

ORDINANCE NO. 3703-C.S.

AN ORDINANCE AMENDING THE MODESTO MUNICIPAL CODE TO ADD CHAPTER 13, “RENTAL HOUSING SAFETY PROGRAM” TO TITLE 9, “BUILDING REGULATIONS”

WHEREAS, the City currently does not have a rental housing safety program; and

WHEREAS, inspection of rental income properties are report-driven and/or based upon tenant complaints to the City; and

WHEREAS, to address housing safety issues, including rental property safety, the City uses Title 9, Chapter 8 of the Modesto Municipal Code (MMC), also known as, “The Building Maintenance Code”; and

WHEREAS, without a Rental Housing Safety Program, this section limits City staff’s ability to address or enforce all issues when complaints are made or the City is made aware of an issue; and

WHEREAS, the City Council of the City of Modesto desires to create a Rental Housing Safety Act to supply safe affordable housing within the City of Modesto.

NOW, THEREFORE, the City Council of the City of Modesto does ordain as follows:

SECTION 1. Amendment of Code. Chapter 13, “RENTAL HOUSING SAFETY PROGRAM,” of Title 9, “Building Regulations” of the Modesto Municipal Code is added to read as follows:

Chapter 13

RENTAL HOUSING SAFETY PROGRAM

Article 1-Purpose and Scope

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Article 2- Definitions

9-13.201 Terms

Article 3- Inspections, Compliance with Applicable Codes and Standards

9-13.301 Inspections

9-13.302 Compliance with Applicable Codes and Standards

Article 4- Registration and Payment of Fees

9-13.401 Registration

9-13.402 Payment of Fees

Article 5- Exemptions

9-13.501 Exemptions

Article 6- Self-Certification Program

9-13.601 Self-Certification Program

Article 7-Notices and Compliance

9-13.701 Notices and Compliance

Article 8- Enforcement, Penalties and Appeals

9-13.801 Enforcement

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CHAPTER 13 - RENTAL HOUSING SAFETY PROGRAM

Article 1- Purpose and Scope

9-13.101 - Purpose.

The purpose of this article is to maintain the supply of safe, decent, and sound affordable housing in the City of Modesto through the conservation and rehabilitation of the City's existing housing stock. This Act does not limit in any way a tenant's or an owner's rights or obligations under State law. For the purposes of clarification, California Civil Code 1942.5(h) is repeated here: Any lessor or agent of a lessor who violates this section (1942.5) shall be liable to the lessee in a civil action for all of the following:

(1) The actual damages sustained by the lessee.

(2) Punitive damages in an amount of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

9-13.102 - Scope.

- (a) The provisions of this article shall apply to all Residential Rental Units located within the city.
- (b) Provisions of this article shall be supplementary and complementary to all of the provisions of this Code, and any local, state or federal law including California Health and Safety Code sections 17910 *et seq.* Nothing herein shall be construed or interpreted to limit any existing right or power of the city to abate and prosecute any and all nuisances or to enforce any other conditions in violation of state or local laws, including but not limited to any building, housing, property maintenance and public nuisance laws.

Article 2 - Definitions

9-13.201 -Terms.

For purposes of this article, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning and application of words and phrases used in this article:

- (a) "Director" shall mean the Director of the Community and Economic Development Department, or his or her designee.
- (b) "City" shall mean the City of Modesto and/or any agent hired to implement this article.
- (c) "City Manager" means the City Manager of the City of Modesto, the Deputy City Manager, or any person or persons designated by the City Manager to act as his or her designee.
- (d) "Health and Safety Standards" shall mean the standards set forth in California Civil Code section 1941.1, and Modesto Municipal Code Title 9-8 and Title 9-9.
- (e) "Hearing officer" means any person appointed by the City Manager to preside over administrative hearings.
- (f) "Inspector" means a person authorized by the Director to inspect a property or residential rental unit.
- (g) "Local Contact Representative" Means the person or entity with full authority to act on behalf of the Owner for all purposes under this article, including the acceptance of service of all notices from the City. The local contact representative shall be physically located within 50 miles of the residential rental property.
- (h) "Owner" means the person or entity identified and listed as having title to a Residential Rental Unit, as listed on the latest property tax assessment roll, maintained by the Stanislaus County Assessor.

- (i) "Property" or "Residential Rental Property" means any lot or parcel of land containing Residential Rental Units, and all improvements thereon, including common areas.
- (j) "Residential Rental Unit" means any structure or part of a structure that is used or may be used by one or more persons as a home, residence, dwelling, or sleeping place for longer than thirty days, including single family dwellings, duplexes, triplexes, or multi-family (four units or more) residential buildings, which is not an owner occupied unit, including rooming houses, boarding houses, apartment units, condominium units, and single room occupancies, but excluding: (1) hotels, motels, and bed and breakfasts used for transient lodging; (2) legal accessory dwelling units where the owner lives on the same property; (3) rooms in owner occupied residences;
- (k) "Responsible party" means any occupant, lessor, lessee, manager, licensee, or other person having control over a structure or parcel of land. A responsible party may be a property owner.
- (l) "Tenant's Affirmative Obligations" shall mean the standards set forth in California Civil Code section 1941.2. An Inspector's determination that a tenant is or is not in substantial violation of Tenant's Affirmative Obligations, or the cause of the existence of a dilapidation or violation, or interferes substantially with the Owner's obligation to effect necessary maintenance or repairs shall not be evidentiary proof of the condition of the unit, and shall be used only for purposes of implementing and enforcing this article.

