



DRAFTING RENTAL REGULATION ORDINANCES IN ILLINOIS MUNICIPALITIES A Short Guide for Local Officials

Alan Mallach



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Written by Alan Mallach, Senior Fellow, Center for Community Progress, with the assistance of Brent Denzin, Esq., Ancel Glink Law Firm

This guide was prepared to assist local officials and others concerned with rental housing issues develop effective rental regulation ordinances. While it contains discussion of legal issues, it does not constitute formal legal advice. Municipalities are urged to consult legal counsel in the course of preparing ordinances or taking other steps with respect to the matters addressed in this guide.

INTRODUCTION

Regulating the condition and operation of rental housing is a major challenge facing local governments across the United States, particularly those experiencing social and economic distress. In recent years, along with widespread foreclosures and loss of property values, many municipalities have seen increasing numbers of single family homes go from owner-occupancy to absentee ownership and rental occupancy. While a stock of sound, well-managed single family rental properties can be a valuable community asset and most landlords are responsible owners, that is not always the case. Many rental properties in some Illinois villages and cities are neither sound nor well-managed, and may have a destabilizing effect on their surroundings.

The responsibility for making sure that landlords maintain and manage their properties well falls to local governments, which has the authority to enforce codes and take a variety of other actions under the legal powers municipalities are granted to regulate property. The goal of these regulations is not to drive landlords away or to punish them, but to raise the quality bar for rental housing in the community, and ensure to the extent possible that landlords who own property in the municipality are responsible stewards of their properties, working with the municipality to ensure that neighborhoods remain safe and clean.

The way a municipality makes sure that landlords maintain and manage their properties is the municipal *regulatory framework*, which is the sum of the ordinances, administrative systems, and operating practices the municipality uses to foster responsible landlord behavior and sound, well-managed rental housing in the community. The purpose of this guide, which is a companion to *Raising the Bar: Linking Incentives and Regulations through Rental Licensing*,¹ is to assist municipalities that want to create an effective regulatory framework for rental housing, by offering a step-by-step guide to drafting an effective local ordinance.

Under Illinois law, however, not all local governments have the same powers or can follow the same procedures. Illinois contains both *home rule* and *non-home rule* municipalities, which operate under different legal ground rules. Home rule municipalities, generally speaking, have flexibility to craft local ordinances to address local concerns within broad parameters set by the Illinois legislature, while non-home rule municipalities must stay within the boundaries of those powers explicitly granted by the legislature. Cities and villages with populations over 25,000 automatically become home rule municipalities, while smaller municipalities can become home rule municipalities by referendum. While it might seem logical for a municipality to hold such a referendum in order to gain those additional powers, becoming a home rule municipality also gives the local government broader taxing powers; as a result, such a referendum might well run into strong resident opposition, and fail to win a majority.

When it comes to regulating rental properties, there are major differences between what a home rule municipality and a non-home rule municipality can legally do, and how they must proceed to exercise their respective powers. Because of these differences, we have prepared this guide in two sections, the first of which offers our recommendations for home rule municipalities, and the second for non-home rule municipalities. Each of these sections has been designed to be read independently of the other, so that where the issues or the ground rules are the same, some of the material may be duplicated to save the reader from having to jump back and forth between the two sections.

I DRAFTING A RENTAL LICENSING ORDINANCE FOR A HOME RULE MUNICIPALITY

A OVERVIEW

The powers of home rule municipalities in Illinois are set forth in the State Constitution, in Article VII, Section 6, the key part of which reads:

...any municipality which has a population of more than 25,000 [is a] home rule unit. Other municipalities may elect by referendum to become home rule units.

¹ *Raising the Bar* can be downloaded from <http://www.metroplanning.org/uploads/cms/documents/raising-the-bar.pdf>

Except as limited by this Section,² a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, *the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt* (emphasis added).

This language provides a robust framework for local regulation, and for using licensing to establish standards and regulate the local rental housing stock.³

The basic approach used in the proposed ordinance is that of rental licensing, an approach which is already being used by a number of Illinois home rule municipalities. A licensing system is fundamentally different from a registration system. Such a system is purely informational. It requires landlords to provide basic information to the municipality. It carries with it no inherent ability to enforce codes or set standards.

A licensing system is a fundamentally different matter. By establishing minimum standards that a landlord must comply with in order to operate a rental housing unit in the municipality, it provides the basis for a strategy to raise the bar for the community's rental housing stock. It makes it clear that the community's landlords have a responsibility to live up to certain standards, but also that the municipality has accepted its responsibility to act proactively to enforce its standards. It enables the municipality to move from a reactive and complaint-driven code enforcement system to one that aims at improving the quality of the entire rental stock, not just individual properties that trigger complaints.

While even the most rudimentary licensing system is likely to be better than no licensing system, the framework that we propose for the licensing ordinance is what we call a *performance-based* licensing system. A performance-based licensing system tracks the performance of rental properties and landlords, in terms of such matters as code violations, nuisance complaints and police calls⁴, and adjusts the licensing requirements based on the property's performance. The majority of responsible landlords who maintain their properties well and carefully screen their tenants benefit with fewer inspections and lower fees, while the municipality can target its limited resources to the smaller number of problem landlords who are creating a disproportionate share of the problems.

² The limitations referenced by this language do not directly affect the aspects of rental regulation described in this guide, with the significant exception of setting fees, as discussed on page 17.

³ The underlying issue of whether equal protection bars a municipality from adopting a regulatory framework that specifically focuses on rental housing has long been settled law; see, e.g., *Chicago Board of Realtors, Inc. v. City of Chicago*, 819 F.2d 732 (1987)

⁴ Using police calls in such a system, along with the use of programs such as crime-free rental housing, raise significant legal and policy issues which require careful consideration. See text box on the following page for further discussion of these issues.

Legal issues and crime-free rental housing programs

Crime is an important concern in most municipalities, and many already have ordinances that provide for use of crime-free rental housing programs or equivalent programs.⁵ While they are widely considered to have a positive impact on community safety, they may nonetheless raise significant legal issues. Similar issues may arise if a municipality proposes to use police calls as a factor in a performance-based rental licensing program. These issues include issues of due process, first amendment rights, and potential violations of state and federal fair housing law. For example, a program that penalizes landlords on the basis of police calls, or that characterizes police calls as a “nuisance” may have a chilling effect on tenant’s exercise of constitutional rights. Similarly, if a municipal ordinance requires a landlord to evict tenants or face penalties under the ordinance, if the tenants are not provided with adequate notice and hearing, that may be seen as a violation of their due process rights. Depending on the demographic character of the community, and of its tenant population in particular, many such ordinances could be potentially be subject to a claim that they have a disparate impact on classes of people protected under state or federal Fair Housing Acts.

