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In City Council, October 28, 2019

ORDINANCE:

AN ORDINANCE AMENDING ARTICLE II OF THE CITY ORDINANCES

Be it Ordained by the City Council of the City of Brockton as follows: That Sections 4-21 through Sections 4-28 of Chapter IV is hereby amended as follows:

Sec. 4-20~~4~~. - Definitions.

As used in this article the term "article II of the state sanitary code" or "state sanitary code, article II," shall refer to the state sanitary code, article II, "Minimum Standards of Fitness for Human Habitation," adopted by the Massachusetts Department of Public Health pursuant to General Laws, Chapter 111.

The terms used in this article shall have the meanings ascribed to them in Article II of the state sanitary code.

The terms "dwelling unit," "apartment" or "tenement" shall be synonymous throughout this article.

The term "rental unit" shall be defined to mean a non-owner occupied room or group of related rooms within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating. A rental unit shall also mean a non-owner occupied condominium unit, apartment or single family dwelling. Dwelling units that have current Lodging House Licenses issued by the Licensing Board for the City of Brockton shall not be considered as rental units for the purposes of this section, and will continue to be annually licensed and inspected pursuant to M.G.L 140 sections 22 and 25.

The term "Authorized inspector" shall be defined to mean any PHD inspector or any other person who (i) is a Commonwealth of Massachusetts Registered Sanitarian or a Commonwealth of Massachusetts Certified Health Officer or a Commonwealth of Massachusetts Certified Home Inspector, or has proof of training acceptable to PHD, and (ii) has demonstrated a proficiency in the application of the State Sanitary Code by satisfactorily completing the PHD certificate program for qualifying authorized professionals to perform inspections under Sec. 4-23, and has been issued a certificate of completion.

The term "Commissioner" shall be defined to mean the Commissioner of the Department of Health and Human Services or a designee.

The term "Days" shall be defined to mean consecutive calendar days.

The term "Owner" shall be defined to mean a for profit or not for profit individual, trust or entity, an agent of a for profit or not for profit individual, trust or entity, or any person having legal charge of or authority over a private dwelling, tenement, lodging house, or other residential rental property dedicated to residential use.

The term "Problem property" As defined by Sec. 4-40.2, as it may be adopted and amended from time to time, a problem property is a property that meets the following criteria and is designated as such following recommendation by the problem properties Task Force: 1. The Police Department has been called to the property not fewer than four (4) times within the preceding twelve (12) month period for any incident involving any arrestable offense including but not limited to disturbing the peace, trespassing, underage drinking or assault; or 2. the Public Health Division of the Department of Health and Human Services has received not fewer than four (4) sustained complaints within the preceding twelve (12) month period for noxious, noisome or unsanitary conditions; 3. the Fire

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(f) Decertification process for authorized inspectors and owners granted an inspection waiver: All authorized inspectors shall perform all inspections in a manner consistent with this section and shall refer to PHD any issue involving imminent life safety or health problems. Authorized inspectors accept the designation to perform these inspections with the understanding that the failure to adhere to the standards of good faith, fair dealing and honesty will result in the revocation of the status as authorized to perform these inspections, action against the professional license and if relevant, notification to authorities for criminal prosecution. PHD shall immediately revoke the approval of any authorized inspector, or owner who has been granted an inspection waiver, who misrepresents the condition of a unit or fails to inspect a unit with due care, misrepresents any information on the application form or any form or document submitted under this section, or for any reason demonstrating a failure to honor the requirement of good faith and fair dealing. An authorized inspector may request a hearing once aggrieved by such a revocation of approval. A hearing shall be held within thirty (30) days upon a written request from the aggrieved party.

(g) Failure to comply with any provisions of this ordinance shall be punishable by a fine as set out in Sec. 4-28.

(h) Any and all notices, statements, inspection forms, applications including supporting documentation, and any other documents concerning an inspection pursuant to Sec. 4-23 shall be a matter of public record.

