

## AN ORDINANCE

AMENDING CHAPTER \_\_\_\_\_, “\_\_\_\_\_” OF THE CITY CODE TO CREATE A NEW ARTICLE \_\_\_\_\_ ENTITLED “PROACTIVE APARTMENT INSPECTION PROGRAM” REGISTERING APARTMENT COMPLEXES OF FIVE OR MORE UNITS, WITHIN THE CITY OF SAN ANTONIO, WHO HAVE THREE OR MORE PROGRAM POINTS WITHIN A CONTIGUOUS SIX MONTH TIME PERIOD; TO ESTABLISH A STRUCTURED AND MONITORED PLAN FOR THE REGISTERED APARTMENT COMPLEXES SO AS TO BRING THEIR UNITS AND STRUCTURES UP TO MINIMUM HABITABILITY AND SAFETY STANDARDS; TO ESTABLISH PENALTIES FOR VIOLATIONS; AND TO PROVIDE FOR PUBLICATION.

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**WHEREAS**, the City Council of the City of San Antonio, Bexar County, Texas (“City Council”), has determined that the City of San Antonio (“City”), as part of its essential functions as a home rule city, has an interest in identifying and regulating Apartment Complexes of five or more units, which have received three or more citations within six contiguous months, for designated health and safety SAPMC violations;

**WHEREAS**, the City Council has determined that the Apartment Complexes of five or more units serve a valuable housing need for a large number of San Antonio citizens;

**WHEREAS**, the City Council has recognized the importance of maintaining minimum standards of habitability and safety in Apartment Complexes for tenants;

**WHEREAS**, the City Council has determined that while there are a substantial number of Apartment Complexes within the City limits that diligently and properly take care of maintaining their properties to minimum habitability and safety standards, that there also exists a number of Apartment Complexes who do not, and who have a high incidence of code violations on their properties;

**WHEREAS**, the City Council has recently been confronted with instances in which the neglect and disrepair of Apartment Complexes have significantly and negatively impacted the lives of the tenants, and the City has been forced to intervene to facilitate remedies;

**WHEREAS**, the City Council has determined current practices do not adequately address these delinquent properties, and that more regulation of those Apartment Complexes, that have received three or more citations in a six month time period, is necessary;

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Code of San Antonio, Chapter [?] “\_\_\_\_\_” is hereby amended by adding a new Article [?] entitled “Apartment Inspection Program” as follows:

**ARTICLE [?] APARTMENT INSPECTION PROGRAM.**

**6-000. Purpose; applicability; definitions.**

- (a) Purpose: The purpose and intent of this ordinance is to establish a program for addressing multifamily apartment complexes, with five (5) or more units; and for addressing the property owners who are not maintaining their property to minimum Code standards, and who have allowed their property to develop health, life, welfare and safety problems.
- (b) Applicability: The provisions of this ordinance shall apply to all multifamily apartment complexes with five (5) or more dwelling units within the City limits.
- (c) Definitions: The following words, terms and phrases, when used in this ordinance shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.
  - 1) Apartment Complex means a multifamily complex with five or more dwelling units, as currently defined in the Building Code as Group R-2.
    - (i.) This definition includes mixed use apartment complexes, in which multifamily units are blended with commercial properties.
  - 2) Code official refers to the Director and his designees.
  - 3) Director shall refer to the Director of Development Services Department for the City of San Antonio, Bexar County, Texas; and/or his assigns.
  - 4) Dwelling Unit means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

