

ORDINANCE NO. 2022-02

AN ORDINANCE OF THE BOROUGH OF MCSHERRYSTOWN, ADAMS COUNTY, PENNSYLVANIA, ADOPTING PROCEDURES FOR THE REGISTRATION AND INSPECTION OF DWELLINGS RENTED IN THE BOROUGH.

WHEREAS, Section 1202(5) of the Borough Code, 8 Pa. C.S. § 1202(5), authorizes the Borough of McSherrystown (the “Borough”) to make regulations as may be necessary for the health, safety, morals, general welfare, and cleanliness and beauty, convenience, comfort, and safety of the Borough; and

WHEREAS, Section 1203 of the Borough Code, 8 Pa. C.S. § 1203, authorizes the Borough to adopt all ordinances, rules, and regulations not inconsistent with or restrained by the Constitution or laws of Pennsylvania as may be expedient for the management, care, safety, and control of the Borough; and

WHEREAS, the Borough has determined that it is in the best interest of the health, safety, morals, and general welfare of the Borough residents to implement a registration and inspection process for rented properties within the Borough.

BE IT ENACTED AND ORDAINED, by the Mayor and Borough Council of the Borough of McSherrystown, and it is enacted and ordained as follows:

SECTION 1: The Code of the Borough of McSherrystown shall be amended to add Chapter 164, which shall be entitled “Rental Registration and Inspection.”

SECTION 2: The contents of the new Chapter 164 shall be as follows:

§ 164-1. **Definitions.**

CODE OFFICIAL: The person or persons authorized by the Borough to determine compliance with the provisions of this ordinance and to enforce the same. The Code Official may either be a third-party company appointed by the Borough or an individual employed and/or appointed by the Borough.

OCCUPANT: Occupier or inhabitant, other than the Owner, of a Rental Unit, rented or leased.

OWNER: Any person, agent, operator, firm, corporation, partnership, limited liability company, limited liability partnership, association, other entity, property management group, trust, or fiduciary holding or having legal, equitable, or other interest in any real property or otherwise having control of the property. The term Owner shall also include Owner’s Agent.

OWNER’S AGENT: An individual or firm designated by the owner of real property who is responsible for the operation of the rental property or Rental Unit in compliance with the codes and ordinances of the Borough.

RENTAL UNIT: A single unit providing complete, independent living facilities for one or more person, including permanent provision for sleeping, eating, cooking, and sanitation.

§ 164-2. **Rental registration.** No person shall rent or offer for rent any Rental Unit, unless such person has registered the property with the Borough for the specified Rental Unit.

§ 164-3. **Property subject to registration requirement.** The Owner(s) having legal or equitable interest in the property or the Owner's Agent shall be responsible for registering tax parcels containing Rental Units with the Borough.

§ 164-4. **Registration procedure.**

A. **Registration form.** The registration of each tax parcel containing a Rental Unit(s) shall be made on a form furnished by the Borough or its designee and shall be completed in accordance with any instructions which may be given by the Borough or its designee. The information provided on the form may include, but not be limited to, the following:

- (1) The name, address, and telephone number of the Owner(s) of the tax parcel where the Rental Unit is located.
- (2) The name, address, and telephone number of the Owner's Agent(s), if any.
- (3) The address of the tax parcel where the Rental Unit is located and the addresses of the Rental Unit located on such parcel, as applicable.
- (4) The type of Rental Unit being registered.
- (5) The number of Rental Units located on the tax parcel being registered.
- (6) A copy of any current inspection reports or licenses from regulating federal or state agencies, as applicable.

B. **Rental Occupancy Report.** Any Owner or Owner's Agent who timely files a Rental Occupancy Report in accordance with Chapter 163 of the Code of the Borough of McSherrystown shall be deemed to be in compliance with the registration requirements of this Ordinance and shall not be required to register pursuant to Section 164-4.C of this Ordinance.

C. **Time for registration.** Any applicant for renewal of registration shall renew their registration by December 31 of each calendar year preceding the year during which the property will be used as a Rental Unit. Owner shall have until **July 31, 2022** to register. This subsection C shall not apply to any Owner or Owner's Agent who has timely filed a Rental Occupancy Report in accordance with Chapter 163 of the Code of the Borough of McSherrystown.

