

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, ADDING CHAPTER 89A (RESIDENTIAL RENTAL UNIT INSPECTION PROGRAM) TO TITLE VIII (CODE ENFORCEMENT) OF THE CITY OF DESERT HOT SPRINGS MUNICIPAL CODE ESTABLISHING A COMPREHENSIVE RESIDENTIAL RENTAL UNIT INSPECTION PROGRAM

WHEREAS, pursuant to the police power granted to the City of Desert Hot Springs ("City") under Article XI, Section 7 of the California Constitution, as well as under Sections 100, 101, 500 and 600 of the City's Charter, the City may adopt rules and regulations to serve and protect the health, safety and welfare of the public; and

WHEREAS, the City Council finds and declares that substandard and unsanitary residential buildings and dwelling units exist within the City, and that the physical conditions and characteristics of which violate state housing and technical codes and render them unfit or unsafe for human occupancy and habitation, and which are detrimental to or jeopardize the health, safety and welfare of their occupants and the public; and

WHEREAS, substandard and deteriorated housing has a detrimental effect upon the stability of neighborhoods, is environmentally undesirable and therefore detrimental to the City's residents and to neighboring communities; and

WHEREAS, the existence of substandard housing units necessitates disproportionate expenditures of public funds for remedial action and impairs the efficient and economical exercise of governmental powers and functions; and

WHEREAS, the City currently lacks a housing code enforcement program that provides for the periodic inspection of residential rental dwelling units, hotels and motels throughout the City; and

WHEREAS, improving the residential housing environment and providing for neighborhood stability throughout the City requires periodic inspection of residential housing units and hotels and motels in the City to ensure that such premises conform to the state housing codes and other applicable laws; and

WHEREAS, the City Council finds that by adopting regulations and procedures requiring the inspection of residential rental dwelling units, including hotels and motels, the City will be better equipped to remedy the existence of, or prevent the development of dangerous, substandard or unsanitary residential rental dwelling units and hotel and motel rooms within the City; and

WHEREAS, the fees imposed pursuant to this ordinance shall not exceed the reasonable cost of providing the service for which such fees are charged and shall be reasonable, fair, equitable and proportionately representative of the costs incurred by the City in providing such services; and

WHEREAS, such fees imposed to recover the cost of the Residential Rental Unit Inspection Program are imposed not on property ownership per se but rather on the carrying on of the business of renting residential property subject to this ordinance; and

WHEREAS, in accordance with the holding of the California Supreme Court in the case of *Apartment Association of Los Angeles County, Inc., v. City of Los Angeles* (2001) 24 Cal. 4th 830, fees that are imposed by public agencies to recover the cost of providing services such as the Residential Health and Safety Rental Inspection Program which fees are imposed on specified property uses rather than on property ownership per se are neither fees or charges imposed as an incident of property ownership nor property-related services that have a direct relationship to property ownership pursuant to Section 3 of Article XIID of the California

Constitution, and such fees are therefore exempt from the requirements of Article XIID of the California Constitution; and

WHEREAS, nothing in this ordinance shall limit the City's ability to inspect properties and issue citations for property-related conditions that may constitute an immediate health or safety threat.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Desert Hot Springs finds that the above recitals are true and correct.

Section 2. Chapter 89A is hereby added to Title VIII (Code Enforcement) of the City of Desert Hot Springs Municipal Code and shall read in its entirety as follows:

Chapter 89A Residential Rental Unit Inspection Program

89A.01 Purpose.

The purpose of this Chapter is to address the existence of substandard and unsanitary residential buildings and dwelling units within the City, the physical conditions and characteristics of which render them unfit or unsafe for human occupancy and habitation and which are detrimental to or jeopardize the health, safety and welfare of the public. The establishment of a periodic housing inspection program for all rental dwelling units, and the specification of caretaker requirements for apartments is necessary to prevent deterioration of the City's housing stock and blight in such housing that could adversely affect economic conditions and the quality of life in the City.

89A.02 Definitions.