In addition to these broad issues, recently-enacted Senate Bill 1547⁶ bars ordinances or regulations that penalize tenants or landlords based on (a) police calls that were intended to prevent or respond to domestic or sexual violence or that were made on behalf of an individual with a disability; (b) incidents of actual or threatened domestic or sexual violence; or (c) criminal activity or ordinance violations that are directly related to domestic or sexual violence.

This is not to suggest that municipalities may not pursue these steps. It is possible to craft ordinances that are both effective as a deterrent to crime and are legally defensible with respect to all of the above concerns. The disparate impact standard of the Fair Housing Act, as it has been interpreted, does not bar activities that may have a disparate impact, but it does impose a high bar on those activities. If a finding of disparate impact has been made, however, the burden is on the municipality not only to show that the challenged activity is necessary to carry out a legitimate interest, but to show that the same interest cannot be served through an activity with a less discriminatory effect.

Moreover, there are many actions that a municipality can take that do not raise these legal issues. The City of Rolling Meadows’ program contains three action phases, as follows:

Phase #1: A 4-hour seminar presented by the police department, including crime

⁵ “Crime-Free Rental Housing” is the name of a program designed and administered by the International Crime-Free Association, a private non-profit entity based in El Cajon, California. While many municipalities use that program, some use similar programs provided by other vendors or designed in-house. Where that is the case, although the Association web site does not indicate that the name is registered or copyright, it is preferable to use a different term in the ordinance for the program.

⁶ Now Public Act 99-441, signed into law on August 21, 2015 and goes into effect on November 19, 2015.

prevention, benefits of applicant screening, crime free lease addendum, evictions, and proactive management techniques.

Phase #2: CPTED (Crime Prevention Through Environmental Design) certification of the security arrangements on the property.

Phase #3: A tenant crime prevention meeting, with the municipality providing materials and assistance to publicize the meeting with their tenants.⁷

Activities of these sorts, which can be incorporated into the licensing process, benefit landlords, tenants and the general public.

Municipalities which want to pursue crime-free or similar ordinance provisions should be aware of these legal issues, acknowledge the possibility of legal challenge, and work closely with legal counsel to draft ordinances that benefit the community while providing appropriate constitutional and legal protection for potentially affected tenants.

B ELEMENTS OF A PERFORMANCE-BASED RENTAL LICENSING ORDINANCE

This section will walk through the elements that may be appropriate for a performance-based rental licensing ordinance in a home rule municipality. The ordinance is designed to lay out:

- The rationale for the licensing program;
- The ground rules the municipality will follow in administering the licensing program;
- The criteria used to evaluate performance and the consequences of different performance levels; and
- Fines, penalties and other sanctions for violation of the ordinance.

While each ordinance should be tailored to the particular conditions and priorities of the municipality, it is critical that the ordinance not only address all of these areas, but that it do so in a way that is *rational* and *consistent*; in other words, the findings should clearly establish a basis for enacting the ordinance, the ground rules should flow logically from the findings, the performance-based system should be a rational system for addressing the conditions identified in the rationale for the ordinance, and the sanctions should be reasonable in light of the nature of the violation. An ordinance that tries to cut and paste different elements or features, without careful attention to the consistency and internal coherence of the different elements, may be either difficult to implement and enforce, or legally unenforceable. A recommended outline of the sections that should be included in an ordinance is shown on the following page. Each one of those section is discussed separately in the following section.

⁷ This is adapted from the City of Rolling Meadows IL web site, see <http://www.ci.rolling-meadows.il.us/rmpd/html/Crime%20Free%20Multi-Housing.htm>

OUTLINE: SECTIONS OF A MODEL PERFORMANCE-BASED RENTAL LICENSING ORDINANCE

1. Findings
2. Definitions
3. License required; application procedure
4. Inspection and re-inspection
5. Issuance of licenses
6. Annual performance evaluation and property classification
7. Performance-based inspection requirements and landlord obligations
8. Fees
9. Violation, suspension, revocation of license; penalties

C SECTION BY SECTION: MODEL PERFORMANCE-BASED RENTAL LICENSING ORDINANCE PROVISIONS

§1 Findings

The findings section should establish not only why a rental licensing ordinance is needed to serve the public interest generally, and the health and safety in particular, of the municipality and its residents, but *why the key features of this ordinance* are needed. Some of the critical findings that should be in this section include:

- a. Finding that problems with the quality, condition and maintenance of housing exist in the municipality, and that they harm the public health, safety and welfare.
- b. Finding that rental properties account for a disproportionate share of these conditions, as well as other problems affecting public health, safety and welfare, and/or impose disproportionate cost burdens on the municipality.⁸
- c. Setting forth the need for an ongoing regulatory regime (as distinct from one-shot or complaint-driven enforcement) to reduce the number and recurrence of problem conditions associated with rental housing in the municipality.
- d. Recognizing that most landlords are responsible owners, and that a targeted approach which focuses on problem landlords and properties is the most effective way to reduce the number and recurrence of problem conditions.

These findings must be carefully crafted. They form the justification for the entire ordinance.

⁸ The municipality should not assert that a disproportionate impact exists unless they can demonstrate it in the event of a legal challenge. An objective analysis of the extent to which rental properties do indeed account for a disproportionate share of problem conditions or municipal costs should serve as the basis for that finding.

§2 Definitions

Definitions are a key part of any ordinance. They should include any basic matters that may be subject to interpretation, such as:

- Dwelling unit
- Owner
- Agent or representative of the owner
- Tenant

This section may include any other matters that the municipality considers relevant. From the standpoint of making the ordinance easier for users to follow, however, it is often better to define certain things in the substantive sections of the ordinance where they are addressed, such as the categories of rental housing that may be exempt from certain requirements of the ordinance. In that event, it is not necessary to define them in the definition section; or if included, they should be defined by reference (e.g., “Nuisance shall have the meaning set forth in § __ of this ordinance”) to avoid duplication and risk of inconsistency. Ordinance drafters should avoid the temptation to flesh out this section by adding definitions for matters that are self-evident, circular definitions⁹, or definitions of terms that are not clearly germane to the ordinance.

We recommend that the official term for the license being issued under this ordinance be **Residential Rental License**, making it clear that it applies only to residential properties. In the interest of clarity, and simplicity of drafting later sections, a definition that specifies that the term ‘residential rental license’ is the same, for purposes of the ordinance, as ‘rental license’ or ‘license’ may be worth including in this section.

