

ORDINANCE NO. 2015-12

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
HESPERIA, CALIFORNIA, REQUIRING THE REGISTRATION
AND REGULATION OF HOUSING RENTAL BUSINESSES FOR
CRIME FREE RENTAL HOUSING**

WHEREAS, the City of Hesperia ("City") has experienced an increase in the occurrence of substandard maintenance, unsafe conditions, illegal activity and public nuisances in single-family rental and multi-family rental property, especially those owned by absentee landlords; and

WHEREAS, residential rental properties are responsible for a disproportionate share of code enforcement and law enforcement calls for service that necessitates a disproportionate expenditure of public funds for such properties; and

WHEREAS, illegal activity in the City interferes with the health, safety, quality of life, quiet enjoyment and general welfare of the individuals residing near rental property and may contribute to a decline in the value of surrounding properties; and

WHEREAS, homeowners and other residents in a given neighborhood have little to no influence on absentee landlords who operate a substandard rental property; and

WHEREAS, existing state and local laws have not sufficiently encouraged landlords, particularly absentee landlords, to take reasonable and proactive steps to abate these conditions and to ensure their premises are crime-free, safe and decent; and

WHEREAS, the City Council has determined it is necessary to implement a "Crime Free Rental Housing Program" to alleviate these problems and improve living conditions for renters, and protect the general welfare of individuals in affected neighborhoods; and

WHEREAS, pursuant to Article XIII B of the California Constitution, it is the intent of the City Council to recover the costs related to the regulation of rental properties located in the City; and

WHEREAS, the rental and letting of housing is a business and it is necessary and proper to regulate such a business to ensure there is safe and decent housing for persons of all income levels; and

WHEREAS, the County Sheriff's department has purchased Crime Free tracking software that allows the Sheriff's Department to quickly determine if a prospective tenant has been in violation of the Crime Free program anywhere in San Bernardino County; and

WHEREAS, through the adoption of this Chapter, the City will implement a new program that is rationally related to encourage upkeep of all residential rental property for the public health, safety, and welfare of the residents of the City of Hesperia.

**NOW, THEREFORE, THE CITY COUNCIL OF CITY OF HESPERIA DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. Chapter 8.20 "Crime Free Rental Housing Program" is hereby added to the Hesperia Municipal Code to read in its entirety as follows:

"CRIME FREE RENTAL HOUSING PROGRAM

- 8.20.010 Purpose and Scope
- 8.20.020 Definitions
- 8.20.030 Rebuttable Presumption
- 8.20.040 Residential Rental Property Registration
- 8.20.050 Crime Free Rental Housing Program
- 8.20.060 Inspections
- 8.20.070 Fees
- 8.20.080 Appeals
- 8.20.090 Complaint-Based Inspections
- 8.20.100 Voluntary Inspection Requests
- 8.20.110 Enforcement
- 8.20.120 Severability

8.20.010 – Purpose and Scope.

The purpose of this Chapter is to identify and regulate rental dwelling units in the City of Hesperia, to ensure that such units afford Tenants a safe and decent place to live, to hold Tenants and Owners accountable for their actions, and to reduce criminal activity. The City Council has determined that requiring that all rental dwelling units governed by this Chapter be registered with the City and inspected, and requiring landlords to use a Crime Free Lease Addendum in their leases, serves these legitimate governmental interests.

Nothing in this Chapter shall be construed to:

- A. Excuse, waive, limit, or modify any requirements or obligations in the Applicable Laws;
- B. Limit any right or authority of the City to investigate and abate nuisances or to enforce any provisions of the Applicable Laws or any other provision of law;
- C. Conflict with any rights or obligations under the Fair Housing Laws or the Americans with Disabilities Act, as amended;

D. Otherwise prevent or waive compliance with all other Applicable Laws or regulations; or

E. Discourage victims of domestic violence or abuse from reporting such violence or abuse.

8.20.020 – Definitions.

For the purposes of this Chapter, words and phrases used in this Chapter shall mean as they are defined in Chapter 1.04 of this Code, except as otherwise defined below.

"Annual Inspection" means an inspection meeting the criteria and standards of Crime Free Through Environmental Design (CFTED).

