

ORDINANCE NO. 577-18
BOROUGH OF ATGLEN
CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE AMENDING THE BOROUGH'S REGULATIONS FOR RESIDENTIAL RENTAL UNIT INSPECTIONS; SETTING FORTH A PROCEDURE FOR INSPECTIONS; REQUIRING A PERMIT FOR RENTAL UNITS; REQUIRING TENANT REGISTRATION; PROVIDING FOR INSPECTIONS AT THE TIME OF TRANSFER OF OWNERSHIP OF RENTAL UNITS; REPEALING ORDINANCE NO. 188 OF YEAR 1982 AND ORDINANCE NO. 480-12; AND ESTABLISHING PENALTIES FOR VIOLATIONS

WHEREAS, the Borough of Atglen desires to repeal Ordinance No. 188 of Year 1982 addressing tenant registration, repeal Ordinance No. 480-12 titled Atglen Borough Property Maintenance and Housing Occupancy Ordinance, and update the Borough's regulations regarding rental unit registration.

NOW THEREFORE BE IT ORDAINED AND ENACTED by Borough Council of the Borough of Atglen, Chester County, Pennsylvania as follows:

SECTION 1. Title: This Ordinance shall be known as the Atglen Borough Residential Rental Property Maintenance and Occupancy Ordinance.

SECTION 2. Intent and Authority: The Borough Council of the Borough of Atglen finds the establishment of a residential health and safety inspection program for residential property rental units is necessary to protect the public health, safety, and welfare by ensuring the proper maintenance of such housing, by identifying and requiring correction of housing, building safety, plumbing, electrical, property maintenance, and fire prevention violations, and by preventing conditions of deterioration and blight that could adversely affect economic conditions and the quality of life in the Borough.

The Borough may enact and enforce ordinances to govern and regulate the occupation, maintenance and inspection of building and housing and to prevent and restrain the use or occupancy of any building, housing or structure used or occupied in violation of such ordinances, and to provide for enforcement of such ordinances by summary offense by §3321 (b)(2) of the Pennsylvania Borough Code.

SECTION 3. Definitions.

APPLICATION - An application for a Permit, filed with the Borough by the property Owner (defined below), pursuant to this Ordinance.

B&B – A bed and breakfast typically referred to as a B&B or BnB. It is a small lodging establishment that offers overnight accommodations and oftentimes breakfast. B&Bs are often in private family homes occupied by the Owner.

BOROUGH - Borough of Atglen, Chester County, Pennsylvania.

BOROUGH COUNCIL - The members of Borough Council of the Borough of Atglen.

BOROUGH MANAGER - Borough Manager, Borough of Atglen.

CODES - Any Code or Ordinance adopted and in effect in and for the Borough of Atglen concerning the fitness for habitation or the construction, maintenance, operation, occupancy, use, or appearance of any premises or residential rental unit. Included within, but not limited by this definition, are the following which are in effect as of the date of the enactment of this Ordinance: Pennsylvania Uniform Construction Code, International Property Maintenance Code, Zoning Ordinance and any duly adopted amendment or supplement to any of the above and any new enactment falling within this definition.

CODE OFFICIAL - The duly appointed Code Enforcement Officer, or any authorized representative of that Officer or any other person authorized by the Borough Council to enforce the Ordinance, perform inspections, issue Residential Rental Permits, and issue notices of violation and citations.

DWELLING UNIT – A building or portion thereof providing one or more rooms designated, used or intended to be used as a single and separate unit, with its own sleeping areas(s) and sanitation facilities, occupied or to be occupied by one or more persons living as a housekeeping unit. Cooking facilities may be provided.

HOTEL – An establishment that provides lodging and various personal services for the public.

INSPECTION - An examination of a property by the Code Official to determine if the property complies with the Codes.

MOTEL – An establishment which provides lodging and parking and in which the rooms are usually accessible from an outdoor parking area.

NOTICE OF VIOLATION - Any Notice of Violation (“NOV”) issued by the Code Official pursuant to this Ordinance.

OCCUPANT - An individual or entity occupying a residential rental unit. A lease or written agreement is not required.