§3 License required; application procedure

This is the heart of the ordinance, where the municipality makes clear that all owners of rental property must obtain a license to offer non-transient rental accommodations¹⁰ to the public. This section should begin with explicit language, such as “No person shall rent, lease or otherwise allow a dwelling or dwelling unit under their ownership or control to be occupied by others unless it has received and has in effect a Residential Rental License [except as provided in Sec. ____].” The municipality may want to exempt some facilities, such as residential facilities owned and operated by universities, hospitals and similar facilities

⁹ For example, “Inspection shall mean the inspection of a rental housing unit pursuant to this ordinance”

¹⁰ Hotels and motels, as well as other transient facilities such as homeless shelters are distinct enough types of facility that, if licensed, they should be the subject of a separate ordinance and procedure. A number of Illinois jurisdictions require hotel and motel licensing.

exclusively for accommodation of students or employees¹¹, as well as rental units on the same premises as the owner that are made available exclusively to members of the owner's family. Otherwise, *all* rental units should be covered by the ordinance unless there is a compelling public policy reason to the contrary.¹²

The balance of this section should deal with the procedure for applying for and obtaining a license (but not the inspection procedure, which is addressed in the following section). The procedural language should address the following matters, each of which may be in a separate subsection of this section:

- a. A requirement that every landlord must submit an application to the [designated office] of the municipality with applicable fees.
- b. The contents of the application, which should at a minimum include the following:
 - i. Address, tax parcel number of property, including where applicable individual addresses or unit numbers for each unit to facilitate mailings to tenants.
 - ii. Name, address, telephone number and email address for owner (must include real person, not corporation or LLC); if owned by a trust, a trust disclosure is required.
 - iii. Name, address, telephone number and email address for property manager, if other than owner
 - iv. Name, address, telephone number and email address for entity located inside Cook County, Illinois that will accept service if owner does not live or have a business address in Cook County, Illinois, and who shall have the authority to address the issues necessary to resolve any and all problems and deficiencies that affect the safety and living conditions of the occupants at any time of day or day of the week.
 - v. An Inventory of the rental units on the property, including number of bedrooms, number of bathrooms and rent charged, identified by the individual addresses required under (i).
- c. Deadlines for filing applications.
- d. Procedures for reporting changes in any information on file with the municipality.
- e. Procedures and deadlines for transferring the license to a new owner.
- f. Procedures and deadlines for filing applications when properties are converted from non-rental (or non-residential) to residential rental use.

¹¹ This is a debatable area. The fact that the units are not offered to the general public does not necessarily mean that the municipality has no accountability in the event that they are found to be in violation of basic health and safety requirements. As an alternative, the municipality may exempt them from the inspection requirement but require that they apply for and obtain a license. As discussed under §4 below, that exemption should be removed in the event that the property is the subject of a substantiated code complaint involving health and safety concerns.

¹² Some municipalities have established rental licensing only for certain categories of property; e.g., buildings with over 5 units, as in the case of the Batavia licensing ordinance. We are not aware of any rational basis for making such distinctions, and strongly recommend that all units meeting the general definition be covered by the ordinance.

While it is good practice for the municipality to track deadlines and send owners notification that they must file or renew license applications, the ordinance should make clear that any such notification is at the municipality's discretion, and that compliance with its requirements is the sole and unequivocal responsibility of the owner.

All of the information received from licensing applications should be entered into a property database, which becomes the starting point for the annual performance evaluation described in §7.¹³

§4 *Inspection requirements; exceptions*

This section sets forth the central condition of licensing, which is that in addition to the provision of information on the application, *each rental unit offered to the public must meet basic requirements needed to preserve the health and safety of the residents of the property and its neighbors*. This does not mean that the unit must be completely code compliant in every respect as a condition of licensing; many minor code violations can be addressed through ongoing enforcement without reaching the level of denial of a license to rent the property.

The conditions that we consider the basic requirements for licensing are shown in Table 1 on the following page, including a short description of why each is a fundamental health and safety concern. It is worth noting that all of these concerns, in addition to creating health and safety risks for tenants, and in some cases for adjacent residents and property owners, can also trigger significant municipal costs for firefighting, inspection services, public health and sanitation. *This is not a detailed inspection checklist, but an outline of elements that can be used as the basis for a checklist.*¹⁴ The checklist should be made readily available to landlords as well as prospective buyers of rental properties, so they will have a clear idea of the municipality's licensing requirements. It should also be generally available to the public by posting on the municipal web site.

In addition to setting down the requirement that the property be inspected, and the scope of the licensing inspection, this section should also include the key elements of the inspection procedure, including:

- a. Notice and timing of initial licensing inspection.
- b. Provision for and timing of re-inspection in the event of failure to pass initial inspection.

No fine or penalty should result from failure to pass the initial inspection, but may result if the owner fails to correct the deficiencies and the property fails to pass upon re-inspection. This section can include language dealing with the consequences of failure to pass re-inspection, but

¹³ A more extended discussion of the rental property database can be found in *Raising the Bar* at pages 10-11

¹⁴ See Appendix 1 of this guide for a checklist used by the Village of Palatine in their rental licensing program.

TABLE 1: HEALTH AND SAFETY CONDITIONS APPROPRIATE FOR THE LICENSING INSPECTION

HEALTH AND SAFETY CONDITION	WHY THIS IS ESSENTIAL TO HEALTH AND SAFETY
<p>1. Fire safety</p> <ul style="list-style-type: none"> • Smoke and CO detectors appropriately located and in good working order • Two or more means of egress 	<p>Lack of detectors and/or inadequate egress increases risk of fires and the risk of bodily harm resulting from fires. In addition to posing a risk to tenants, both increase risks for adjacent properties and impose fire service and health costs on the public.</p>
<p>2. Other safety conditions</p> <ul style="list-style-type: none"> • All doors to the exterior must close fully and have appropriate, well-functioning locking mechanisms • All hand or guard rails must be firmly fastened and capable of supporting reasonable loads • Sidewalks and walkways must be in reasonable repair 	<p>Improperly closing doors or malfunctioning locks can provide opportunities for burglary or trespassing with significant risk to tenants.</p>
	<p>Insecure or inadequate guard rails can result in injury to tenants or visitors, particularly senior citizens or individuals with physical disabilities.</p>
	<p>Holes, cracks and other deficiencies in sidewalks and walkways can lead to injury of tenants, visitors and passers-by.</p>
<p>3. Plumbing</p> <ul style="list-style-type: none"> • Access to public water and sewer service; or, a well and/or septic system approved by the appropriate approval authority. • Complete bathroom, including sink with hot and cold running water, toilet and shower and/or bathtub in working order with all fixtures properly installed and no visible water hazards present. 	<p>Inadequate water service can lead to tenant health problems, while inadequate sewer service can affect health for both tenants and residents of nearby properties because of the potential spread of disease.</p>
	<p>Lack of adequate, properly functioning and safe washing, bathing and toilet facilities can lead to significant health problems for tenants.</p>
<p>4. Drainage</p> <ul style="list-style-type: none"> • Properly operating drains in bathroom and kitchen • Proper drainage from apartment into sewer or septic system • Gutters and downspouts in good condition and draining properly 	<p>Improperly functioning drains can lead to significant health problems for tenants, as well as for nearby residents through potential spread of disease.</p>
	<p>Improperly functioning drains can lead to significant health problems for tenants, as well as for nearby residents through potential spread of disease.</p>
	<p>Improperly functioning gutters and downspouts can lead to ponding, flooding and infestation, as well as lead to roof and wall problems creating health and safety problems for tenants and neighbors.</p>
<p>5. Working and property vented heating system</p>	<p>Lack of adequate heating facilities can lead to significant health and safety problems for tenants, including the use of alternative heating measures that lead to fire risk.</p>
<p>6. Working and safe electrical system</p>	<p>Dangerous or inadequate electrical systems increase the risk of physical injury to residents and visitors and increase fire risk for the property and adjacent properties.</p>
<p>7. Kitchen with operating stove, oven, refrigerator and sink</p>	<p>Lack of operating kitchen equipment can lead to use of undesirable and dangerous alternatives by tenants which</p>

