There are partitions or internal doors which may serve to bar access between segregated portions of the dwelling, including but not limited to bedrooms.
- (10) There exists a separate written or oral lease or rental arrangement, payment or agreement for portions of the dwelling among its owner(s) and/or occupants and/or persons in possession thereof.
- (11) The inability of any occupant or person in possession thereof to have unimpeded and/or lawful access to all parts of the dwelling unit.
- (12) Two or more kitchens each containing one or more of the following: a range, oven, hot plate, microwave or other similar device customarily used for cooking or preparation of food and/or a refrigerator.

C.

Nothing herein shall be construed to prevent persons living together as a family unit, with the owner, as defined by this Code.

TRANSIENT RENTAL PROPERTY

A.

A rental dwelling or dwelling unit occupied by persons other than the owner or a family member of the owner and for which rent is received by the owner, directly or indirectly, in exchange for such rental occupation for a period of less than 30 nights. For the purposes of this article, the term "transient rental property" shall mean all non-owner-occupied dwelling units rented for a period of less than 30 nights and shall not include:

- (1) Properties used exclusively for nonresidential commercial purposes in any zoning district; or
- (2) Any legally operating hotel/motel business operating exclusively and catering to transient clientele; that is, customers who customarily reside at these establishments for short durations for the purpose of vacationing, travel, business, recreational activities, conventions, emergencies and other activities that are customary to a commercial hotel/motel business.

B.

Presumption of dwelling unit as transient rental property.

- (1) The presence of the following shall create a presumption that a dwelling unit is being used as a transient rental property:
 - (a) The dwelling unit or any room therein is offered for lease on a short-term rental website, including Airbnb, Home Away, VRBO and the like for a period of less than 30 days; or
 - (b) The dwelling is offered for lease in any medium for a period of less than 30 nights.
- (2) The foregoing presumption may be rebutted by evidence presented to the Code Enforcement Official that the dwelling unit is not a transient rental property.

§281-3. Applicability; conflict with other provisions

A.

Scope. This article shall apply to all rental dwelling units located within the Village of Babylon, whether or not the use and occupancy thereof shall be permitted under the applicable use regulations for the zoning district in which such rental dwelling unit is located, as in this article provided. Nothing herein shall be deemed to preempt the zoning of any district of the Incorporated Village of Babylon. Any dwelling unit, rooming house, rooming unit, or any other premises subject to this chapter shall be presumed to be rented for a fee and a charge made if said premises or the portion thereof in question is not occupied by the legal owner thereof. It shall also be immaterial whether rent or any other consideration is paid to the owner by the occupant of the dwelling unit as this article is also intended to require a permit for the use of any dwelling unit where the owner does not reside on the premises.

B.

Applicability. The provisions of this article shall be deemed to supplement applicable state and local laws, ordinances, codes and regulations, and nothing in this article shall be deemed to abolish, impair, supersede or replace existing remedies of the Village, Town, county or state or existing requirements of any other applicable state or local laws, ordinances, codes or regulations. In case of conflict between any provision of this article and any applicable state or local law, ordinance, code or regulation, the more restrictive or stringent provision or requirement shall prevail. The issuance of any permit or the filing of any form under this article does not make legal any action or statement of facts that is otherwise illegal under any other applicable legislation.

§281-4. Rental occupancy permit required

It shall be unlawful and a violation of this article and an offense within the meaning of the Penal Law of the State of New York for any person or entity who owns a dwelling unit in the Village to

establish, maintain, use, let, lease, rent or suffer or permit the occupancy and use thereof as a rental occupancy without having a valid permit for such rental occupancy as herein provided. No rental permit shall be issued to a transient rental property.

§281-5. Application for rental occupancy permit

A.

Application for a rental occupancy permit for a rental dwelling unit shall be made in writing to the Building Department on a form provided by the Building Department for that purpose.

B.

Such application shall be filed in duplicate and shall contain:

(1)

The name, address and telephone number, if any, of the owner of the dwelling unit intended for rental occupancy.

(2)

The street address and Tax Map description (section, block and lot or lots) of the premises intended for rental.

(3)

The names, ages and relationships, if any, to the owner of the premises of each person presently residing in or occupying such premises intended for rental occupancy.

(4)

A description of the structure, including:

(a) The number of rental dwelling units in the structure;

(b) The number of persons intended to be accommodated by and to reside in each such rental dwelling unit; and

(c) The number of rooms and the dimensions and use of each room in the structure but outside of the rental dwelling units.

(5)

For each rental dwelling unit, a description of the unit, including:

(a) The number of rooms in the rental dwelling unit; and

(b) The dimensions and use of each such room.

(6)

The name, address and telephone number, if any, of the managing agent or operator of each such intended rental dwelling unit.

C.

Such application shall be signed by the owner of the premises, and the statements of such owner therein contained shall be verified under oath.

D.

Such application shall be accompanied by the following:

(1)

A property survey of the premises drawn to scale not greater than 40 feet to one inch, or if not shown on the survey, a site plan, drawn to scale, showing all buildings, structures, walks, drives and other physical features of the premises and the number, location and access of existing and proposed on-site vehicle parking facilities.

(2)

A building permit application, properly prepared, for all proposed buildings, improvements and alterations to existing buildings on the premises, if any.

(3)

A copy of the certificate of occupancy or certificate of existing use.

§281-6. Fees

A.

Permit application fee. A nonrefundable permit application fee shall be paid, upon filing an application for a rental occupancy permit, in accordance with a fee schedule set by resolution of the Village Board from time to time, for:

(1)

One dwelling unit.

(2)

Two dwelling units.

(3)

Three dwelling units.

(4)

Four dwelling units.