OWNER - Any person having a legal ownership interest in a residential property. The Owner may, in writing provided to the Borough, assign a representative to interact with the Borough on the Owner's behalf. For purposes of service to be provided under this Ordinance, the Owner of a property shall be the person(s) in whose name(s) the property on which the rental unit is located is recorded in the Office of the Recorder of Deeds of Chester County, as reflected on the tax duplicate issued by the Office of Tax Assessment of Chester County.

PERMIT - A residential rental unit occupancy permit issued by the Code Official pursuant to this Ordinance.

PERSON – An individual, corporation, partnership, trust, estate, association or other legal entity capable of holding title to real property.

REGISTRATION – A residential rental registration shall be required for the lawful rental of rental unit(s). Rental registration does not constitute a warrant by the Borough of the proper zoning, safety, or condition of the rental unit(s).

RENTAL UNIT - A dwelling unit within the Borough including single family homes, single family homes converted to multi-family use, rental apartment(s), rooming unit(s), B & B rentals, hotel, motel, and similar living accommodations which are leased or rented and not owner-occupied.

ROOMING UNIT - A portion of a dwelling unit including any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping but not for cooking purposes. Granting of permission to use shared or common cooking facilities may be associated with the leasing of a rooming unit.

TENANT - Any individual or entity who occupies a rental unit. A lease or written agreement is not required.

VIOLATION - Any condition of a rental unit subject to this Ordinance causing the rental unit to fail to comply with the Codes or any applicable housing, building, plumbing, electrical, safety, or fire prevention ordinance or regulation.

SECTION 4. Tenant Registration for Residential Rental Unit(s).

On a form obtained from the Borough, the Owner shall complete and submit to the Borough a completed tenant registration form within fifteen (15) days of the occupant's commencing residency in the rental unit. Annually, by February 15 of each year, the Owner shall submit a completed tenant registration form to the Borough. The completed form shall contain the rental unit address, contact information for the tenant, names of such occupants and designation as minor or adult for each occupant, contact information for the Owner, contact information for the Owner's local representative, number of rental units in the dwelling unit, and other needed information. There is no exemption from this requirement.

SECTION 5. Permit Required for Residential Rental Unit(s).

A. No Owner or person shall let to another for occupancy any rental unit unless he shall first apply for and obtain a permit issued by the Code Official.

B. Exemptions. A permit is not required when the Owner is the United States, the Commonwealth of Pennsylvania, the Borough of Atglen, or an agency thereof.

SECTION 6. Duration of Permits.

A. Except as provided in Section 6.B., a Rental Unit permit shall be issued upon a completed application and upon a satisfactory inspection performed according to the inspection schedule of the Code Official and shall continue in effect for two (2) years after the date of the application, except as otherwise provided in this Ordinance. Upon the expiration of said permit, a new permit shall be required for the ensuing two (2) years.

B. A Rental Unit permit shall be issued for a Rooming Unit, B & B, Motel, and Hotel upon a completed application and a satisfactory inspection performed according to the inspection schedule of the Code Official and shall continue in effect for one (1) calendar year after the date of the application. Upon the expiration of said permit, a new permit shall be required for the ensuing one (1) year.

SECTION 7. Application for Permit.

The Owner is required to complete a Borough application form and submit the application and required fee to the Borough. The Borough shall have no duty to process the application or schedule an inspection until the required fee is paid in full.

SECTION 8. Requirements for Issuance of Permit.

The Code Official shall issue the Permit for the rental unit when:

- A. The required application has been completed and filed with the Borough;
- B. The required fee has been paid in full;
- C. The rental unit has been inspected by the Code Official and receives a passing inspection.

SECTION 9. Denial of Permit.

If, upon inspection of the rental unit the Code Official determines the Permit shall not be granted, due to any condition(s) that does/do not comply with applicable Codes and regulations, the Code Official shall issue to the Owner a written determination identifying the non-compliant condition(s) and order that compliance be achieved in a timely manner. The Owner shall comply with all such orders, provided, however, that the Owner may appeal any such order, but only as provided in this Ordinance, and no such appeal shall relieve the Owner of the immediate duty to correct dangerous and/or nuisance conditions.

SECTION 10. Effect of Permit.

The issuance of a permit for a rental unit, which is not new construction, is based upon inspection of conditions readily observable by the Code Official. A permit does not constitute the Borough's warrant or representation that there is no condition at the inspected premises which violates applicable Codes and regulations. The Borough's ability to enforce compliance with its regulations, with respect to conditions existing at the time any permit is issued, is not limited by the issuance of the permit and reliance upon a permit shall not constitute a defense to an NOV or any enforcement action.