"Applicable Laws" means and includes all federal, state and local statutes, ordinances and regulations that pertain to the condition, habitability and safety of dwelling units and residential property. This includes, but is not limited to, this Code.

"Law Enforcement Officer" means an individual(s) who is designated by State law or by the City Manager to enforce Applicable Laws.

"Criminal Activity" means behavior or actions that are in violation of established federal, state, or local laws, including but not limited to all Applicable Laws.

"Crime Free Lease Addendum" means the lease addendum described in this Chapter.

"Fair Housing Laws" means the Federal Fair Housing Act, as amended, (42 U.S.C. Sec. 3601 et seq.), the California Fair Housing and Employment Act (Government Code Sec. 12900 et seq.), and the Unruh Civil Rights Act (Civil Code Sec. 51).

"Local Property Management Company" shall mean an entity that is responsible for the day-to-day maintenance, upkeep and security of a rental property and is operated by a person who is licensed with the California Department of Real Estate as a real estate broker.

"Local Property Manager" shall mean a person who is responsible for the day-to-day maintenance, upkeep, and security of the rental property. The local property manager may be the Owner of the property.

"Occupant" or "Tenant" means any person who occupies a Residential Rental Property, whether as a Tenant or permittee of the Owner.

"Owner" or "Property Owner" means a single individual, partnership or joint venture or any entity that has any kind of ownership interest in a Single-Family Residential Rental Property, Multi-Family Rental Property, or Residential Rental Dwelling Unit (collectively, "Residential Rental Property") whether as an

individual, partner, joint venture, stock owner, or ownership interest in some other capacity or the Owner's designee, which may include a Local Property Management Company. If more than one person or an entity owns the subject rental property, Owner or Property Owner refers to each person or entity holding any kind of ownership interest in the property, and the Property Owners' obligations in this Chapter are joint and several as to each Property Owner. Owner shall also mean any person having legal title to real property, including all individuals shown as Owners on the last equalized assessment roll of the San Bernardino County Assessor's Office, or an Owner's authorized representative.

"Program" means the Crime Free Rental Housing Program as set forth in this Chapter.

"Single-Family Residence" means a dwelling configured for one group to live in with common areas such as a kitchen and common bathrooms on a single property.

"Multi-Family Residences" means three dwellings or more on a single property.

"Single-Family Residential Rental Property", "Multi-Family Rental Property", or "Residential Rental Dwelling Unit" (collectively, "Residential Rental Property") means a dwelling unit, all or part of which is occupied by a person(s) other than the Owner of the unit where money, services or valuables are exchanged for the ability to reside whether this agreement is verbal or in writing. This includes the premises on which said Residential Rental Property is situated and any common areas. The following types of dwelling units or facilities are not considered Residential Rental Property:

1. Hotels or motels.
2. Accommodations in any hospital, extended care facility, residential care facility and convalescent home.
3. Mobile home parks.
4. Business, commercial or industrial properties unless there is a dwelling structure on the property.

8.20.030 – Rebuttable Presumption.

For the purpose of this Chapter, if the water, refuse, gas, electric or property tax bill is in a different name than that of the Property Owner, or if the water, refuse, gas, electric or property tax bill is in the Owner of record's name but mailed to an address other than the property address, it shall be a rebuttable presumption that the property is Residential Rental Property. This presumption can be rebutted by the Owner of record, or by his or her designated representative, providing satisfactory documentation to the City that the property is Owner-occupied or is not being used for rental income.

8.20.040 – Residential Rental Property Registration.

A. Registration Required. As a condition of exercising the privilege of renting or leasing a Residential Rental Property to any person and/or entity, the Owner of the Residential Rental Property, Local Property Management Company or Local Property Manager shall register with the City by the first day of the January immediately following the adoption of this Chapter and shall register every subsequent first day of January thereafter.

1. Contents of Registration Form and Payment of Fees. The registration form shall be in a format determined by the City Manager from time to time, and shall contain the location of the Residential Rental Property, the Owner's name and contact information, the name of person acting on the Owner's behalf and his or her contact information, number of dwelling units, and any other information the City Manager deems necessary. The Owner shall pay an annual registration fee, set by resolution of the City Council, which shall cover the costs of the City's administration and enforcement of this Chapter.

