

Memorandum

City of Lawrence

Planning & Development Services

TO: David L. Corliss, City Manager

FROM: Brian Jimenez, Code Enforcement Manager

CC: Scott McCullough, Director Planning & Development Services

Date: September 19, 2011

RE: Over Occupancy Code Violations

Background

On June 21, 2011, the City Commission was briefed on staff's enforcement efforts regarding over occupancy violations occurring in single dwelling and multi-dwelling residential zoning districts, as well as ways that the city partners with the University of Kansas to communicate the city's occupancy standards to students. At the conclusion of the presentation, staff was directed to address the following four topics of interest:

1. **Review the penalties/fines for such violations.** A noted concern for staff and the City Commission is the fine schedule for violations of the occupancy regulations located within the Development Code, which is not less than \$10 nor more than \$500. This fine schedule is established pursuant to K.S.A 12-761(a). By comparison, a violation of the Rental Licensing Ordinance upon adjudication of guilt, or a plea of no contest, is a minimum fine of \$250.00 to a maximum of \$1,000. As noted below, staff currently enforces over occupancy violations under the provisions of the Development Code but recommends utilizing a currently established process within the Rental Licensing Ordinance in lieu of the Development Code enforcement process, thus increasing the minimum fine from \$10 to \$250.00. Even with this increase, the commission may want to consider increasing the \$250 fine if determined to be too low to be an effective deterrent.
2. **Research the possibility of requiring a "disclosure statement".** This document would be signed by tenants and property owners/property managers upon the leasing of a rental dwelling unit to ensure all parties involved in the leasing of the dwelling are fully aware of the occupancy limits at the time of the lease being signed.

K.S.A. 12-16,123(b) appears to prevent a disclosure statement document from being implemented as the statute states, "no municipality shall adopt or enforce

an ordinance or resolution which requires any landlord to provide to such municipality a list of names of any tenants of such landlord.”

Section (c) does allow for a municipality to require a landlord to provide to the municipality a list of the names of tenants occupying the landlord's property if a citation for a violation of an ordinance or resolution adopted to protect the public health, safety or welfare has occurred on such property. Such list shall not be required to be provided until at least 30 days following the date of the issuance of a citation. Such list shall not be required if the landlord complies with the provisions of such ordinance or resolution.

In lieu of requiring such a statement, staff has revised the initial and annual renewal licensing applications (attached) to include language placing the applicant on notice that it is a violation of the Rental Licensing Ordinance to exceed established occupancies. The applications will be further revised to include a provision requiring the applicant to sign and certify that the applicant has provided all tenants of the licensed property with a copy of the City's current code provisions related to occupancy limits. Staff will provide the applicant with the code language on a sheet of paper that the applicant can easily pass along to the tenants if they choose to use it (attached to revised license application). This will be a convenient and efficient method to ensure the tenants, as well as the property owner, are informed of the requirements of the law.

3. **Propose solutions for habitual offenders.** Staff has identified a solution that is discussed in detail below.
4. **Define the term “Occupancy” in the Development Code for residential uses.** While adding a definition to the Development Code will require initiation of a text amendment and a public hearing process, the following language demonstrates possible text for such a definition.

Occupancy - the use of a dwelling unit or any portion thereof for living and/or sleeping purposes by a person acting in any of the following capacities:

- (1) As an owner of the dwelling unit;
- (2) As a tenant under an express or implied lease or sublease of the dwelling unit or any portion thereof;
- (3) As a guest or invitee of the owner, property manager, tenant(s) or other person(s) who have control of the dwelling unit, if such guest or invitee stays overnight at the unit for a total of 14 (fourteen) days within any 30 (thirty) day period of time.

Additionally, it has been identified that the language related to the applicability of the definition of Family needs to be strengthened in the Development Code for Multi-Dwelling districts. Subsequent to the adoption of the 2006 Land Development Code it was identified that language in Article 2, Base Districts, should be revised to include language that more directly demonstrates the applicability of the occupancy limits. The revision was made for Single-Dwelling Residential Districts but not the Multi-Dwelling

Residential Districts. While staff interprets the code to require occupancy limits in the multi-dwelling districts, the language of both districts should be consistent and language should be added to the Multi-Dwelling Residential Districts to conform to the language of the Single-Dwelling districts. This house keeping matter should be included in any text amendment initiated to include the definition of "Occupancy."

Discussion

After reviewing the Development Code and the rental licensing requirements established in Chapter 6, Article 13, (Rental Licensing Ordinance) staff recommends utilizing the provisions outlined in sections 6-1305 and 6-1308 of the City Code which identifies the criteria and process for the revocation/probation of a rental licensing permit. As mentioned at the June 21st meeting, staff currently cites property owners for occupancy violations under the Development Code as this code provides the occupancy regulations and definition of Family in Article 2. However, utilizing the enforcement measures of the Rental Licensing Ordinance may produce quicker and more permanent solutions to over occupancy violations in single dwelling districts, especially for repeat offenders.

Section 6-1305 states that the maintenance of a public nuisance shall be grounds for the revocation of a rental licensing permit pursuant to the Article. Dwellings that are regulated pursuant to the Article where there is one or more violations of the six codes/ordinances listed below which affect the public safety of tenants and the rights of nearby residents to the quiet enjoyment of their property are considered to constitute a public nuisance.