	increase risk of physical injury and risk of fire to property and adjacent properties.
8. Roof free from leaks; if evidence of prior leaks is visible, documentation that repairs were made	Leaking roof can lead to significant health and safety problems for tenants.
9. Absence of holes, breaks, rotting material or major cracks in walls or floors	Holes, breaks or major cracks in walls or floor can pose injury risks to tenants, particularly children, as well as indicate potential structural problems.
10. Soundness of exterior structural elements, including balconies, stairs and decks	Unsafe balconies, decks, stairs and visible joists can pose severe injury risks to tenants and visitors.
11. Absence of mold or mildew	Mold or mildew can lead to significant health and safety problems for tenants
12. Absence of rats, mice, termites or bedbugs	Rats and other vermin can lead to significant health and safety problems for tenants.

we recommend that that language be placed in §9 of the ordinance, where issues arising from failure to comply, violations and penalties are addressed.

This section should also address those categories of property that are exempt from the requirement that they be inspected as a condition of licensing. These can include properties that are not offered to the general public, as discussed above, as well as properties that are subject to a separate inspection requirement that at a minimum covers all of the conditions listed shown in Table 1. This would include dwelling units which are rented to recipients of Housing Choice Vouchers, where the local housing authority or other responsible entity is legally required by HUD to inspect the property prior to authorizing its use by a voucher recipient.¹⁵

Not all entities responsible for inspecting properties, however, are equally effective. While the ordinance should waive the initial inspection requirement for these properties, it should also provide that *in the event of a complaint where the inspector finds a health and safety violation in any such property, the inspection waiver is removed, and from that date forward the property is subject to licensing inspection similar to any other rental property in the municipality.*¹⁶

Municipalities must decide whether to require inspection of all of the units in multifamily buildings; and if not, what percentage to inspect, which should then be specified in the ordinance. Many ordinances only require inspection of a percentage of the units; the Village of

¹⁵ The inspection checklist required by HUD for this purpose is quite comprehensive, and goes beyond what is likely to be required under a municipal licensing ordinance. It can be reviewed or downloaded at <http://portal.hud.gov/hudportal/documents/huddoc?id=52580.pdf>

¹⁶ Municipalities should make sure that they have a straightforward and user-friendly process by which tenants can submit complaints about code violations in their units without fear of retaliation, and which ensures that the tenants are notified of the outcome of their complaints.

Addison, for example, provides that “the annual rental inspection shall be scheduled to inspect twenty percent of the dwelling units in each building. When the calculation of 20 percent of the total units creates a fraction of a unit it shall be increased (rounded up) to the full whole number of units to be inspected. The units selected to be inspected shall be a random choice made by the inspector.”¹⁷

Municipalities must also decide whether and to what extent inspections will be conducted by inspectors employed by the municipality or by third parties. The third party entity can either be (a) a single firm selected by the municipality to perform this function through a competitive process, or (b) a firm selected by the property owner from a list of approved inspectors created by the municipality. The municipality can assign responsibility for all inspections, including re-inspections, to third parties, or can retain responsibility for all but the initial inspection. This is an administrative matter that is more appropriate to be handled by administrative action rather than be embedded in the rental licensing ordinance, except to the extent that it may have a bearing on the fee structure in the ordinance.

§5 *Issuance of license*

This section sets forth the obligation of the municipality to immediately issue a license for properties that pass the health and safety inspection, and the obligations of the owner with respect to the license.

The ordinance should provide that the owner provide a copy of the license to every sitting tenant, and on every subsequent re-rental of the property shall provide the new tenant with a copy of the license. If the rental is subject to a written lease, the ordinance should require that copy of the license be attached to the tenant’s copy of the lease agreement, along with contact information for the 24 hour contact provided in the landlord’s licensing application.

§6 *Annual performance evaluation and property classification*

The circumstances that lead to rental properties becoming problem rental properties, and the response to those problems by property owners, vary widely. Some conditions may be isolated, quickly addressed and not arise again; in other cases, there may be many recurrent problems associated with the property, which owners may not address in a timely fashion. Municipalities have a compelling interest to reduce the number and scope of problems in rental property, by motivating property owners to become more responsible landlords, fixing the problems with their properties and making sure to the extent possible that they do not recur. The best way to do that is to conduct an annual review of the ‘track record’ of each licensed rental property, and adjust its status going forward on the basis of that review, distinguishing between those properties that are well-maintained and well-managed, those that need help, and those that are chronic offenders.

¹⁷ Village of Addison Code, Sec. 10-85.1(B)

Through the annual review, the owner of a property that cause the municipality few if any problems is rewarded for responsible behavior, while those that continue to cause problems face varying degrees of additional scrutiny or requirements.

This section spells out the procedure for the annual review, while §7 lays out both the criteria under which properties are placed in one of a number of categories, typically three or four, and what obligations or scrutiny are associated with each.

In order to conduct an annual performance review, a municipality must have a basic property database. The database has two elements:

- The property database into which information on the licensing application is entered (see §3);
- Regular tracking of complaints, calls, violations and other property concerns.¹⁸

While many municipalities use sophisticated database programs, this can be done – especially in a small community with a relatively small rental property inventory – with a simple Excel spreadsheet.¹⁹ Which information is tracked is up to the municipality, and may reflect both what they consider important, as well as their capacity to create a timely flow of information from different municipal offices into a single database. We would recommend, if possible, that the database include the following:

- Health and safety conditions identified and cited
- Other code violations cited
- Nuisance violations cited; e.g., trash dumping, junked cars, tall weeds
- Timeliness of correction of violations
- Criminal offenses
- Other nuisance event complaints or citations

The elements that are chosen by the municipality to use as part of the performance evaluation are referred to below as ‘performance criteria.’

The municipality may also want to include whether the property is current with respect to property taxes and other fees owed the municipality.

The municipality uses the annual review of this information to determine whether, and to what extent, the property was in compliance with the conditions of licensing and the owner acted

¹⁸ As with the crime-free programs discussed above, the municipality must be careful that any such procedure does not raise potential legal concerns.