Article 3 - Inspections; Compliance with Applicable Codes and Standards

9-13.301-Inspections. The Director, or his or her designee, hereinafter referred to as the Inspector, is authorized to inspect all Residential Rental Units to determine whether such Residential Rental Units meet minimum Health and Safety Standards. A reasonable fee may be charged to the owner for inspections, as set forth in the Development Fee Schedule.

9-13.302-Compliance with Codes and Standards. Residential Rental Units shall be required to be in conformance with the code standard that was in effect at the time the Residential Rental Unit was constructed, substantially altered, or remodeled, erected, or converted, except for any additional requirements mandated by this Code or state law.

Article 4 - Registration and Payment of Fees

9-13.401- Registration.

- (a) All Residential Rental Properties are required to be registered and updated whenever there is a change of ownership, contact information, or property management company.
- (b) A Residential Rental Property is registered with the city when the Owner submits the following to the city:

- (1) A completed registration form, made available by the city that contains the following information:
 - (i) Description of the Residential Rental Property, including but not limited to, the street address and APN;
 - (ii) Number and description, including identifying number, of all Residential Rental Units on the Property;
 - (iii) Name and current contact information of the Owner;
 - (iv) Name and current contact information for a local contact representative with full authority to act on behalf of the Owner for all purposes under this article, including the acceptance of service of all notices from the City.
 - (v) Date of first occupancy.
 - (vi) The registry will only include the information specified in subparagraphs (i) through (v) of this section.
 - (vii) To the extent legally permissible, the contact information shall remain confidential and for internal city and current tenant use only, and not available to any member of the public.
- (c) It is unlawful for any person to knowingly make a false statement or knowingly omit any information that is required to register a Residential Rental Unit pursuant to this section.
- (d) Registration shall remain valid unless or until one of the following circumstances occurs:
 - (1) The Owner fails to notify the Director of any change in the information submitted pursuant to this section within thirty days of such change; or
 - (2) The Owner fails to pay any fees established by this article when payment is due.

Article 5 - Exemptions

9-13.501- Exemptions.

- (a) The following shall be subject to registration under this article, but shall be exempt from routine inspections, subject to section (c) below:
 - (1) **Newly Constructed Buildings.** Newly constructed buildings shall be exempt from this article for a period of ten (10) years. The ten (10) year period begins to run the date listed on the certificate of occupancy issued by the city for the newly constructed building.
 - (2) **Government Regulated or Subsidized Residential Rental Units.** Properties that are subject to routine inspections by another government agency (i.e., Stanislaus County Housing Authority).
- (b) An Owner is required to provide an affidavit signed under penalty of perjury certifying the Property is exempt pursuant to this section.
- (c) A Residential Rental Unit that is determined to be exempt shall become subject to the requirements of this article if a notice of violation or notice and order relating to the Property is issued pursuant to the provisions of this code. A Property that loses its exemption pursuant to this subsection may reinstate its exemption if:
 - (1) After the last inspection conducted pursuant to this article, the Inspector determines that no violations exist; and
 - (2) The Owner is not delinquent on any payment to the city of fees, penalties, business taxes or other monies related to the Property.

Article 6- Self-Certification Program

9-13.601- Self-Certification Program.

- (a) The city shall develop a self-certification program. A Property may be placed in the self-certification program if: (i) the Property is inspected at least once every twelve (12) months (with a thirty (30) day grace period), and re-inspected upon change of tenancy, by a professional property management company licensed by the State of California; or (ii) the Owner provides documentation that the Property is inspected at least annually. Documentation of annual Property inspections shall be on forms provided by the city, or forms that the Director determines to be substantially equivalent to those forms.
- (b) All forms required by this Section shall be signed under penalty of perjury. It shall be unlawful to knowingly falsify any material information on a form, and any such falsification may be prosecuted as a misdemeanor.
- (c) City shall conduct an annual audit of the Self-Certification Program. As part of this audit, up to 10% of Residential Rental Properties in the self-certification program, and a sampling of individual units thereon, may be inspected by the city each year. A Property that is selected for an inspection under this subsection, and passes the inspection, shall be exempt from further audit inspections for two (2) years from the date of the initial inspection. After

the two (2) year period has expired, the Property shall be eligible to be inspected pursuant to this subsection.

- (d) The City may select properties identified as being owned by frequent Health and Safety Code Violators.
- (e) The City may randomly select properties within a specified census tract using statistical data or case information.
- (f) A Property in which any unit is subject to a Notice of Violation or a Notice and Order from the city shall immediately be removed from the self-certification program.

Article 7- Notices and Compliance

9-13.701- Correction Notices.