- 5.) Notice of violation means that to avoid program points, the owner will have 10 calendar days to cure the violation(s); the 10 days being calculated from the date the notice is mailed, or personally delivered, to the owner or their registered agent or property manager.
- 6.) Owner means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property or otherwise having control of the property including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.
- 7.) Program Participant means a property owner, property manager, and/or agent of an apartment complex with five (5) or more dwelling units who receives three or more program points (discussed below) within 6 months.
- 8.) Program Points means an uncorrected violation which, after notice and the owner's failure to cure in a reasonable time, will individually constitute points that will go towards enrollment in this Program. Violations which originate under the following sections of the Code, as well as other Code sections internally referenced in individual sections are solely to be considered. Violations under these provisions, and other referenced sections, are categorized as conditions which are detrimental to the resident's health, life, safety and welfare.
- (i) SAPMC 302.5 Rodent harborage; 303.2 Enclosures; 304.1 General; 304.1.1 Unsafe conditions; 304.4 Structural members; 304.5 Foundation walls; 304.6 Exterior walls; 304.7 Roof and drainage; 304.10 Stairways, decks, porches and balconies; 304.11 Chimneys and towers; 304.12 Handrails and guards; 304.13 Window, skylight and door frames; 304.13.1 Glazing; 304.13.2 Openable windows; 304.15 Doors; 304.18.1 Occupied and partially occupied structures; 305.1 General; 305.1.1 Unsafe conditions; 305.2 Structural members; 305.3 Interior surfaces; 305.4 Stairs and walking surfaces; 305.5 Handrails and guards; 307.1 General; 308.2.1 Rubbish storage facilities; 308.2.2 Refrigerators; 309.1 Infestation; 309.2 Extermination Prior to Occupancy; 309.4 Multiple occupancy; 403.1 Habitable spaces; 403.2 Bathrooms and toilet rooms; 403.4 Process ventilation; 403.5 Clothes dryer exhaust; 502.1 Dwelling

units; 504.1 General; 504.2 Fixture clearances; 504.3 Plumbing system hazards; 505.1 General; 505.2 Contamination; 505.3 Supply; 505.4 Water heating facilities; 506.1 General; 506.2 Maintenance; 602.1 Facilities required; 602.2 Heat supply; 602.3 Room temperature measurement; 603.1 Mechanical appliances; 603.2 Removal of combustion products; 603.3 Clearances; 603.4 Safety controls; 603.5 Combustion air; 603.6 Energy conservation devices; 604.1 Facilities required; 604.2 Service; 604.3 Electrical system hazards; 605.1 Installation; 605.2 Luminaires; 606.1 General; 702.1 General; 702.2 Aisles; 702.3 Locked doors; 702.4 Emergency escape openings; 703.1 General; 703.2 Smoke Alarms; 703.3 Power source; 703.4 Interconnection; 703.5 Additional Requirements in Leased Tenancies contained within R-2.

- 9) Reasonable time to cure means the time that it takes to reasonably fix a violation. It is a rebuttable presumption that 10 days is sufficient.
- 10) Structure means that which is built or constructed.

#### **6-001. Program Point Citations**

(a) Notice of Violations:

- (1) Notifications of a possible program point violation, prior to citation shall state:
- (i) The identity of the affected dwelling unit, if applicable;
  - (ii) The identity of the affected building, if applicable;
  - (iii) The applicable Code sections;
  - (iv) A description of the violation
  - (v) A statement explaining that a failure to timely cure the violation may result in the property being enrolled in the Apartment Inspection Program.
- (2) Such notice shall be deemed to be properly delivered if a copy is:
- (i) Delivered personally to the owner or their registered agent or property manager; or
  - (ii) Sent by first class mail, to the owner of record at his address as it appears on the Bexar County Appraisal District records, and posting a notice in a conspicuous place in or about the structure affected by such notice.

(3) Designation of a courtesy email address. A property owner may designate an operable and functioning email address as their desired means of notice and communication. The City may use this email address as a courtesy, in addition to other means of communicating with the property owner.

(i) Use of email is an additional but not supplemental form of communication, and does not replace proper service as defined above.

(4) Notice shall be given each time a program point violation is noted. The second paragraph of SAPMC 107.1 "Notice to person responsible" shall not apply in this ordinance.

(b) Failure to Cure within a Reasonable Time:

(1) If the property owner fails to cure the violations within a reasonable time, as defined herein, then upon further inspection demonstrating the continuing existence of said violations, those will individually count towards program points .