¹⁹ We do not *recommend* this, but it can be done. The key thing is to have a system that can create the information needed for the annual review.

responsibly during the preceding year, and on that basis, which category of license the property is eligible for in the coming year. This determination has significant financial implications for property owners; In order to ensure that the system is rational and not arbitrary, the manner in which the municipality evaluates each property, and determines the license category into which the property is put for the following year, *must* be clearly spelled out in the ordinance and *must* be non-discretionary. The procedure should also provide for adequate due process for both landlords and affected tenants to challenge incorrect information being used to determine the property's license category, particularly if the system includes police calls or other third party complaints.

Exactly which performance criteria to adopt and how to score them is a matter for each municipality to determine. The city of Brooklyn Center, Minnesota,²⁰ which has had such a system in place for a number of years, uses the following approach:

Brooklyn Center annually determines the number of property code and nuisance violations, and police service calls, for each property. They then use that information to classify each property from Type I through IV, as follows:

- Properties are first scored on the basis of the number of property code and nuisance violations; for example, to be considered a Type I property, a one or two family house must have had no more than 1 violation during the preceding year.
- The property score is then adjusted on the basis of the number of validated calls for disorderly conduct and Part I crimes. For example, for a one or two family house that received a Type 1 ranking in the 'first cut' to retain that same ranking, it must have had no more than 1 validated call during the year.
- If the property had 2 or 3 calls, its score is reduced by one category; if more than 3, by two categories.

This is fairly straightforward. An alternative approach would be for the municipality to give a numerical score for each nuisance or other issue that occurred during the year, and place properties in different categories based on their total score.

This section of the ordinance should include the following:

- a. Specification of the performance criteria that are used to evaluate properties; e.g., health and safety violations cited;
- b. The metrics for each factor that are used to evaluate properties and place them in different licensing categories; e.g.; no more than _ violations to be placed in Category _.
- c. The overall scoring system used to determine which properties are placed in which categories.

²⁰ The full description of the Brooklyn Center scoring system can be found at <http://www.cityofbrooklyncenter.org/DocumentCenter/Home/View/118>

§7 Performance-based inspection requirements and landlord obligations

This ordinance section follows directly from the performance evaluation described in §7, and addresses what happens as a result of the evaluation. The basic information required for this section should be put in a schedule or chart so that it can be easily understood. The discussion below presents our recommendations for a basic schedule of inspection requirements and landlord obligations based on a system that places properties into four categories, as well as potential refinements and additions to that schedule that municipalities may want to consider.

Basic performance-based schedule. Table 2 below offers a basic schedule of scrutiny and obligations based on the licensing category into which the property is placed. This or a similar schedule should be included in the ordinance. The key distinction between categories is the length of time for which the renewed license is valid, which affects both the frequency of inspection and the cost of licensing. If, for example, the per unit re-licensing fee is \$100, a Category I landlord will pay that fee only once every four years or \$25/unit/year, while a Category IV landlord will pay the same amount every six months or \$200/unit/year.

Creating a re-inspection schedule based on performance also benefits the municipality, because instead of inspecting good landlords too often and problem landlords not often enough, as is often the case with non-performance based programs, the bulk of the municipal inspection resources can be directed at the relatively small number of serious problem landlords, using the same level of resources to far greater effect.

TABLE 2: MODEL PERFORMANCE-BASED SCHEDULE OF LICENSING CATEGORIES

CATEGORY	I	II	III	IV
Re-licensing inspection timetable	Every four years	Every two years	Annual	Every six months
Re-licensing fee	Paid every four years	Paid every two years	Paid annually	Paid every six months
Participation in landlord improvement program	Encouraged	Encouraged	Required	Required
Participation in crime-free program	Encouraged	Encouraged ²¹	Required	Required
Other requirements	None	None	None	Must complete remedial action plan subject to approval by municipal officers

This model has a number of additional features worth noting. If the municipality has a landlord improvement program; i.e., a program to provide training, technical assistance and support to

²¹ This can be made a requirement of owners if police calls or related nuisance complains are the reason for the lower score.

improve the skills and capabilities of local landlords,²² landlords in Categories III and IV should be required to participate. If no local program is available, there are a number of organizations which provide similar services. A municipality could require that such landlords participate in a suitable program run by a qualified organization in the region such as Chicago's Community Investment Corporation.

If, as is often the case, the municipality already requires some form of participation in crime-free or similar program as a condition of licensing, the municipality may require a higher level of participation (such as completion of Phase II) for owners in categories III and IV. This assumes, of course, that the program has been carefully reviewed to ensure that it does not run afoul of the legal issues discussed earlier. Under the Village of Addison's model, properties are placed in three categories.²³ Each category is placed on a different schedule (two years, one year, and six months) in terms of re-inspection and fees charged. Addison also requires that all licensed landlords participate in the basic crime-free program.

Finally, the most severe problem landlords should be required to work with municipal officials (a housing inspector and a police officer,²⁴ both specially trained) to develop remedial action plans, showing how they will address their properties' deficiencies, and provide regular reports to the appropriate municipal officials on their compliance with the terms of the plan.

Refinements to the basic performance-based schedule. The schedule above contains what we consider the basic elements of the performance-based approach. A municipality can, however, adopt other features which can further increase property owners' motivation to raise the level of maintenance and management of their properties. We recommend that municipalities consider adding some or all of these elements to the basic features of the model:

- Impose an additional two-tier problem property fee on owners of Category III and IV properties, with the fee for Category IV properties set higher than that for Category III.
- Provide good landlord incentives for Category I, and to a more limited extent, Category II owners. A variety of such programs exist in the United States and elsewhere, and include incentives such as the following:
 - Access to free one-on-one technical help with specific management or maintenance

²² Landlord improvement programs are discussed in detail in *Raising the Bar*, pages 15-17 (see footnote 1)

²³ The Village of Addison's grading system is based solely on the number of violations found at the time of the annual inspection; Village Code Section 10-85.2.

²⁴ There are many ways in which a specially-trained police officer can contribute to this process, including providing training, advising on changes to buildings and grounds, etc. Any police officer engaged in this work must also be trained to understand the distinction between which crime prevention activities are or are not legally defensible.

problems.²⁵

- A designated police officer as an ongoing liaison with landlords, to assist with specific problems or concerns related to criminal activity.
- Regular forums between key municipal officials and landlords.
- Fast-track approval of permits for property improvements.
- Free advertising of available rentals on the municipal web site and in local newspapers, particularly free weekly merchandising papers.
- Discounts for good landlords on goods and services at local merchants or from local contractors.
- Free or low-cost equipment such as smoke or carbon monoxide detectors, security locks, etc., which the municipality may be able to obtain in bulk at low cost.
- Preferential access to purchasing municipally-owned properties

These incentives, as well as others, are described in greater detail in *Raising the Bar*.²⁶

- Specific incentives tied to improved performance from one year to the next; i.e., if a landlord moves up from Category III or Category I or II.