For purposes of this Chapter, the following definitions shall have the meanings defined herein:

- a. "Certificate of Compliance" shall mean the certificate(s) issued evidencing compliance with the requirements of this Chapter.
- b. "Chapter" shall mean Chapter 89A of Title VIII (Code Enforcement) of the City's Municipal Code.
- c. "City" shall mean the City of Desert Hot Springs.
- d. "Code" shall mean the Municipal Code of the City of Desert Hot Springs.
- e. "Code Enforcement Officer" means the individual employed by the City to conduct inspections and to take such actions as may be required by the provisions of this Chapter for the purpose of enforcing certain prescribed provisions of the Municipal Code and all applicable statutes, rules, codes and regulations.
- f. "Code Enforcement Department" shall mean the Director of Code Enforcement, or his/her designee.
- g. "Community Development Director" shall mean the Director of Community Development, or his/her designee.
- h. "Deficiency" shall mean any failure of a Unit subject to this Chapter to comply with applicable laws.
- i. "Major Violation" shall mean any one or more of the following violations:
 - i. Heating system not fully operational at any time between October and May of the following year.

- ii. Hazardous code violations, including any one or more of the following:
 - 1. Exposed electrical wiring;
 - 2. Collapsed ceiling or walls caused by water leakage;
 - 3. Sewage leakage into walls, floors or onto the ground;
 - 4. Structural damage resulting in the building being determined by the Director of Community Development to be unsafe;
 - 5. Fire alarm system not fully operational;
 - 6. Firewalls damaged or not maintained.

- j. "New construction" shall mean those Units issued a Certificate of Occupancy within the preceding six (6) months.

- k. "Occupant" means the person or persons having a right of present possession of the affected property, other than the owner, including without limitation tenant(s), subtenant(s), lessee(s), sublessee(s), or assignee(s), or any authorized agent of any such person(s) or owner(s).

- l. "Residential dwelling" shall mean a single-family home, duplex, multi-family dwelling, hotel, motel or other similar living accommodations.

- m. Unit shall mean a residential dwelling occupied by or intended for occupancy by other than the Owner of the Unit, located within the City.

- n. "Owner" shall mean the owner of record as shown on the last equalized assessment roll of the county or as otherwise may be known to the Code Enforcement Officer. If there is more than one owner, the term includes all of the owners. For purposes of providing notice to an owner of any action or proceeding under this chapter, "owner" includes the actual owner of record, or such owner's agent, employee or other legal representative if such agent, employee or representative is authorized by the owner to receive such notice.

- o. "Unit unavailable for rent" shall mean a residential dwelling whose Owner has filed with the Code Enforcement Department a statement, signed under penalty of perjury in accordance with administrative regulations adopted pursuant to this Chapter, providing that such residential dwelling is not offered or available for rent as a Unit, and that prior to offering or making available such residential dwelling for rent as a Unit, the Owner will apply for a Certificate of Compliance, as required by this Chapter.

89A.03 Scope.

The provisions of this chapter shall apply to all Units, except however, that the provisions of this Chapter shall not apply to:

- a. Owner or manager-occupied Units;

- b. Units that are owned, operated or managed by a government agency other than the City or which are exempt from municipal regulation pursuant to state or federal law or regulations, but only so long as such government Ownership, operation or management or exemption from municipal regulation continues in effect;

- c. Units Unavailable for Rent;

- d. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code;

- e. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code; or

- f. A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code.

89A.04 Registration Required.

Every Owner carrying on the business of operating rental Units within the City is subject to the requirements of this Chapter. All Owners shall register their Unit(s) with the Code Enforcement Department within six (6) months of the effective date of this Chapter or within sixty (60) days of a property being converted to a Unit as defined by this Chapter. A fee shall not be required to register new construction, which shall not require re-registration for five (5) years unless its Certificate of Compliance is terminated or otherwise expires.

89A.05 Certificate of Compliance Requirement.

Owners of all Units subject to this Chapter shall have and maintain a valid and current Certificate of Compliance. A Certificate of Compliance shall be issued for each Unit upon completion of the following:

- a. The Unit has been inspected and approved by the Code Enforcement Officer;
- b. Any existing Code violations have been corrected and/or repaired and any required permits have been obtained;
- c. A current, complete registration application is on file with the Code Enforcement Department;
- d. All registration and inspection fees have been paid in full.

89A.06 Certificate of Compliance Contents.