(c) Reasonable Time to Cure:

(1) In determining whether a period of time is a reasonable time to repair or remedy a condition, there is a rebuttable presumption that 10 days is a reasonable time. To rebut that presumption several factors may be considered, including but not limited to the following:

- (i) the date on which the Owner received the notice;
- (ii) the severity, scope, and nature of the condition;
- (iii) the reasonable availability of materials and labor and of utilities from a utility company.

(2) Any requests for more time from the Owner must be in writing to the Director before the termination of the 10 days period to cure the violation. Written requests may made in several ways, it may be delivered in person, sent by mail, or transmitted by email. The requests for more time must include:

- (i) A plan to repair the violation(s); and
- (ii) Any plan to mitigate the effects of the violation on the tenants;  
and
- (iii) An estimate of the amount of time required to cure the violation.

(3) The Director shall have the discretion to extend the time to cure the violation for so long as the Director shall deem necessary and reasonable, and the Director will notify the Owner of their decision.

(d) Program Points Applied:

- (1) If a property owner fails to cure the problem within a reasonable time, the Code Official shall issue a citation or ticket for the violation.
- (2) The issuance of a citation or ticket for a listed violation will generate, administratively, a program point.
- (3) The program point will not be applied against the Owner or the Property until
  - (i) the administrative appeal period of 10 days expires if the owner fails to appeal, or
  - (ii) if there is an appeal, then only after the Code Official has made a finding against the Owner and the Property (see subsection e following).

(e) Appeal of Program Points

- (1) The property owner may administratively appeal a program point to the Code Official within 10 calendar days of issuance of the citation. The appeal of program points is separate and apart from the citation; and decisions in the administrative appeal shall not affect the criminal and civil processes in Municipal court. The Appeal of Program Points shall be as follows:
  - (i) The appeal must be in writing;
  - (ii) The appeal must state why the owner did not cure the violation within the reasonable time to cure – whether within the 10 days or for a longer period of time, if granted;
  - (iii) The appeal must include sufficient proof of any claims challenging the citation.
- (2) The burden of proof in the Appeal of Program Points applied, is upon the owner.
  - (i) The standard of proof is clear and convincing.
  - (ii) The Code Official may consider any number of mitigating circumstances which may have impeded an owner in curing the violation within a reasonable time, including but not limited to:
    - 1.Obstruction by Tenant;
    - 2.Lack of Notice;
    - 3.Act of God;
    - 4.Supply or labor shortages constituting an impossibility;
    - 5.Action or inaction of Tenant which impedes repair.
- (3) The appeal and decision by the Code Official must be made before the case appears in court.
- (4) If the Code Official finds in favor of the owner, than the case will be withdrawn from consideration by the court.
- (5) If the Code Official finds against the owner, then the case will proceed and be adjudicated by the court

(6) An adjudication by the court in favor of the owner, not guilty or not liable, shall have the effect of removing the applicable program point and upon notice of the same the Code Official shall remove the program point.

## **6-002. Registration**

### (a) Registration of an Apartment Complex.

- (1) Upon receiving 3 or more program points (see Definitions) within a contiguous 6 month time period, a property shall be enrolled in the Apartment Inspection Program;
- (2) An Apartment Complex may also be Ordered enrolled by the BSB, separately.
- (3) Once enrolled, the Apartment Complex shall be in the Program for a minimum of 6 months.
- (4) The owner shall register with the city not later than ten (10) calendar days after notice is sent from the Director.

### (b) Information for registration. Owners who register or who have been found by the code official to have ownership of a property eligible for the Apartment Inspection Program shall be required to furnish all information requested on the registration forms.

### (c) Costs of the Program. Owners shall be assessed a fee from the City upon entry to the Apartment Inspection Program.

- (1) Payment of the assessed fee must be made within 30 days of becoming registered in the Apartment Inspection Program, or the property owner shall be in violation of the ordinance thereof and be made civilly and criminally liable for the infractions thereof.

## **6-003. Notification To Register**

### (a) A notice of the Requirement to Register in the Apartment Inspection Program will be sent to be property owner. To avoid penalties, the owner will have 10 calendar days to register the structure; the 10 days being calculated from the date the notice is mailed, or personally delivered, to the owner or their registered agent or property manager.