2. Non-Transferable. Registration of a Residential Rental Property accepted by the City pursuant to this Chapter is not transferable to a new Owner of the Residential Rental Property. Any new Owner must re-register and provide current registration information.

3. Failure to Register. Failure to comply with or violations of this Chapter shall be considered a misdemeanor.

8.20.050 – Crime Free Rental Housing Program.

A. Participation in the Program. Owners shall participate in the Program by registering pursuant to Section 8.20.040. Owners who comply with the requirements of this Chapter will be considered in "good standing," and the City may hold in abeyance any fines levied against a Tenant for such Tenant's unlawful activity in or around the Residential Rental Property leased by the Tenant, and not levy such fines against the Owner. If the Owner is not in good standing, the City shall levy fines against the Tenant and the Owner jointly and severally.

B. Crime Free Tenant Screening. The Chief of Police will maintain a Crime Free data base. This data base shall include all Owners participating in the Program. All Owners or their designees are required to provide identifying information for all potential adult Tenants of a Residential Rental Property prior to leasing or renting. Prospective adult Tenants must be identified by a valid government-issued photo identification card. The Chief of Police will in turn determine if the potential adult Tenants have been in violation of a Crime Free agreement or rules at previous locations. The Chief of Police shall provide the Owner or their designee notice of the determination as provided herein within two (2) business days after receipt of identifying information contemplated herein. Upon receiving this notice, the Owner or their designee has the sole discretion to take actions that he or she determines to be legally appropriate.

C. **Crime Free Lease Addendum.** The Crime Free Lease Addendum shall be in a form approved by the City Manager from time to time, and subject to approval of the City Council. The Owner of a Residential Rental Property shall include the Crime Free Lease Addendum in any lease agreement between the Owner and Tenant. The Crime Free Lease Addendum shall be incorporated into all new or renewed rental agreements and leases executed after the effective date of this Chapter.

1. When an Owner or their designee is notified by the Chief of Police, or his or her designee, that a Tenant has engaged in criminal activity that would violate any federal, state or local law, on or near the Residential Rental Property leased to Tenant, the Owner shall begin the eviction process against the Tenant within 10 business days of the date of such notice, and pursuant to the Crime Free Lease Addendum. The Chief of Police may require proof of the eviction process. Notwithstanding for the foregoing, this Chapter shall not be applied in a manner that will result in the eviction of a victim of domestic violence or abuse.

a. When allowed by law the notice provided by the Chief of Police shall provide a report or incident number, identify the offending Tenant(s), unit number if applicable, and the specific violation(s), and shall state the date(s) and time(s) of any observed criminal activity and any resulting arrest(s), and shall further state the Owner's obligations under this Chapter.

b. The notice provided by the Chief of Police contemplated hereunder shall, to the extent permitted under Applicable Law and at the Chief of Police's discretion, contain the evidence and documents used by the Chief of Police to determine whether a Tenant has engaged in criminal activity as contemplated herein.

c. The notice provided by the Chief of Police shall be in writing and sent by email with acknowledgement or certified mail, return receipt requested.

D. **Criminal Background Check.** In addition to the Crime Free Tenant Screening described above, Owners shall conduct a criminal background check for all Tenants using a commercially available service, at Owner's cost. The Owner shall maintain the criminal background check on file during the Tenant's occupancy of the Residential Rental Property.

8.20.060 – Inspections.

A. **Annual Inspections.** All Residential Rental Property located in the City shall be subject to an annual inspection by the City for compliance with Applicable Laws. The specific items to be inspected will be in keeping with national standards for the Crime Free program and can be adjusted with approval of the City Manager to meet the needs of this city. The Owner or their designee will receive the results of the inspection.

B. **Notice of Inspection and Procedures.**

1. After receiving a completed registration form from an Owner, the City will conduct an exterior inspection of the Residential Rental Property to identify compliance with the Program and Applicable Laws. Additionally, a subsequent inspection of the Owner's records may be requested to ensure compliance with this Chapter.