SECTION 11. Administration, Inspection, Enforcement.

- A. The Code Official shall administer and enforce this Ordinance and the Codes.
- B. The Code Official is authorized to inspect to determine the condition, occupancy, number of occupants, and use and/or compliance of all rental units as defined by this Ordinance and other applicable Borough regulations in order to safeguard the health and safety of the occupants thereof and the general public. Furthermore, the Code Official is authorized to enter by way of appointment or other manner provided in this Ordinance for the purpose of examining and surveying all areas of the habitable premises at all reasonable times. Every occupant and Owner of any rental unit shall extend to the Code Official access to such premises for the purpose of making an inspection, examination, or survey at all reasonable times.

C. The Code Official is authorized to issue permits, revoke permits and issue determinations of non-compliance or NOVs under this Ordinance and other applicable Borough regulations; to issue orders compelling compliance with the Codes; and to file and prosecute legal and equitable actions to compel such compliance.

D. Search Warrants - If entry to any property, building or rental unit, for the purpose of inspection is denied to the Code Official, the Code Official may apply to the appropriate authority for an administrative search warrant under the following circumstances:

1. The inspection is part of a systematic inspection, permitting and enforcement program;
2. The Code Official has knowledge of or probable cause to believe that there is an existing or suspected violation of applicable Codes and regulations, in the rental unit or on the premises of which the rental unit is part; and/or;
3. The entry is necessary for the purpose of re-inspecting the condition of a rental unit for correction of a violation of a Borough regulation previously observed by the Code Official and which the Code Official ordered to be corrected.

A search warrant is not required if an imminent danger to health or safety exists, or the Code Official has probable cause to believe that a dangerous condition exists and an inspection is required to determine if an imminent danger to health or safety exists.

E. Emergency Order - If the Code Official determines that, within any residential premises, an emergency condition exists which requires immediate action to protect the public health, safety and/or welfare, the Code Official may issue a determination declaring the existence of such emergency condition and an order requiring the action necessary to be undertaken by the Owner to correct such condition effectively and immediately. The Owner may file an appeal of such order, but any such appeal shall neither serve as nor have the effect of a supersedeas.

SECTION 12. Enforcement, Service of Notices, and Orders.

A. Whenever the Code Official believes, or has cause to believe, that a violation of this Ordinance or any other Code or regulation exists, the Code Official shall give written notice to the Owner that an inspection is required and the Owner shall promptly schedule the inspection.

B. Should a violation exist, the Code Official shall first attempt to mediate the issue for a period of at least seven (7) days. No attempt to mediate the issue shall be required in the event of a condition posing imminent danger to public health, safety or welfare, as solely determined by the Code Official. If the issue has not been resolved the Code Enforcement Officer shall issue an NOV to the Owner requiring the abatement of the violation, which notice shall:

1. State the nature of the violation;
2. Identify the Code and/or regulations violated;
3. Identify the date the notice is issued; and
4. Include an order requiring correction within a specified time.

The NOV may contain other requirements for compliance as well as any other pertinent information or statements which the Code Official deems appropriate under the circumstances.

The service of NOV shall be made by 1) personal service by hand delivery or 2) by both regular first class mail, postage prepaid, and certified mail, return receipt requested signed by the Owner or authorized agent. A Notice of Violation personally served on the Owner shall be effective immediately. Service by mail shall be deemed complete unless the mailing is returned or noted as unfound.

If a person or entity does not comply with the NOV as directed, a summary citation may be issued.

SECTION 13. Transfer of Property. Any permit issued under the provisions hereof shall terminate upon the transfer of ownership of the property, and the new Owner shall apply for a renewal thereof within thirty (30) days of such ownership transfer. The renewal period shall be determined in accordance with Section 6 of this Ordinance. An Owner of a rental unit who transfers his interest therein to a new Owner shall have no right to a reimbursement from the Borough for all or any part of his last paid permit fee upon transfer.

SECTION 14. Re-inspection During Term of Permit. The Code Official may re-inspect any property for which a permit has been issued upon receiving complaints from the occupants or other property owners affected by the expressed condition.

SECTION 15. Fees and Charges.