(i) In an effort to evaluate the effectiveness of the inspection programs delineated herein, the Commissioner shall annually prepare a report detailing the activities of the program no later than July 31st of each calendar year, beginning June 30th, 2020. The annual written report shall include the following items:

1. The number of registration statements received by the Commissioner during the prior twelve (12) month period.
2. The number of owners issued fines or citations by PHD for (i) failing to initially file a registration statement and (ii) for failing to file a registration statement within thirty (30) days of written notice from PHD.
3. The total number of inspections performed by PHD inspectors during the prior twelve (12) months, along with a district categorized list of the number of inspections performed in such district during such period.
4. The total number of inspections performed on problem properties, as defined in Sec. 4-40.2, along with a break down by district of the number of problem properties inspected in such district.
5. Such other information as may be requested by the City Council

(j) The provisions of Sec. 4-23 may be enforced in accordance with the noncriminal disposition process of M.G.L. c. 40, s. 21D, provided that this section shall not preclude the City of Brockton from proceeding to restrain a violation by injunction. The provisions of this section may also be enforced according to M.G.L. Chapter 40 as accepted by the City of Brockton.

(k) Transfer or ownership of rental units must be reported to PHD within thirty (30) days of closing. New property owners must register within thirty (30) days of closing and must submit a reasonable maintenance plan that identifies and address the any significant code deficiencies within the subject property. If the property was acquired during its inspection year and the inspections did not occur before the transfer of ownership, then the new owner must, within ninety (90) days, must complete any required inspection.

(l) The Commissioner shall promulgate written rules and regulations necessary to implement and enforce the provisions of Sec. 4-23. The Commissioner will work to employ and implement technology to the extent possible in order to optimize the fairness and effectiveness of the registration and inspection processes within these rules, which may be revised from time to time.

(m) If any provision of Sec. 4-23 shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

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2. Failure to comply with a PHD notice of violation under the state sanitary code (105 CMR 400 & 410) the state building code (780 CMR), or Brockton zoning code, within the time frame provided. (1 point).

3. Failure to make a good faith effort to correct emergency violations after two (2) inspections (2 points).

4. Failure to register and/ or complete the inspection requirements of Sec. 4-23. (1 point).

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Upon being assessed with points in excess of the amount allowed, as described in Table 1 below, PHD shall notify owners of their classification as a "chronic offender" by mail, return receipt requested. PHD shall notify owners of each point assessed by mail, return receipt requested. The owner shall have fourteen (14) days to request a hearing to contest each point assessment or their classification as a "chronic offender". Chronic offenders are subject to fines of three hundred dollars (\$300.00), or the maximum allowed, for each subsequent point received in a twelve (12) month rolling period, and may also be subject to court prosecution under the applicable codes and regulations. Chronic offenders shall be required to request an inspection of each rental unit once every two (2) years, and it shall be mandatory that PHD conduct said two (2) year inspection. Chronic offenders with less than two (2) points in a rolling twelve (12) month period shall have the chronic offenders classification removed on the last day of the twelfth (12th) month following their classification.

<u>TABLE 1</u>		
<u># Rental Units Owned</u>	<u>Point Threshold in a 12 Month Period</u>	<u>Point Threshold in a 16 Month Period</u>
1 to 50 units	6	10
51 to 500 units	10	16
501 or more units	14	24

(d) All inspections performed under these sections shall be performed in accordance with the requirements of the State Sanitary Code and recorded on a form approved by the PHD. The Commissioner shall charge a filing fee of fifteen dollars (\$15.00) for any registration or sworn statement filed by an owner, authorized Inspector or other agent of the owner; said filing fees shall be capped at a maximum of two thousand five hundred dollars (\$2,500.00) per building or five thousand dollars (\$5,000.00) per complex.

For an inspection performed by PHD, the Commissioner shall charge a fee of fifty dollars (\$50.00) per unit for buildings of one (1)-to-three (3) units and seventy-five dollars (\$75.00) per unit for all other buildings, including condominium units. This inspection fee shall provide up to the first inspection, for two (2) or more inspections, the Commissioner shall charge a fee of fifty dollars (\$50.00) per inspection for each rental unit inspected.