D. **Newly registered property.** If the property is being registered for the first time or is being registered after a period of time during which it was not continuously registered on an annual basis or pursuant to Chapter 163, then the Borough or its designee shall schedule an inspection of the Rental Unit within thirty (30) days of receipt of a completed registration form.

§ 164-5. **Inspections.**

A. **Inspections upon transfer.** The Owner or Owner's Agent shall inform the Borough of any change of Occupants of a Rental Unit, at which time an inspection of such Rental Unit shall occur. This requirement shall not apply to a sublease.

- B. **Inspections upon complaint.** Inspections may occur if an Occupant files a complaint in writing signed by the Occupant at the Borough office or with the Code Official. The Owner or Owner's Agent shall be notified of the complaint, and the Owner or Owner's Agent may be present for the inspection. If no violation(s) of this Ordinance is found to exist by the Code Official, the Occupant who filed the complaint shall be responsible for the cost of the inspection. If a violation of this Ordinance is found by the Code Official in the course of the inspection, the Owner or Owner's Agent shall be responsible for the cost of the inspection.
- C. No person shall refuse to admit the Borough or its designee from entering the premises or Rental Unit after showing proper identification, and no person shall interfere with or hinder the Borough or its designee in the performance of its duties and inspections performed pursuant to this Ordinance.

§ 164-6. **Fees.** Fees for registration and inspection shall be as follows:

- A. **Fees for registration.** Fees for the registration of each tax parcel where Rental Units are located shall be set from time to time by resolution of the Borough Council of the Borough of McSherrystown. Such registration fees shall be assessed on a per tax parcel basis.
- B. **Fees for inspection.** Fees for the inspection or reinspection of Rental Units shall be set from time to time by resolution of the Borough Council of the Borough of McSherrystown.
- C. **Follow-up inspection.** In the event that a Rental Unit fails to pass the initial or follow-up inspection, or if the Owner or Owner's Agent fails to allow full inspection of the Rental Unit and premises at the scheduled appointment time, the Owner or Owner's Agent shall be charged a reinspection fee.

§ 164-7. **Exemptions.** The registration and inspection provisions of this Ordinance shall not apply to:

- A. All property owned by the Adams County Housing Authority or which is enrolled in in a state subsidized housing program, including, but not limited to, the Housing Choice Voucher Program and is inspected by a third party certified inspector in conformance with United States Department of Housing and Urban Development requirements. The Code Official shall be given a copy of the inspection results for each unit.
- B. Hospitals, nursing homes, group homes or other rental units used for habitation, where such facilities are subject to County, State, or Federal licensing and inspection. Inspections of these facilities must be at a level which meets or exceeds this Ordinance.
- C. Hotels, motels, boarding houses, or bed and breakfast establishments.
- D. Single family dwellings where a parent, parent-in-law or adult child of the Owner remains in occupancy and no net income is earned by the Owner. However, this exemption shall not apply where the dwelling is not occupied by the Owner and the dwelling becomes subject to code violations, which remain uncorrected beyond the time frames specified in the code.

§ 164-8. **Ownership.**

- A. **Transfer of ownership.** Registration of a tax parcel containing a Rental Unit shall not be transferable to a subsequent purchaser of said parcel or Rental Unit. If the ownership of a registered Rental Unit is transferred, whether it is legal or equitable, the registration shall be invalid on the date of transfer of ownership, unless the new Owner has submitted an application for registration within ten (10) days of the date of transfer, in which case the property, if currently occupied, may continue to be occupied; If the new Owner fails to submit an application for registration within ten (10) days of the date of transfer, the property cannot be used as a Rental Unit, and any rental occupancy of the property is a violation of this Ordinance.
- B. **Lease-purchase agreements.** Any property that is being occupied and currently subject to a lease-purchase agreement between the occupants of the property and the owner of record, and which lease-purchase agreement is recorded in the Recorder's Office of Adams County, shall not be subject to the requirements of this ordinance. The burden of proving a valid lease-purchase agreement under this section shall be on the Owner or Occupant claiming the exemption from the requirements of this Ordinance.