2. No prior notice of inspection will be made to the Owner. An Owner does not have to be present for the inspection.

C. Members of the City's police department will be responsible for conducting the inspections authorized by this Chapter. However, the City may request that other City departments participate in the inspection process. The inspection will be from the exterior of the Residential Rental Property's buildings and structures. It will cover items relating to crime prevention and the health and safety of the Occupants.

D. After completion of the inspection, a written report of the inspection will be sent to the Owner. The report shall contain:

1. An itemization of any violations of the Applicable Laws identified during the inspection;

2. The period of time for correcting each of the identified violations;

3. A statement of a re-inspection at the end of the period of time for correction, if applicable;

4. The amount of the re-inspection fee and the date by which the re-inspection fee must be paid; and

5. A statement that if the violations are not corrected within the period of time for correction the City may pursue legal action as authorized under this Code to abate such violations.

6. If no violations are found as a result of the inspection, the inspection report shall state so and City shall issue a certificate of registration to the Owner.

8.20.070 – Fees.

The City Council may establish such fees that are necessary for the administration of the regulatory program established by this Chapter. All such fees shall be set by resolution of the City Council.

8.20.080 – Appeals.

A. Any recipient of an administrative citation may contest the citation by the procedures set forth in this Code.

B. Any party to an administrative citation hearing may appeal an adverse ruling in accordance with this Code.

8.20.090 – Complaint-Based Inspections.

Nothing contained in this Chapter shall prevent or restrict the City's authority to inspect any Residential Rental Property in response to a complaint alleging code violations or violations of Applicable Laws and to pursue all remedies permissible under Applicable Laws.

8.20.100 – Voluntary Inspection Requests.

Nothing contained in this chapter shall be construed to prohibit a property Owner or Occupant from voluntarily requesting an inspection pursuant to this chapter to determine whether the Residential Rental Property complies with Applicable Laws.

8.20.110 – Enforcement.

A. **Violations Identified During Inspection.** If the Owner fails to correct a violation of the Applicable Laws identified in the report of inspection within the time allowed, the City may issue an administrative citation, issue a notice of intent to abate, or may take any other action authorized by law to enforce the provisions of this Code.

B. **Failure to Pay Fees.** Should an Owner fail to timely pay any fees due under the Program, the City may take appropriate action to recover the unpaid fees, including any accrued interest, penalties and personnel costs utilizing any remedies authorized by law.

C. **Violations.** Owners who fail or cause to fail to cooperate with inspections required under this Chapter or fail to otherwise comply with the requirements of this Chapter may be subject to an administrative citation in accordance with this Code or any other action authorized by law to enforce the provisions of this Chapter.

D. **Strict Liability.** Violations of this Chapter shall be treated as a strict liability offense regardless of intent. Any person, firm and/or corporation that violates any portion of this Chapter shall be subject to prosecution under Applicable Law.

E. **Revenue and Taxation Code.** The City may also utilize the provisions of the Revenue and Taxation Code Section 24436.5 to encourage the elimination of substandard conditions in rental housing. The City is also authorized to bring an action under the Business and Professions Code for unfair business practices.

F. Attorneys' Fees. In an action, administrative proceeding, or special proceeding to abate a violation of this Chapter, the prevailing party may recover Attorneys' fees pursuant to Government Code Section 38773.5. Recovery of Attorneys' fees is limited to those individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own Attorneys' fees. An award of Attorneys' fees to a prevailing party shall not exceed the amount of reasonable Attorneys' fees incurred by the City in an action, administrative proceeding, or special proceeding.

8.20.120 – Severability.

If any provision, section, paragraph, sentence or word of this Chapter is determined or declared invalid by any final court action in a court of competent jurisdiction or if the application of any provision, section, paragraph, sentence or word of this Chapter is inapplicable to a specific situation by reason of any preemptive state or federal legislation or regulation, the remaining provisions, sections, paragraphs, sentences or words of this Chapter shall remain in full force and effect."

SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, phrase, or portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 3. This Ordinance shall be effective commencing on January 1, 2016.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of the same to be published in a manner prescribed by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Hesperia, California, at a regular meeting held on this 17th day of November, 2015.

Eric Schmidt, Mayor

ATTEST:

Melinda Sayre, City Clerk

APPROVED AS TO FORM

Eric L. Dunn, City Attorney