(e) Before conducting an inspection pursuant to Sec. 4-23 of an occupied unit, reasonable advance notice shall be provided to the occupant in writing. Results of the inspection shall be provided to both the owner and the occupant. If an owner's agent is denied access by the occupant for purposes of conducting a Sec. 4-23 inspection, the owner of said unit shall notify PHD of such denial within seven (7) calendar days. Such denial shall be noted on a sworn, dated statement filed by an authorized inspector. If any person is denied access to a unit for the purposes of conducting such an inspection by the occupant, then PHD shall verify and document in writing such denial, which shall exempt the owner from the inspection requirements of Sec. 4-23 for the period of one (1) year. Denial of access by the occupant shall neither deem the dwelling to be in compliance with the State Sanitary Code nor bar the occupant from exercising legal rights. The Commissioner may cause the unit to be inspected pursuant to the terms herein in the manner provided for in the State Sanitary Code.

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the violations of Article II of the state sanitary code which exist in said apartment or apartments which must be corrected before a certificate of fitness shall be issued. At any time after such violations are corrected, an owner may request a reinspection, provided that none of the time limits provided for in this article shall be applicable. Each and every reinspection shall be subject to a reinspection fee pursuant to paragraph "d" Sec. 4-24.

(ac) Any owner subject to the provisions of this article may fulfill the said requirements by requesting an inspection from PHD, within thirty (30) calendar days from issuance of an inspection notice, or notifying PHD within thirty (30) calendar days that the inspection will be completed utilizing one of the alternate methods outlined in paragraph "c". Non-PHD inspection reports must be submitted subject to the regulations promulgated by the Commissioner. Failed Non-PHD inspections must be accompanied by a compliance plan acceptable to PHD that will bring the subject rental unit into compliance with the minimum standards for human habitation for a residential dwelling as set forth in the Massachusetts State Sanitary Code (105 CMR 410), as it may be adopted and amended from time to time. All inspections shall include a sworn statement and shall be signed by an PHD Housing Inspector, Brockton Housing Authority Housing Inspector, an Inspector of any other public or private non-profit entity that administers a Section 8 tenant-based assistance program, or by other Federal, State, or City inspection programs that are accepted by PHD as being substantially equivalent, or an "authorized inspector". An authorized inspector shall be prohibited from charging more than one hundred thirty-three percent (133%) of the fee charged by the City of Brockton for an inspection performed under these sections.

Sec. 4-24. -Correction of violations & Chronic Offenders.

(a) If after any inspection pursuant to this article, an inspector refuses to issue a certificate of fitness, he shall issue an order setting forth the violations of Article II of the state sanitary code existing in an apartment which must be corrected before a certificate of fitness may be issued. It shall be the responsibility of any owner receiving such order to notify ~~the code division of the board of health~~PHD when such violations have been remedied. If within five (5) full working days of receipt of such notice, ~~the code division of the board of health~~PHD shall fail to make a reinspection of such vacant unit, it shall issue a certificate of permission to rent, permitting such unit to be reoccupied.

(b) Any rental unit determined to be a problem property as defined by Sec. 4-40.2, as it may be adopted and amended from time to time, must annually request an inspection from PHD. Each owner of a problem property shall also file with PHD an annual management plan, within thirty (30) days of its classification as a problem property, outlining the remediation of any outstanding code violations or other persistent conditions requiring the landlord's affirmative response as identified by the Task Force. Said management Plan shall identify the deficiencies in the property, identify consultants and contractors engaged to proceed with any remediation work, detail any proposal made by the contractors or consultants, and set out a timeline over which the work will be completed.

(c) Chronic offender point system. Residential rental property owners who fail to register or who repeatedly fail to comply with notices of violations, or warnings of noncompliance, or municipal fines, shall be assessed points based on the following schedule at the time of registration or at the time the violation is found (property owners cannot be assessed points under more than one of the following sections for the same violation):

1. Inclusion on the Problem Property list. (2 points).

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officers against any property which said owner may own in the city. Said owner or agent must submit payment of any such fines to the city clerk before a certificate of fitness may be issued.

(f) Any dwelling which has actually been inspected and certified as required above shall not be required to be recertified for a period of twenty-four (24) months from the date such certification has been made.

(g) No certificate of fitness shall be issued by the board of health through its code enforcement division if the inspection as required above reveals that violations of Article II of the state sanitary code exist in such unit.