§ 164-9. **Violations and penalties.**

- A. **Occupancy without registration and inspection.** It shall be unlawful for any Owner or Owner's Agent to allow a Rental Unit to be occupied without being registered or for failing to have any Rental Unit inspected pursuant to this Ordinance. Further, it shall be unlawful for any Owner or Owner's Agent to offer for rent, lease, or occupancy unless the Rental Unit is currently registered.
- B. **Prosecution of a violation.** Any person failing to comply with a notice of violation or order served in accordance with this Ordinance shall be deemed guilty of a summary offense. If the notice of violation is not complied with, the Borough or its designee may institute the appropriate proceedings at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure or Rental Unit in violation of the provisions of this Ordinance or of the order or direction made pursuant thereto. Any corrective action taken by the authority having jurisdiction over such premises may be charged against the real estate upon which the structure or Rental Unit is located and shall be a lien upon such real estate.
- C. **Penalties.** A violation of this Ordinance, including a failure to pay any fees under this Ordinance, shall be subject to a fine of not more than \$1,000 per day, or imprisonment for a term not to exceed thirty (30) days, or both, at the discretion of the court. Each day that a violation continues shall be deemed a separate offense.

§ 164-10. **Appeals.**

- A. Any person directly affected by a decision of the Code Official or a notice or order issued under this Ordinance shall have the right to appeal to the Board of Appeals, provided that a written application for appeal is filed within thirty (30) days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this Ordinance or the rules legally adopted hereunder have been incorrectly interpreted, the

provisions of this Ordinance do not fully apply, or requirements of this Ordinance are adequately satisfied by other means.

B. Membership of the Board. The Board of Appeals shall consist of three members appointed by the Borough Council of the Borough of McSherrystown, with the initial appointment to be one member to serve for three years, one member to serve for two years and one member to serve for one year. Thereafter, each new member shall serve for three years or until a successor has been appointed. The Borough of McSherrystown Board of Appeals shall hear appeals under this Ordinance. In appointing members to the McSherrystown Board of Appeals as the term for each of the current members expires, the Borough shall make every effort to appoint members who are qualified by experience and training to pass on matters pertaining to property maintenance and who are not employees of the Borough:

- (1) **Alternate member.** The Borough Council of the Borough of McSherrystown shall appoint an alternate member who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. The alternate member shall possess the qualifications required for board membership.
- (2) **Chairman.** The McSherrystown Board of Appeals shall annually select one of its members to serve a chairman.
- (3) **Disqualification of member.** A member shall not hear an appeal in which that member has a personal, professional, or financial interest.
- (4) **Secretary.** The Borough Council of the Borough of McSherrystown shall designate a qualified person to serve as secretary to the McSherrystown Board of Appeals. The secretary shall file a detailed record of all proceedings with the Borough Secretary.

C. Court review. Any person aggrieved by an adjudication of the McSherrystown Board of Appeals who has a direct interest in such adjudication shall have the right to appeal therefrom to the Court of Common Pleas, Adams County Branch, by or pursuant to Pennsylvania Law.

SECTION 3: Repealer. All provisions of previous Ordinances of the Borough of McSherrystown which are contrary to this Ordinance are expressly repealed.

SECTION 4: Savings Clause. In all other respects, the Code of the Borough of McSherrystown shall remain as previously enacted and ordained.

SECTION 5: Severability. The provisions of this Ordinance are severable, and if any of its sections, clauses, or sentences shall be held illegal, invalid, or unconstitutional, such provision shall not affect or impair any remaining sections, clauses or sentences of the same.

SECTION 6: Effective Date. This Ordinance shall take effect immediately.

ENACTED AND ORDAINED this ____ day of _____, 2022.

Borough Council of the
Borough of McSherrystown

Adams County, Pennsylvania

ATTEST:

Secretary

By: _____
Daniel P. Colgan, Council President

Approved this _____ day of _____, 2022

Kathleen Todt, Mayor of the Borough of McSherrystown

DRAFT