One way a municipality can provide incentives for improvement is by holding fines that are collected during the year for code and other violations in escrow pending the outcome of the following year's performance evaluation. The ordinance can provide that:

- For any property that moves up *two* categories (from IV to II or from III to I) in the year, the entire amount of the fine is rebated to the owner;
- For any property that moves up *one* category, half of the fine is rebated to the owner, with the other half retained by the municipality.

We recommend that municipal officials think carefully and creatively about the ways in which they can build incentives into the performance-based system, bearing in mind, however, that any incentive must bear a rational relationship to the goal of the ordinance, and be structured so that its application is fair and non-discriminatory.

§8 Fees

Any fees imposed under a rental licensing program should be designed to cover the cost of the licensing program and no more. While home rule municipalities in Illinois have broad powers, Article VII, §6(e) of the state constitution specifically bars “licens[ing] *for revenue*” which can only be done pursuant to specific authority granted by the General Assembly. A “license for

²⁵ The municipality may be able to recruit a small group of people, including property managers, lawyers, and the like, who agree to be available for a modest amount of time for this program.

²⁶ See pages 17-21.

revenue” has been defined by the courts²⁷ as “an attempt by the governmental unit, which does not have the power to tax, to use its police power to raise revenue.”²⁸

Over and above the legal constraints affecting fees, it is important to remember that in setting licensing fees that the goal of the licensing system is to motivate compliance and responsible landlord behavior. As a general policy, *fees should be set as low as possible consistent with sound fiscal management*. The best case, from a compliance standpoint, is if the municipality has both the existing personnel and fiscal capacity to set the fee at a minimal level, and cover the cost of licensing inspections from general fund revenues. Since that may not be realistic, the fee should be set so that it is adequate to cover the cost of inspections and the administrative costs of the program.

Table 3 shows representative rental licensing fees for a number of municipalities in the Chicago Metropolitan Area. As the table shows, fees vary widely from municipality to municipality, particularly with respect to multifamily properties. There can be many reasons for differences in fees from one municipality to the next.

TABLE 3: REPRESENTATIVE RENTAL LICENSING FEES IN CHICAGO METROPOLITAN AREA

MUNICIPALITY	FEE SCHEDULE PROVISIONS	TOTAL FEE – SINGLE FAMILY HOUSE	TOTAL FEE: 10 UNIT MULTIFAMILY BUILDING
Addison	\$50/dwelling plus \$50 for each building with 1 to 5 units and \$75 for each building with 6 to 11 units	\$100	\$575
Aurora	\$70 for single family unit \$214 for 6-10 units ²⁹	\$ 70	\$214
Batavia	\$100 for buildings of 6 to 50 units	NOT SUBJECT TO LICENSING	\$100
Des Plaines	\$50 for SF detached unit \$100 for SF attached unit \$20 per unit for apartment or multi-unit building	\$50 or \$100	\$200
Elgin	1-5 units \$71 6-10 units \$107	\$ 71	\$107
Schaumburg	Single family house \$100	\$100	\$330

²⁷ *Forsberg v. City of Chicago*, 151 Ill. App. 3d 354, 365 (1st Dist. 1986) (citing *Paper Supply Co. v. Chicago*, 57 Ill. 2d 553 (1974)).

²⁸ Although we are not aware of any clear precedent or ruling in Illinois on the matter, it is likely that if a home rule municipality conducted a study which clearly established that rental housing units imposed a disproportionate impact on municipal costs in such areas as police, fire and inspections, the municipality could impose a fee on rental housing, either through the licensing process or separately, to cover those additional costs. A possible model for such an approach exists in a Utah statute discussed in *Raising the Bar*, page 20.

²⁹ These fees are effective Sept. 1, 2015. They will increase to \$90 and \$300 respectively on Sept. 1, 2016.

	Apartment 1-50 units \$330		
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Some municipalities, as the Fee Schedule column shows, have graduated schedules that vary with the number of units; others put buildings into broad categories, such as Schaumburg with a set fee for multifamily properties containing 1 to 50 rental units. In other cases, the scope of what is included in the fee may vary; one municipality may charge an additional fee for re-inspection, while another may include that cost in the base fee. The city of Aurora includes the cost of the initial inspection in the base fee, and then has a sliding scale for each re-inspection, as follows:

First re-inspection	\$ 80
Second re-inspection	\$150
Third re-inspection	\$250
Fourth re-inspection	\$500

A sliding scale of this sort can be an effective means of motivating compliance with the licensing program. Aurora also charges a variety of other fees, all of which must be paid in full before the property’s rental license is issued or renewed. Whatever the pros and cons of the specific fees charged by Aurora, it is useful to put all the fees that *are* charged under the rental licensing program in a single schedule attached to the rental licensing ordinance. Aurora’s complete fee schedule is reproduced in Appendix 2.

In the final analysis, each municipality must adopt a schedule of fees that, while remaining clearly within the bounds of legal authority and reasonableness, best reflects their cost profile and business model. It is important to remember, however, that fees are not neutral; the level of the fees, and how and when they are assessed, will have a direct and powerful effect on the likelihood of property owner compliance. The fee schedule is as much a part of the overall rental licensing strategy as are the substantive, performance-based elements of the ordinance.

§9 Violation, suspension, revocation of license; penalties

Although both Addison and Brooklyn Center have found that their performance-based systems significantly increase compliance and reduce the incidence of problem properties, even under the best system not all landlords will always comply with the municipality’s codes and standards. The rental licensing ordinance must recognize this, and provide clear language setting forth the penalties, beginning with increased fees and ending with fines and revocation of the license, that are associated with various levels of non-compliance.

There is no hard and fast line between fees and penalties. Some of the matters that Aurora treats as fees might be handled as penalties in another municipality. Where to draw this distinction lies in each municipality’s judgement. The following are matters that *can be considered* to call for penalties, in the sense of charges associated with failure to comply with the requirements of the ordinance:

- Failure to file a new or amended licensing application in timely fashion after acquisition of a rental property, or conversion of a property to rental use;
- Failure to file a complete application, or to submit the complete fee due in timely fashion;
- Failure to comply with a requirement of the program *unrelated to property conditions*; e.g., failure to attend the required crime-free seminar, failure to use the crime-free lease addendum, etc.
- Failure to correct violations found during the licensing inspection in timely fashion;
- Failure to correct code violations found as a result of complaints during the licensing period (as distinct from violations identified during the licensing inspection);
- Verified nuisance complaints; e.g., trash dumping, excessive noise.

Many of these matters, particularly failure to correct code violations found as a result of complaints and verified nuisance complaints, may already be addressed in the municipality's code of ordinances. In that event, assuming that municipal officials are comfortable with the current ordinance provisions, they should simply be added by reference in this section of the rental licensing ordinance.

We recommend that this section contain a schedule or chart of violations and penalties, so that an interested party can easily and quickly learn the effects, financial or otherwise, of each possible violation or infraction of the rental licensing ordinance or a related ordinance. Where the relevant penalties are in another ordinance, the schedule should reference the specific section and subsection of that ordinance; e.g., "see village code, Sec. _____".