(h) It shall be the duty and responsibility of any owner, his agent or lessor of such property, upon the vacating of any such apartment by a tenant to notify PHD, in writing upon forms provided by the division, that such unit is vacant. If, within five (5) full working days after receipt of such notice, PHD shall fail to make an inspection of such vacant unit, it shall issue a certificate of permission to rent, permitting such unit to be reoccupied.

(i) the Public Health Division of The Brockton Department of Health and Human Services shall be authorized to issue certificates of fitness for human habitation and/or certificates of permission to rent. Whenever a certificate of fitness or a certificate of permission to rent shall be issued for any apartment, it shall be posted in a conspicuous place in a common area of the building in which the apartment is located, or a copy of it shall be given to any person occupying said apartment. On each certificate of fitness shall appear the date of its issuance and the name of the inspector making the inspection, and a description of the apartment certified. On each certificate of permission to rent shall appear the date of the issuance and a description of the apartment for which such permission is granted.

Sec. 4-23. - ~~Voluntary~~ Inspections and eCompliance.

(a) All rental units must be inspected at least once every three (3) years. In order to develop the inspection plan for the first year, and subsequent years of the three (3) year inspections cycle, PHD shall utilize data that may include, but shall not be limited to, inspection records, court records, documented constituent complaints, and any information related to the status of the property with the Problem Property Task Force or information compiled by said Task Force to prioritize a list of properties for inspection in each neighborhood. Owners may request that PHD conduct the inspection or said owner may engage an "authorized" non-PHD inspector meeting the qualifications enumerated in Sec. 4-20. The procedures and fees for such inspections are set forth in paragraph "c" of this section and paragraph "d" Sec. 4-24. . Annual comprehensive apartment inspections conducted by the Brockton Housing Authority leased housing program or any other public or private non-profit entity that administers a Section 8 tenant-based assistance program, or by other Federal, State, or City inspection programs that are accepted by PHD as being substantially equivalent, may be used to satisfy the three (3)-year inspection requirement. PHD shall perform periodic and random audit inspections of no less than five percent (5%) of the "authorized" inspections that are filed with PHD.

(b) Any owner subject to the provisions of this article may request an inspection by PHD of any apartment owned by him, whether vacant or occupied, for the purpose of receiving a certificate of fitness for said apartment. If upon inspection of said apartment or apartments, the inspector finds there are no violations of Article II of the state sanitary code, he shall issue a certificate of fitness for the apartment or apartments inspected. If, however, inspection reveals that violations of Article II of the state sanitary code exist in an apartment or apartments, no certificate of fitness shall be issued for the apartment or apartments in which violations exist and the inspector shall issue an order setting forth

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Prevention Bureau has received not fewer than four (4) sustained complaints within the preceding twelve (12) month period for unsafe or hazardous conditions.

Sec. 4-21. – Rental Unit Registration

(a) All owners of private residential rental housing units ("Owners"), including condominium units, in the City of Brockton shall register no later than July 1st of each year with the Public Health Division of The Brockton Department of Health and Human Services ("PHD") identifying the property by street address and the number of units that they own at each address. An owner of a rental unit, who does not reside within the subject dwelling, shall post and maintain or cause to be posted and maintained on such dwelling adjacent to the mailboxes for such dwelling or elsewhere in the interior of such dwelling in a location visible to the residents a notice constructed of durable material, not less than twenty (20) square inches in size, bearing her/his name, address and telephone number. If the owner is a realty trust or partnership, the name, address and telephone number of the managing trustee or partner shall be posted. If the owner is a corporation, the name, address and telephone number of the president of the corporation shall be posted. Where the owner employs a manager or agent who does not reside in such dwelling, such manager or agent's name, address and telephone number shall also be included in the notice. P.O. boxes do not satisfy the address requirement of this section. All owners must register each rental unit annually with PHD, and must attest to and affirm that they are familiar with their obligations to comply with this section, the State Sanitary Code (105 CMR 410), the State Building Code (780 CMR), the City of Brockton Zoning Code, Federal, State and Local fair housing regulations, and all other regulations applicable to residential dwellings, and that they intend to comply with said regulations, by signing a form provided by and approved by the Commissioner of PHD. An owner owning multiple units in the same building may submit one form representing all said units. Any owner residing outside of the Commonwealth of Massachusetts must designate a Brockton based resident agent authorized to accept service on the owner's behalf.