(5)

More than four dwelling units.

B.

The fees required by this section shall be waived for any applicant that demonstrates that it is a not-for-profit housing development corporation organized under the laws of the State of New York and that it is providing housing for senior citizens or other designated special populations subject to income guidelines established by either federal or state regulation.

§281-7. Review of application

A.

The Building Inspector shall review each application for completeness and accuracy. No permit or renewal thereof shall be issued under any application unless the property shall be in compliance with all the provisions of the Code of the Village of Babylon, the laws and sanitary and housing regulations of the County of Suffolk and the laws of the State of New York

B.

Prior to the issuance of any such permit or renewal thereof, the property owner shall provide a certification from a licensed architect, a licensed professional engineer or a Village building inspector that the property which is the subject of the application is in compliance with all the provisions of the Code of the Village of Babylon, the laws and sanitary and housing regulations of the County of Suffolk and the laws of the State of New York.

§281-8. Term of permits

All permits issued pursuant to this article shall be valid for a period of two years from date of issuance.

§281-9. Register of permits

It shall be the duty of the Building Inspector to maintain a register of permits issued pursuant to this article. Such register shall be kept by street address and show the name and address of the permittee, the number of rental dwelling units at such street address, the number of rooms in each such rental dwelling unit and the date of expiration of the permit for such unit.

§281-10. Smoke detectors

No permit shall be issued until the Building Inspector shall inspect the rental dwelling unit to determine that it is equipped with a functioning smoke-detector device and carbon monoxide detector, in compliance with the New York State Uniform Fire Prevention and Building Code.

§281-11. Inspections

The Building Inspector is authorized to make or cause to be made inspections to determine the condition of rental dwelling units. The Building Inspector is authorized to enter upon consent of the owner if the unit is unoccupied, or upon consent of the occupant if the unit is occupied, any rental dwelling unit and the premises in which the same is located at a reasonable time or at such other time as may be necessary in an emergency for the purpose of performing duties under this article.

§281-12. Search warrant authorized

The Village Attorney is authorized to make application to the Supreme Court of Suffolk County or other court of competent jurisdiction for the issuance of a search warrant, to be executed by a police officer, in order to conduct an inspection of any premises covered by this article where the owner or occupant refuses or fails, after due notice by certified mail, to allow an inspection of the rental

dwelling unit or premises and where there is reasonable cause to believe that a violation of this article or a violation of the Multiple Residence Law, the New York State Uniform Fire Prevention and Building Code, or the Village Code has occurred. The application for a search warrant shall, in all respects, comply with applicable laws of the State of New York.

§281-13. Revocation of permit; written notice; appeal

A.

The Building Inspector shall revoke a rental occupancy permit where he or she finds that the permit holder has caused, permitted, suffered or allowed to exist and remain upon the premises for which such permit has been issued, for a period of 10 days or more after written notice has been given to the permit holder or the managing agent of such rental dwelling unit, a violation of the Multiple Residence Law, New York State Uniform Fire Prevention and Building Code, or this article or other chapter of the Village Code. Revocation of a permit under this subsection cannot be done by a delegate or assistant of the Building Inspector. Notice shall be deemed properly given if mailed via first-class United States mail to the address listed on the Village's tax records.

B.

An appeal from such revocation may be taken by the permit holder to the Village Board of Appeals.

§281-14. Rental registration required

It shall be unlawful and a violation of this article and an offense within the meaning of the Penal Law of the State of New York for any owner to permit any tenant or other person to take up residence by a rental occupancy in any dwelling unit or for a person to take up residence by a rental occupancy without the owners first having completed and filed with the Building Inspector a rental registration form approved by the Village Administrator. A new form must be filed whenever a dwelling unit or portion thereof has become vacant and the owner intends to permit a new tenant or other person to take up residence.

§281-15. Collection of rent

The following shall be conditions precedent to the collection of rent for the use and occupancy of any dwelling unit:

A.

The issuance of a rental occupancy permit for the premises, as required by §281-4.

B.

The filing of a valid rental registration form for the tenancy as required by §281-14.

§281-16. Broker's responsibility prior to listing

It shall be unlawful and a violation of this article and an offense within the meaning of the Penal Law of the State of New York for any broker or agent to list, show or otherwise offer for lease, rent or sale on behalf of the owner any dwelling unit for which a current rental occupancy permit has not

been issued by the Building Inspector. It shall be the broker's or agent's duty to verify the existence of a valid permit before acting on behalf of the owner.

§281-17. Offers to rent

No owner, broker or agent shall publish a written offer or solicitation of offers to rent or lease a rental dwelling unit unless that offer or solicitation refers by number to a valid rental occupancy permit for the rental dwelling unit in question. For purposes of this section, "publish" means to promulgate to the general public, or to selected segments of the general public, in a newspaper, magazine, flyer, handbill, mailed circular, bulletin board, sign or electronic media. Violation of this section shall be unlawful and an offense within the meaning of the Penal Law of the State of New York.

§281-18. Penalties for offenses

A.

Any person, association, firm or corporation who or which violates any provision of this article or assists in the violation of any provision of this article shall be guilty of a violation, punishable by:

(1)

A fine of not less than \$500 and not exceeding \$1,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense.

(2)

A fine of not less than \$1,000 nor more than \$3,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the second of two offenses, both of which were committed within a period of five years.

(3)

A fine of not less than \$2,000 nor more than \$5,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the third or subsequent offense of a series of offenses, all of which were committed within a period of five years.

B.

Each week's continued violation shall constitute a separate additional violation.

§281-19. Severability

If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in said judgment.

§281-20. When effective

This article shall be effective upon filing with the Secretary of State.