While most infractions and violations can reasonably be addressed through imposition of additional fees or penalties, a recurrent issue is how to address conditions where it is appropriate to suspend or revoke a rental license. In that respect, it is important to distinguish between two separate conditions: (1) conditions where the landlord has repeatedly failed to comply with the requirements of the ordinance, pay fees or penalties, etc., but the property itself is not unsafe or unhealthy for the occupant; and (2) conditions where the property is unsafe or unhealthy.

Where the license is revoked because the property is unsafe or unhealthy, there is usually no question that unless the condition can be quickly repaired (such as, in most cases, a malfunctioning heating plant) the property should be vacated. In some cases the property need only be vacated temporarily to allow the landlord time to correct the problem, while in other cases it may have to be permanent, and the building may ultimately have to be demolished.³⁰

³⁰ The extent to which a municipality can require the landlord under these circumstances to provide for either the temporary or permanent relocation of the tenant is unclear under Illinois law. There is at least a colorable legal argument that a home rule municipality could include such a provision in a rental regulation ordinance under its powers to protect the public health and safety of its residents.

Where the grounds for revocation of the license do not involve conditions that require that the unit be vacated as a matter of basic health and safety, however, requiring that the owner vacate the unit, while seemingly a rational response, places a far greater burden on the tenant than on the landlord. Under these circumstances, the ordinance should not require that the property be vacated, but should provide for fines to the owner for operating an unlicensed property. In addition, where the grounds for revocation include health and safety violations (although not to the extent that the unit must be vacated) the municipality should consider pursuing receivership actions against such units in the court of appropriate jurisdiction under 65 ILCS 5/11-31-2. These actions have been extensively used in Chicago, particularly through the Troubled Building Initiative run by the Community Investment Corporation in partnership with the City of Chicago³¹ as a way of getting problem buildings back into sound condition, and where necessary, responsible ownership.

³¹ See <http://www.cicchicago.com/about-2/troubled-buildings/> for further information.

II DRAFTING AN ORDINANCE TO REGULATE NUISANCE RENTAL PROPERTIES FOR A NON-HOME RULE MUNICIPALITY

A OVERVIEW

This section will walk through the elements of a rental regulation ordinance that can legally be enacted within the framework of the more limited powers available to non-home rule municipalities in Illinois. Before addressing the specific elements of such an ordinance, it is important to address what those powers are, and how they can be applied to form the basis of an ordinance that will be both effective and legally defensible.³²

- Basic authority

Non-home rule municipalities in Illinois do not have the broad power to regulate and license given by the state constitution to home rule municipalities. Instead, the authority that non-home rule municipalities in Illinois have to regulate rental properties flows from the provisions of 65 ILCS 5/11-60-2, which reads *in its entirety*:

Sec. 11-60-2. The corporate authorities of each municipality may define, prevent, and abate nuisances.

This one-line statute grants authority to non-home-rule units of government to enact and carry out ordinances that identify and regulate property conditions as nuisances. Since the statute provides no further guidance, as a general rule, a municipality's determination as to what constitutes a nuisance is likely to be upheld unless it is clearly erroneous, arbitrary or unreasonable; however, to be subject to regulation under the law, the nuisance must be a *public* nuisance. Where a nuisance becomes a 'chronic nuisance,' the municipality has broad power to abate the nuisance, as well as to impose sanctions on the owner or tenant. A leading case is *Village of Northfield v. BP America, Inc.*, excerpted in the text box on the following page.

- What is a public nuisance?

As one commentator has written, "Illinois courts have specifically defined a "public nuisance" as an unreasonable interference with a right common to the general public."³³ That means that

³² By saying this, we are not implying that there is any certainty about the outcome of any legal challenge to any ordinance, nor are we offering any formal legal opinions to that effect. There are many gray areas in the law on nuisances, particularly when, as is true with this ordinance, one moves away from the tried and true. What this means is that, on the basis of our best understanding of Illinois statutes and case law, as well as fundamental constitutional principles, everything recommended herein can be strongly defended if challenged.

³³ Roger Huebner, Deputy Executive Director & General Counsel; Brian Day, Staff Attorney; & Jerry Zarley, Paralegal, "Legal Brief - Abating Public Nuisances", published by the Illinois Municipal League, accessible at <http://legal.iml.org/file.cfm?key=2746>, referencing *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351 (2004).

LEGAL FRAMEWORK [*Village of Northfield v. BP America, Inc.* (citations omitted)]

Section 11–60–2 of the Municipal Code provides that “the corporate authorities of each municipality may define, prevent, and abate nuisances.” Pursuant to this broad grant of authority, non-home-rule units like the Village may implement ordinances regulating nuisances. *Traditionally, a municipality's determination as to what constitutes a nuisance will be upheld unless it is clearly erroneous* (emphasis added).

The stated purpose of section 11–81 of the Village Code is to prevent a public nuisance “which adversely affects * * * the public safety and welfare.” BP does not dispute that an abandoned gasoline service station can be detrimental to the public's health, safety, or welfare. Ordinances are presumed valid, and the party challenging an ordinance, in this case BP, bears the burden of proving invalidity. Based on the record before us, we cannot say that the Village's decision to define an abandoned gasoline service station as a nuisance is clearly erroneous. As a consequence, we conclude that section 11–60–2 of the Municipal Code provided the Village with adequate statutory authority to enact section 11–81 of the ***832 **418 Village Code” (403 Ill. App. 3d 55, 58, 933 N.E.2d 413, 417-18 (2010))

the public, beyond the owner or tenant of the property, must be affected in some fashion by the nuisance. That can take many different forms. In some cases, as with dumping of garbage in the street, it can directly affect their health and safety; in others, such as perpetuating conditions that require the municipal government to intervene, or that create costs to local government for actions to protect the public health or public safety, the public is affected because these costs increase the taxes everyone must pay to the municipality. Thus, an ordinance violation does not have to be *visible* to the public to become a public nuisance, as long as the municipality can show the clear nexus or relationship between the violation and an effect on the public well-being. On the following page, Table 4 describes a variety of health and safety violations typically found in many problem rental properties, and explains how why each can reasonably be considered a public nuisance.

Crime-Free Rental Housing Programs

Many non-home rule municipalities have voluntary crime-free programs for rental housing. This section of the guide does not address those programs. Readers are urged to read the section on pages 4-5 on legal issues in crime-free rental housing programs for guidance.

- When does a nuisance become a chronic nuisance?