Fees and charges for the application, permit, inspection, re-inspection, missed appointments, and other matters pursuant to this Ordinance shall be established from time to time by Borough Council by Resolution.

SECTION 16. Appeal.

A. An appeal from a decision of the Code Official or from an NOV shall be addressed to the Borough Council.

B. An appeal shall be commenced by filing a written Notice of Appeal with the Borough Manager within fifteen (15) days after service of the NOV or decision of the Code Official. At the time of filing the Notice of Appeal, a filing fee shall be submitted, the amount of which shall be established by Borough Council by Resolution. The Notice of Appeal shall state specifically all the grounds and facts on which the appeal is based and shall identify the mailing address of the appellant for purposes of communications concerning the appeal.

C. Within thirty (30) days after the Borough Manager receives the Notice of Appeal, Borough Council shall hold a public hearing thereon. Written notice of the hearing shall be given to the appellant and Borough Council not less than fifteen (15) days prior to the date of the hearing.

D. During the hearing Borough Council shall review the Notice of Violation, the Notice of Appeal, applicable Codes and regulations, hear testimony of witnesses and examine other

evidence proffered by the appellant as Borough Council deems to be of probative value. Strict rules of evidence shall not apply, however clearly flagrant, irrelevant or repetitive information may be determined to be inadmissible by Borough Council. Borough Council's review shall be limited to the specific issues raised by the Notice of Appeal.

E. Borough Council shall issue an Adjudication and Order within thirty (30) days after the hearing. The Adjudication and Order shall be in writing and shall set forth the reasons for the decision. The Adjudication and Order shall be served upon all parties, or their attorney of record by first class regular mail, postage pre-paid, or by personal service, within three (3) business days of the issuance.

F. Should an appeal of Borough Council's Adjudication and Order be desired said appeal shall be filed with the Court of Common Pleas within thirty (30) days of the date the Adjudication and Order is mailed to and/or served personally to the appellant or the appellant's attorney.

SECTION 17. Violations and Penalties.

An Owner or person who violates any provisions of this Ordinance shall, upon conviction thereof in a summary proceeding brought before a magisterial district judge in the manner proved for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be subject to the payment of a fine of not less than Twenty-Five Dollars (\$ 25) and not more than One Thousand Dollars (\$ 1000) plus the costs of prosecution. Upon default of payment thereof, the defendant may be sentenced to imprisonment in the County prison for not more than thirty (30) days. Each section of this Ordinance that is violated shall constitute a separate offense, and each day or portion thereof in which a violation of this Ordinance is found to exist beyond the time limit for correction of the violation in an NOV, shall constitute a separate offense, each of which violation shall be punishable by a separate fine imposed by the magisterial district judge of not less than Twenty-Five Dollars (\$25) and not more than One Thousand Dollars (\$1,000) plus the costs of prosecution, and upon default of payment thereof, the defendant may be sentenced to imprisonment in the County prison for not more than thirty (30) days.

In addition to the above, the Borough may institute an action for injunctive relief to prohibit or abate any activity in violation of the provisions of this Ordinance.

All court costs and reasonable attorney fees incurred by the Borough in connection with enforcement proceedings under this Ordinance shall be assessed against the Owner.

SECTION 18. Repealer.

Ordinance No. 188 of Year 1982 addressing tenant registration and Ordinance No. 480-12 titled Atglen Borough Property Maintenance and Housing Occupancy Ordinance, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 19. Severability.

If any section or provision of this Ordinance is held, by the final Order of any Court of competent jurisdiction, to be unconstitutional, illegal or invalid, all the remaining sections and provisions of this Ordinance shall remain in full force and effect.

SECTION 20. Effective Date.

This Ordinance shall be effective at the earliest permissible date as provided for under the Pennsylvania Borough Code.

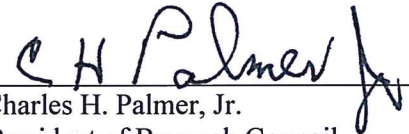
DULY ORDAINED AND ENACTED by the Borough Council of the Borough of Atglen, this 6th day of August 2018, in lawful session duly assembled.

BOROUGH OF ATGLEN

Attest:



Caren D. Andrews, Manager/Secretary

By: 

Charles H. Palmer, Jr.
President of Borough Council

APPROVED THIS 6 DAY OF August, 2018

By: 

George E. Stewart, Mayor