Certificates of Compliance issued pursuant to this Chapter shall specify: the date of issuance, the legal use and occupancy of the Unit, the Unit address, the name of the Unit Owner to whom the Certificate of Compliance is issued, and that the Unit complies with applicable laws, including regulations under the City's Code, so far as could be determined by the inspection. Issuance of a Certificate of Compliance shall not constitute a guarantee or warranty of the habitability or complete compliance with City housing and property maintenance standards, and the Occupant of any Unit shall not rely on the Certificate of Compliance as such a guarantee or warranty. The Certificate of Compliance shall contain a notice to this effect. The City shall not assume any liability to any person by reason of the inspections required by this Chapter or the issuance of a Certificate of Compliance.

89A.07 Expiration of Certificate of Compliance.

Certificates of Compliance shall expire on the expiration date shown on the Certificate and shall be renewed prior to such date. The Code Enforcement Department shall determine the expiration dates of Certificates of Compliance and inspection frequency based on the nature of violation(s) discovered during the Unit inspection(s), pursuant to Section 89A.08 of this Chapter.

89A.08 Initial Inspection.

Within twenty (20) calendar days of registering a Unit, the Code Enforcement Department shall cause the Unit or Units specified in the registration documents to be inspected by a Code Enforcement Officer. All Units shall be inspected for compliance with the City's housing laws and the provisions of Health and Safety Code Sections 17910-17995. The Code Enforcement Department may require inspections by other City departments (i.e., Building Inspector, Fire Department) and/or Riverside County enforcement agencies, as may be authorized by state law.

89A.09 Notice of Inspection.

The Code Enforcement Department shall give a minimum of ten (10) calendar days advance written notice of the date and time of the inspection. Such notice shall provide the address and phone number where additional information concerning the inspection may be obtained. Notice shall be sent to Owner by U.S. mail, first class, postage pre-paid, at the address listed on the registration form filed with the City. The Code Enforcement Officer shall post a notice at the Unit to inform all Occupants of the inspection. The notice shall also be sent via U.S. mail, first class, postage pre-paid, to the Occupant(s) of the Unit, at the Unit address.

89A.10 Consent.

Owners shall make every effort to make Unit(s) subject to this Chapter available to the City for inspection. If the Owner and/or Occupant does not consent to entry by the City for purposes of this Chapter, the Code Enforcement Officer may not force or otherwise attempt to gain entry except in accordance with a valid inspection warrant issued in accordance with California Civil Procedure Section 1822.50, *et seq.*

89A.11 Cancellations.

Inspection cancellations must be made at least forty-eight (48) hours in advance. All cancellations made with less than forty-eight (48) hours advance notice shall be subject to a cancellation fee established by the City Council pursuant to Section 89A.13.

89A.12 Re-inspections.

A Unit that exhibits a deficiency or deficiencies shall be subject to re-inspections as set forth in the administrative regulations adopted pursuant to Section 89A.24 of this Chapter.

89A.13 Payment for Inspection.

Payment for the Unit inspection shall be received before an inspection will be performed. The Residential Rental Unit Inspection Program fee shall be established by a resolution of the City Council. The registration fee shall be deemed to cover the cost of the Code Enforcement Officer's first inspection and one follow-up inspection per Unit. Fees for any and all additional inspections shall be set forth in the City's regular fee schedule.

89A.14 Inspection Schedule.

- a. Any Unit issued a certificate of occupancy within the preceding six (6) months shall not be inspected for a period of five (5) years, subject to the limitations of Sections 89A.16, 89A.17 and 89A.18 of this Chapter.
- b. All Units shall be inspected once every three (3) years unless a Major Violation is found during an inspection, or a violation is not corrected within thirty (30) days from the date of the Notice of Violation, in which case such Unit may be inspected each year, subject to the limitations of Sections 89A.16, 89A.17 and 89A.18 of this Chapter.

89A.15 Renewal of Certificate of Compliance.

The Owner of a Unit subject to this Chapter shall apply for a Certificate of Compliance and pay all required fees not less than thirty (30) days prior to the scheduled expiration of a Certificate of Compliance. The Owner of the Unit shall re-register and meet all requirements and pay all fees for a new Certificate of Compliance. Upon re-registration, the Unit shall be inspected pursuant to the provisions of Section 89A.08 of this Chapter. If the Unit complies with the provisions of Section 89A.05 of this Chapter, a Certificate of Compliance shall be issued.