- (1) Such notice shall be deemed to be properly delivered if a copy is:
  - (i) Delivered personally the owner or their registered agent or property manager; or
  - (ii) Sent by first class mail, to the owner of record at his address as it appears on the Bexar County Appraisal

District records, and posting a notice in a conspicuous place in or about the structure affected by such notice.

**6-004. Agent – Property Manager required**

- (a) Property manager. Any owner, or other person in control of an Apartment Complex in this Program shall be required to designate a property manager who shall be physically present at the Apartment Complex during scheduled inspections. The property manager shall have charge, care and control of the Apartment Complex, and shall provide access to the Apartment Complex for inspection upon request by the code official within a reasonable length of time, no more than 15 calendar days from receipt of said request.
- (b) Emergency contact information. An owner, or other person in control of an Apartment Complex in this Program shall provide the Code Official with the name, street address, and telephone number of a person or persons who can be contacted twenty four (24) hours a day, seven days a week, in the event of an emergency condition. An emergency condition includes any fire, natural disaster, collapse hazard, burst pipe, serious police incident, or other condition that requires an immediate response to prevent harm to property or the public.

**6-005. Monitoring, inspection and condition standard**

- (a) The Code Official may inspect Apartment Complexes entered into this Program on at least a monthly basis.
  - (1) Inspections of this sort shall encompass the entire premise of the Apartment Complex, including but not limited to appurtenances, side structures, and infrastructure; as well up to 5% of the all dwelling units, and a minimum of two units.
  - (2) This shall not restrict the Code Official from entering the structure or premises in other circumstances, as deemed necessary by the Code Official.
- (b) The Owner shall not prohibit, bar or obstruct entry by the Code Official upon the premises, or any structure therein, of an Apartment Complex entered into this Program.
- (c) Upon the request of the Code Official, an owner shall provide access to habited dwelling units in order to permit a complete inspection.
  - (1) Requests to inspect habited dwelling units shall be made by the Code Official within a reasonable period of time, no more than 10 calendar days in advance of inspection.
- (d) Property Manager shall be present during scheduled inspections.

**6-006. Graduation from the Apartment Inspection Program.**



- (a) To be removed from the Apartment Inspection Program, the Apartment Complex must have completely fixed all the original violations and have received no more than two program points for 6 contiguous months.
- (b) Failure to cure the violations, original and subsequent, in a reasonable time will result in the Apartment Complex remaining in the program until such time as all cited violations are cured and no new citations or points are issued for 6 contiguous months.
- (c) If within 4 years from the date of graduation, an Apartment Complex or Owner who had previously successfully graduated from this program is re-enrolled in the program due to further citations, their term will be in the program for a minimum of no less than one year.

#### **6-007. Violation and penalties**

- (a) If an Apartment Complex or Owner reoffends and is placed back into the program within four years from the date of the completion of their last enrollment, then the minimum time that they are in the program doubles to one year.
- (b) The City reserves the right to enforce this ordinance by all means available, whether Civil, Criminal, or Administratively.
- (c) A violation of this ordinance is deemed to be a class C misdemeanor, with a penalty range of a fine up to \$500.00.

**SECTION 2.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this Ordinance, or any appendix thereof, for any reason, be held illegal, inoperative, or invalid or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

**SECTION 3.** No other provision of the City Code is amended hereby. All other provisions shall remain in effect.

**SECTION 4.** It is officially found, determined, and declared that the meeting at which this ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Revised Civil Statutes Annotated as amended Title 5, Chapter 551, Government Code.

**SECTION 5.** The publishers of the City Code are authorized to amend the City Code to reflect the changes adopted herein.

**SECTION 6.** This Ordinance shall be effective on the xx day of \_\_\_\_, 2023.

**PASSED AND APPROVED this x<sup>th</sup> day of \_\_\_\_\_, 2023.**

**MAYOR,**  
Ron Nirenberg

**ATTEST:**

**APPROVED AS TO FORM:**

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Debbie Racca-Sittre, City Clerk

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Andy Segovia, City Attorney