All rental unit registrations shall be recorded in an electronic database of all owners for an initial registration fee of thirty dollars (\$30.00), and annual renewal fees of twenty dollars (\$20.00) for each rental unit. All owner-occupied dwellings containing two or fewer rental units shall not be required to pay an initial registration or annual renewal fees set forth in this subsection (b). Nothing in this subsection (b) shall relieve any owner of a rental unit of the duty to register their rental units with PHD, regardless of whether the owner is exempt from the requirement to pay annual renewal fees. The Commissioner shall work to employ technology to the extent possible in order to optimize the fairness and effectiveness of the registration process.

Sec. 4-22. - Certificate of fitness.

(a) Whenever a dwelling unit, apartment or tenement is vacated by the occupant or occupants, no owner, his agent or other lessor of such property shall allow such unit to become reoccupied unless, prior to its becoming reoccupied by a new tenant, such unit is inspected by PHD ~~the board of health through its code enforcement division and the such~~ division issues a certificate of fitness stating that such apartment meets the standards set forth in this state sanitary code, Article II.

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(b) Regardless of any vacancy, every apartment unit subject to this article shall receive a certificate of fitness at least once every three (3) years.

(c) A certificate of fitness shall not be issued unless the fee for said certificate pursuant to Sec. 11-181 has been paid.

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(d) A certificate of fitness shall not be issued unless water, sewer and tax bills have been paid.

(e) A certificate of fitness shall not be issued to any owner or his agent if said owner or agent has any outstanding fines assessed by the board of health or the code enforcement

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Sec. 4-26. - Exemptions.

(a) Boardinghouses, hotels, inns, lodging houses, dormitories, and any hospitals, sanitoriums, convalescent or nursing homes, infirmaries or boardinghouses for the aged licensed by the Massachusetts Department of Public Health, Rental units owned or operated by Federal, State, or City Government are exempt from the requirements of this article.

(b) Any apartment which is newly constructed shall be exempt from this article for a time period of five (5) years after receipt of a certificate of occupancy from the department of building inspection, except that any apartment existing in a building constructed with state or federal financial assistance or mortgage insurance shall be exempt for a period of two (2) years after receipt of a certificate of occupancy from department of building inspection.

Sec. 4-28. - Violations.

Any owner, his agent or other lessor of such property used for dwelling purposes failing to comply with this article shall pay a fine of fifty dollars (\$50.00) per day for every day he allows any person or persons to live, occupy or inhabit the same premises without having received a certificate of fitness for human habitation or a certificate of permission to rent from the board of health, division of code enforcement PHD. Any owner of property failing to comply with the requirements of 105 CMR 410.481: Posting of name of owner, shall pay a fine of fifty dollars (\$50.00). Any owner of property failing to comply with the requirements of this article and who has allowed the number of dwelling units or apartments on such property to be in excess of the number allowed by chapter 27 of these ordinances shall pay a fine of three hundred dollars (\$300.00) per day. Any owner of property failing to comply with the requirements of Sec. 4-21. (Rental Unit Registration) will result in the assessment of a fine of three hundred dollars (\$300) per month beginning in the first month in which the property is found not to be in compliance and continuing for each subsequent month thereafter.

Dennis Eaniri
Councillor
Councillor Dennis R. Eaniri

IN CITY COUNCIL

October 28, 2019
READ AND REFERRED TO STANDING
COMMITTEE ON Ordinance
Anthony J. Zeali
CLERK

In City Council November 25, 2019

SENT TO MAYOR FOR APPROVAL

DECEMBER 12, 2019
APPROVED
[Signature]
MAYOR

The amendment passed by a hand vote.
Passed to a third reading, as amended
by a hand vote.

Anthony J. Zeali
City Clerk

In City Council December 9, 2019

Ordained as amended, by a roll call vote taken by "yeas and nays"; 10 members present and all voting in the affirmative. Councilor Cruise absent.

Anthony J. Zeali
City Clerk