89A.16 Voluntary Inspection Requests.

Nothing in this Chapter shall be construed to prohibit an Owner or Occupant from voluntarily requesting an inspection pursuant to this Chapter to determine whether a Unit complies with applicable laws, even though such inspection may not be required pursuant to this Chapter. Such voluntary inspection requests shall be subject to all of the provisions of this Chapter, including, but not limited to, the provisions governing applications and fees.

89A.17 Immediate Health and Safety Threats.

Nothing in this Chapter shall limit the City's ability to inspect properties and issue citations for property-related conditions that may constitute an immediate health or safety threat, including, but not limited to Sections 83.01, 89.04 and 150.024.010 of the City's Code.

89A.18 Complaints.

Upon receipt of a complaint of violation(s) of the City's Municipal Code, housing laws or violations of Health and Safety Code Sections 17910-17995, the City shall inspect the pertinent Unit(s) and/or area(s) of the property. All violations shall be corrected and re-inspected within the time specified in the Notice of Violation.

89A.19 Notice of Violation.

If an inspection of a Unit or its premises conducted pursuant to this Chapter reveals any violations of applicable City ordinances or state laws, including the substandard housing provisions of Health and Safety Code Section 17910-17995, the City shall issue a Notice of Violation, containing the information required by Section 84.02 of the Code. The Notice of Violation shall be mailed to the Owner at the address listed on the registration form filed with the Code Enforcement Department. The violation must be cured within thirty (30) days of the date of the Notice of Violation. If, upon re-inspection the violation remains, the City may seek any remedies permitted by law and the City's Code, including obtaining an inspection warrant pursuant to California Code of Civil Procedure Section 1822.50.

89A.20 Change of Ownership.

When Ownership of a Unit changes, the previous Owner shall notify the Code Enforcement Department within thirty (30) days of the change in the ownership. Failure to notify the Code Enforcement Department shall result in immediate expiration of the Certificate of Compliance.

89A.21 Caretaker Requirements for Apartments.

- a. Regardless of the number of Units in an apartment complex, the Owner shall post in a conspicuous public place on the premises of the apartment complex, a notice containing the name, address and telephone number of the resident caretaker or resident Owner who is responsible for management of the apartment, or of the non-resident Owner or non-resident Owner's agent who is responsible for the management of the apartment.
- b. At any apartment complex with sixteen (16) or more Units, a caretaker employed by the Owner shall reside upon the apartment premises and shall be responsible for management of the apartment, unless the Owner resides upon the premises and has assumed such management responsibility. Alternatively, at any apartment complex with sixteen (16) or more dwelling Units, there shall be a designated caretaker's office which shall be staffed between the hours of eight a.m. (8:00 a.m.) and five p.m. (5:00 p.m.) Monday through Friday by the Owner or caretaker employed by the Owner and responsible for management of the apartment complex, and there shall be posted a telephone number for the Owner or Owner's agent, to which a telephone complaint may be made during all other hours, and a response to which shall be made within a reasonable time period.

89A.22 Violation, Enforcement and Penalties.

- a. Failure to comply with the regulations of this Chapter shall constitute a violation of the City's Code and may be enforced in any combination as permitted by Chapters 80 through 89, Chapters 90, 95 and 99 of Desert Hot Springs Municipal Code or any other enforcement and legal remedies available to the City under the law.
- b. Violations of this Chapter shall be treated as a strict liability offense regardless of intent.
- c. Each day a violation exists shall constitute a separate violation.
- d. Failure to pay any fee or costs imposed by this Chapter shall be subject to the placement of a lien against the real property as provided in Section 99.56 of the Code, or as this section may be amended.

89A.23 Appeal of Denial of Certificate of Compliance.