- (a) **Content.** Whenever it is determined by the Inspector that a violation of Health and Safety Standards exists, the Inspector shall issue a written correction notice to the property owner. The notice shall contain a description of the violation, the specific action required to correct the violation, and a demand the violations be corrected within the specified time period listed in the notice. The notice shall contain the scheduled re-inspection date and time, and shall otherwise comply with any pertinent Regulations promulgated pursuant to Section 10-1609 of this article.
- (b) **Time for Correction.** The correction notice shall provide a reasonable time for correction. The time stipulated shall take into account the following factors: (i) the time it would take a reasonably diligent person to complete the required action; (ii) the potential harm to the public welfare, health and safety; (iii) the harm to the tenant or nearby properties; and (iv) the extent of the corrections required. Imminently dangerous violations shall require immediate correction.
- (c) **Compliance Re-inspections.** Compliance re-inspections shall be conducted to verify the violations identified on the correction notice have been abated. Violations that were not noted on the initial correction notice, but are discovered during any re-inspection due to subsequent activities, damage or deterioration, shall be subject to correction.

Article 8- Enforcement, Penalties and Appeals

9-13.801 - Enforcement.

If, after a correction notice has been issued, the Owner fails to abate the violations, the City may proceed with all remedies available under law to compel compliance, including but not limited to issuing administrative citations, abatement proceedings, civil injunction, and/or criminal prosecution, or any combination of remedies, so long as violations are not caused by tenant's breach of Tenant's Affirmative Obligations. In any action or proceeding brought by the City to enforce this article, the City shall be entitled to recover its attorney's fees when it is the prevailing party. The City Attorney may, at his or her discretion, charge any violation of this ordinance as either an infraction or a misdemeanor.

9-13.802 - Appeal.

The Owner of a Residential Rental Unit or a party with a legal property interest in the Residential Rental Unit may appeal to the City's Administrative Hearing Officer in the manner provided in Title 1, Chapter 6, Section 502 of this code. The enforcement of any administrative Notice and Order, or other action of the Neighborhood Preservation Unit or Chief Building Official issued under the Modesto Municipal Code, shall be stayed during the pendency of any timely and properly filed appeal taken therefrom.

9-13.803. - Delinquent Fees and Late Fee Penalties.

(a) Penalty for failure to register, or late registration.

- (1) The City shall mail notice to Owners with an application for registration. Owners shall have thirty (30) days from date of the notice to submit registration information either by mail or online. Any incomplete registration shall be mailed or emailed back to the Owner for correction and the Owner shall have thirty days to make necessary corrections without penalty. Failure to submit registry information within thirty days from the date of the notice from the City shall result in the following penalties:
 - (i) A fine of \$100 dollars per Property for up to 30 days late.
 - (ii) A fine of \$200 per Property for 31 to 60 days late.
 - (iii) A fine of \$500 per Property for 61 to 120 days late; and
 - (iv) A fine of \$1,000 per Property for over 120 days late, plus interest charges at 10% per annum.

(b) Penalties for making false statements regarding affidavit of exempt status. Knowingly making a false statement regarding the affidavit of exempt property status will be a \$100 per unit fine for the first offense, and \$250 per unit for any subsequent offenses by the same Owner for the same Property.

(c) Penalties for making false statements on self-inspection report. Knowingly making a false statement on a self-inspection of any individual unit or number of residential units shall be fined at \$100 per unit for the first offense and \$250 per unit for any subsequent offenses by the same Owner for the same Property.

Article 9- Miscellaneous

9-13.901. - Rules and Regulations.

The City Manager, with the assistance of the Director, may make rules and regulations enforceable hereunder, which are not inconsistent with the provisions of this article and which may be necessary or desirable to aid in the administration or enforcement of the provisions of this article.

9-13.902. - Quarterly Review.

This article shall require a quarterly review for the first three (3) years following implementation. The city shall review all elements of this article to analyze the effectiveness provisions have been to maintain the supply of safe, decent, and sound affordable housing in the city and make adjustments to improve the Program's efficiency.

9-13.903 – Language Access.

In accordance with state and federal law, activities covered by this section will be conducted in such a way as to ensure access by limited-English-proficient persons. Including, but not limited to, providing notices, self-certification forms, informational materials, and correspondence in the appropriate languages.

SECTION 2. CEQA. The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”).

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 4. Effective Date. The City Clerk shall certify the adoption of this Ordinance, and the City Clerk shall cause this Ordinance or a summary thereof to be published as required by law. If this Ordinance is approved by a majority of the voters as set forth in Section 1 of this Ordinance, it shall take effect immediately upon certification of the election results by the City Council.

SECTION 5. Publication. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *the Modesto Bee*, the official newspaper of the City of Modesto,

setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of September, 2019, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Kenoyer, Madrigal, Ridenour, Mayor Brandvold
NOES: Councilmembers: None
ABSENT: Councilmembers: Ah You, Grewal, Zoslocki

APPROVED: _____
TED BRANDVOLD, Mayor

ATTEST:

BY: _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: _____
ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3703-C.S.
Effective: October 24, 2019

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FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 24th day of September, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal, Zoslocki

APPROVED: _____
MAYOR TED BRANDVOLD

ATTEST: _____
STEPHANIE LOPEZ, City Clerk

Effective Date: October 24, 2019

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