- Noise Ordinance; Section 14-413
- Environmental Code; Section 9-601
- Anti-Litter Ordinance; Section 14-101
- Development Code; Chapter 20 of the Code of the City of Lawrence
- Disorderly House Nuisance Ordinance; Ordinance No. 7223, Section 14-1101
- Uniform Housing Code; Section 5-501 (Amendment to change to Property Maintenance Code, Section 5-1001, is forthcoming)

The code provides staff discretion in determining when to take the graduated steps of probation and revocation when violations are found or when they are not properly addressed or become habitual.

As noted above, a violation of the Development Code is one of the six identified city codes/ordinances that constitute a public nuisance. Therefore, an over occupancy violation meets the criteria identified in the code for the city to proceed with the probation or revocation of a rental licensing permit.

In addition to being a legal nuisance, subject to the administrative penalties of revocation or probation, a violation of any of the provisions of Article 6, Chapter 13 (including exceeding the occupancy limits) is a municipal offense per section 6-1309 and is subject to the higher fine schedule outlined in the rental licensing ordinance.

It is important to note that this recommendation of pursuing probation/ revocation of rental licensing permit does not include occupancy violations located in multi-dwelling residential zoning districts as the rental licensing ordinance does not require rentals in such zoning districts to be licensed and inspected. For multi-dwelling districts, the Development Code remains the enforcement mechanism. Revising the Rental Licensing Ordinance to include all rental units, including those located in Multi-Dwelling zoning districts, would have several advantages in terms of addressing over occupancy; however, enhancing the existing rental registration program to include all rental units requires policy and budgeting discussions that, if pursued, would be matters for future commission discussion

Section 6-1308, Procedure for Probation/Revocation Status of License

Section 6-1308 outlines the administrative procedures that staff must follow when proceeding with the probation/revocation of a rental licensing permit. Those steps are the following:

- (A) Any person found by the public officer to be in violation of this Article shall be sent a notice of such violation by the public officer. The notice shall be sent by certified mail, postage prepaid, return receipt requested. The notice shall state:
 - (1) The condition which has caused the violation of this Article;
 - (2) Whether the proposed enforcement action is to place or continue the permittee or person on a probation status or whether the proposed enforcement action is to revoke the license; and
 - (3) That the person in violation shall have fifteen (15) days from the date of the notice to request in writing a hearing before the governing body on the violation. The request in writing for a hearing before the governing body shall stay pending enforcement actions.
- (B) The placement of the owner on probation status shall be to provide a reasonable period of time for the owner to correct or alleviate conditions giving rise to the notice of violation. The probation status may be conditioned by the City with reasonable reporting requirements and time periods for corrections. The failure to successfully complete the requirements of the probation status shall be grounds for the initiation of the revocation of the license granted pursuant to this Article.
- (C) The public officer, or the Governing Body upon the conclusion of a requested hearing, shall have the authority to revoke a license granted pursuant to this Article or place the property owner on probation status. In determining whether to revoke a license or place the property owner on probation status, the public officer or the Governing Body shall take into account mitigating circumstances, including the legal authority of the property owner to order the vacation of the property by tenants whose conduct has caused the violation(s).

Procedural Steps to Implement

The following procedures are recommended to be implemented for property owners of first time occupancy violations.

- A. Certified letter (attached) mailed to property owner outlining the violation.
- B. Property owner is advised their rental license is being placed on a probation status.
- C. Property owner is advised they have 15 days to request hearing before the city commission.
- D. Time frame for compliance is identified within notice. No longer than 30 days.
- E. Property owner will be advised that a follow up inspection will be required to ensure the property is in compliance and a signed written statement stating the property is in compliance must be signed by the property owner.
- F. Failure to become compliant will result in staff initiating the revocation of the rental licensing permit, which may include a hearing and final determination by the city commission.

Staff is recommending the following procedures be implemented for dwelling units found to be in violation of occupancy limits more than one time within any 24 month period with the owner of such property being constant during that time period.

- A. Certified letter (attached) is mailed to property owner outlining the violation and that the property is now considered to be a habitual violator of the occupancy limits established for dwelling units located in single dwelling residential zoning districts.
- B. Identifies the proposed enforcement action to be taken is the revocation of the license due to being a habitual violator.
- C. Property owner is advised they have 15 days to request hearing before the city commission.
- D. If request for hearing is not received, staff will revoke the license.
- E. Staff will notify property owner that license has been revoked and occupancy of dwelling unit shall cease immediately.

Summary of Recommendations

It is staff's opinion that the steps identified above will address over occupancy violations in a more efficient manner in single-dwelling districts by utilizing the currently established probation/revocation code provisions in the rental licensing ordinance. As discussed, for habitual violators, staff will pursue the revocation of the rental licensing permit as well as filing a code violation complaint through Municipal Court.

Staff awaits direction from the City Commission as these procedural changes can begin immediately.

Action requested

- (1) Initiate a text amendment to (1) correct a matter of inconsistency between single and multi-dwelling districts related to over occupancy and the definition of Family, and (2) to include a definition of "Occupancy" in the Development Code.**
- (2) Direct staff to submit an ordinance for the commission's consideration that would increase the current \$250 minimum fee established in Section 6-1309 of the City Code related to Rental Licensing.**
- (3) Direct staff to establish practices that employ the enforcement measures of the Rental Licensing Ordinance, including placing rental structures (and their owners) on probation and revoking licenses when compliance matters are not resolved.**