- a. An Owner denied a Certificate of Compliance must obtain a "Request for Appeal Hearing" form from the Community Development Director or his/her designee, located at City of Desert Hot Springs City Hall, 65-950 Pierson Boulevard, Desert Hot Springs, CA 92240, and return the form to the City Clerk, fully completed within twenty one (21) days from the date of denial of the Certificate of Compliance.
- b. Failure to timely submit a completed Request for Appeal Hearing form constitutes a waiver of the right to appeal and a failure to exhaust administrative remedies.
- c. Enforcement of the requirement to maintain a Certificate of Compliance shall be stayed during the pendency of a timely filed appeal, unless the City obtains order from a court of competent jurisdiction authorizing the abatement of such conditions subject to the City's code enforcement efforts.
- d. The Owner's timely appeal shall be heard by the City Manager or his designee. Such hearing shall occur not less than fifteen (15) days nor more than sixty (60) days from the date the Request for Appeal Hearing was filed, unless the City determines that the matter is urgent or that good cause exists for an extension of time, in which case the hearing date may be shortened or extended, as warranted by the circumstances.
- e. When the Request for Appeal Hearing is filed, the City Clerk shall set the time and place for the hearing, pursuant to subsection (d) of this Section, and shall serve a notice of hearing either personally or by United States mail, first-class postage pre-paid, to the appellant at the address listed on the Request for Appeal Hearing form. If the Code Enforcement Officer submits a written report concerning the decision to deny the Certificate of Compliance to the City Manager for his/her consideration at the hearing, such report shall be served on the appellant at least five (5) days prior to the date of the hearing.
- f. At the time set forth in the notice of hearing, the City Manager or his/her designee, shall conduct a hearing on the decision not to issue a Certificate of Compliance. Evidence presented by the Code Enforcement Officer or other official of the City tending to show the Owner failed to comply with the requirements of Section 89.05(A) of this Chapter shall establish a prima facie case that denial of the Certificate of Compliance was warranted. The burden of proof shall then be on the Owner to refute such evidence. The standard to be applied for meeting such burden shall be a preponderance of the evidence.
- g. The City Manager or his/her designee shall consider written or oral testimony or other evidence regarding compliance with Section 89.05(A) of this Chapter presented by the Owner, the Occupant, any officer, employee, or agent of the City, and any other interested party. Evidence offered during a hearing must be credible and relevant in the estimation of the City Manager or his/her designee, but formal rules governing the presentation and consideration of evidence shall not apply.
- h. The City Manager or his/her designee shall conduct the hearing, order the presentation of evidence, and make any rulings necessary to address procedural issues presented during the course of the hearing.
- i. After receiving all of the evidence presented, the City Manager or his/her designee may then deliberate and consider what action, if any, should be taken, or may adjourn the hearing and take the matter under consideration.

- j. Within thirty (30) days of conclusion of the hearing, the City Manager or his designee shall issue a decision regarding the issues presented during the course of the hearing. If the City Manager or his designee finds that no violation specified in Section 89.05A occurred or that the violation(s) listed in Section 89.05A was corrected within the specified time period, the City Manager shall direct the Code Enforcement Department to issue the Owner a Certificate of Compliance. If the City Manager finds that there was a violation or the violation was not corrected within the specified time, the City Manager shall uphold the decision of the Code Enforcement Department denying the Certificate of Compliance.
- k. The decision of the City Manager shall be considered a final administrative decision.

89A.24 Administrative Regulations.

The Code Enforcement Department is authorized and directed to promulgate administrative regulations pertaining to the implementation and enforcement of this Chapter. Such administrative regulations shall not take effect unless and until they are approved by a resolution duly adopted by the City Council.

89A.25 Annual Review and Report.

The Code Enforcement Department shall conduct an annual review of the Residential Rental Unit Inspection Program and shall submit an annual report of the Program's effectiveness to the City Council.

Section 3. SEVERABILITY

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. EFFECTIVE DATE

This Ordinance shall be effective thirty (30) days following its adoption.

Section 5. POSTING

The City Clerk shall, within 15 days after the passage of this Ordinance, cause it to be posted and published as required by law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the _____ day of _____ 2009 by the following vote:

AYES, Council members:

NAYS, Council members:

ABSENT, Council members:

ABSTAINING, Council members:

ATTEST:

Pat Hammers, Interim City Clerk

APPROVED:

Yvonne Parks, Mayor

APPROVED AS TO FORM:

Ruben Duran, City Attorney

Preliminary