A problem becomes chronic if it is recurrent. From the standpoint of balancing private and

TABLE 4: HEALTH AND SAFETY CONDITIONS APPROPRIATE FOR THE LICENSING INSPECTION

HEALTH AND SAFETY CONDITION	WHY THIS IS ESSENTIAL TO HEALTH AND SAFETY	WHY IT MAY BE A PUBLIC NUISANCE
<p>1. Fire safety</p> <ul style="list-style-type: none"> Smoke and CO detectors appropriately located and in good working order Two or more means of egress 	<p>Lack of detectors and/or inadequate egress increases risk of fires and the risk of bodily harm resulting from fires. In addition to posing a risk to tenants, both increase risks for adjacent properties and impose fire service and health costs on the public.</p>	<p>Increased risk of fire on a property increases risks for adjacent properties and imposes fire service and health costs on the public.</p>
<p>2. Other safety conditions</p> <ul style="list-style-type: none"> All doors to the exterior must close fully and have appropriate, well-functioning locking mechanisms All hand or guard rails must be firmly fastened and capable of supporting reasonable loads Sidewalks and walkways must be in reasonable repair 	<p>Improperly closing doors or malfunctioning locks can provide opportunities for burglary or trespassing with significant risk to tenants.</p>	<p>Increased risk of crime imposes police costs on the public</p>
	<p>Insecure or inadequate guard rails can result in injury to tenants or visitors, particularly senior citizens or individuals with physical disabilities.</p>	<p>increased risk of injury affects tenants, visitors and neighbors and imposes health and emergency service costs on the public</p>
	<p>Holes, cracks and other deficiencies in sidewalks and walkways can lead to injury of tenants, visitors and passers-by.</p>	<p>increased risk of injury affects tenants, visitors and neighbors and imposes health and emergency service costs on the public</p>
<p>3. Plumbing</p> <ul style="list-style-type: none"> Access to public water and sewer service; or, a well and/or septic system approved by the appropriate approval authority. Complete bathroom, including sink with hot and cold running water, toilet and shower and/or bathtub in working order with all fixtures property installed and no visible water hazards present. 	<p>Inadequate water service can lead to tenant health problems, while inadequate sewer service can affect health for both tenants and residents of nearby properties because of the potential spread of disease.</p>	<p>Inadequate water service can lead to resident health problems, while inadequate sewer service can affect health for both residents and nearby residents, in both cases imposing costs on the public.</p>
	<p>Lack of adequate, properly functioning and safe washing, bathing and toilet facilities can lead to significant health problems for tenants.</p>	<p>Tenant health problems can impose costs of treatment on the public.</p>
<p>4. Drainage</p> <ul style="list-style-type: none"> Properly operating drains in bathroom and kitchen 	<p>Improperly functioning drains can lead to significant health problems for tenants, as well as for nearby residents through potential spread of disease.</p>	<p>Increased risk of disease can affect neighbors as well as tenants and impose costs on public.</p>

<ul style="list-style-type: none"> • Proper drainage from apartment into sewer or septic system • Gutters and downspouts in good condition and draining properly 	<p>Improperly functioning drains can lead to significant health problems for tenants, as well as for nearby residents through potential spread of disease.</p>	<p>Increased risk of disease imposes costs on public.</p>
	<p>Improperly functioning gutters and downspouts can lead to ponding, flooding and infestation, as well as lead to roof and wall problems creating health and safety problems for tenants and neighbors.</p>	<p>Increased risk of health and safety problems can affect neighbors as well as tenants and impose costs on public.</p>
<p>5. Working and property vented heating system</p>	<p>Lack of adequate heating facilities can lead to significant health and safety problems for tenants, including the use of alternative heating measures that lead to fire risk.</p>	<p>Can create health problems and increase fire risk both imposing costs on public.</p>
<p>6. Working and safe electrical system</p>	<p>Dangerous or inadequate electrical systems increase the risk of physical injury to residents and visitors and increase fire risk for the property and adjacent properties.</p>	<p>Can increase health problems and fire risk for residents and neighbors and impose costs on public.</p>
<p>7. Kitchen with operating stove, oven, refrigerator and sink</p>	<p>Lack of operating kitchen equipment can lead to use of undesirable and dangerous alternatives by tenants which increase risk of physical injury and risk of fire to property and adjacent properties.</p>	<p>Can increase health problems and fire risk for residents and neighbors and impose costs on public.</p>
<p>8. Roof free from leaks; if evidence of prior leaks is visible, documentation that repairs were made</p>	<p>Leaking roof can lead to significant health and safety problems for tenants.</p>	<p>Can lead to health problems for tenants imposing treatment costs on public, as well as increase risk of deterioration that may require corrective action at public cost</p>
<p>9. Absence of holes, breaks, rotting material or major cracks in walls or floors</p>	<p>Holes, breaks or major cracks in walls or floor can pose injury risks to tenants, particularly children, as well as indicate potential structural problems.</p>	<p>Can lead to health problems for tenants imposing treatment costs on public, as well as increase risk of deterioration that may require corrective action at public cost</p>
<p>10. Soundness of exterior structural elements, including balconies, stairs and decks</p>	<p>Unsafe balconies, decks, stairs and visible joists can pose severe injury risks to tenants and visitors.</p>	<p>Can lead to health problems for tenants imposing treatment costs on public, as well as increase risk of deterioration that may require corrective action at public cost</p>
<p>11. Absence of mold or mildew</p>	<p>Mold or mildew can lead to significant health and safety problems for tenants</p>	<p>Can contribute to health problems for residents imposing public cost for treatment</p>

12. Absence of rats, mice, termites or bedbugs	Rats and other vermin can lead to significant health and safety problems for tenants.	Can contribute to health problems for residents imposing public cost for treatment
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public rights, one way to put this is that the owner should be given an opportunity to correct any nuisance condition before it can be considered chronic, but that the municipality is under no obligation to allow a problem to fester once there is evidence that the owner has not addressed it.

The threshold should be different depending on whether the nuisance in question is a *condition*; that is, something that is a permanent physical attribute of the property unless corrected, such as a malfunctioning septic system or a leaking roof, or whether it is an *event*; that is, something that takes place at a moment of time, such as a police call to the property.

With respect to events, the standard is typically “X events in Y days”. The actual number and time frame is defined by the municipality. A typical Illinois ordinance will list a variety of events that constitute a nuisance, and specify that two, or sometimes three, within a period of 120, or 180, days, constitutes a chronic nuisance.

With respect to conditions, we suggest a simpler standard: if the owner has been given proper notice and a reasonable time to correct the condition causing the nuisance, and has not done so within the time provided, it can be considered a chronic nuisance.³⁴ That, in turn, triggers the inspection regime that forms of the heart of rental regulation in non-home rule municipalities.

- What does a rental regulation ordinance accomplish?

Every community has rental housing, which is an important part of the community’s housing stock, and meets the needs of many community residents. While in most communities the majority of the rental housing stock is in decent shape and most landlords are responsible owners, some rental properties are substandard, causing problems for residents, neighbors and the entire community, and some landlords are less than responsible. The goal of rental regulation is to establish a basic standard for the quality of rental housing in the community, and to motivate more responsible landlord behavior.

Many municipalities use their legal authority to identify and abate nuisances, but many do so on a one-off, case-by-case basis, rather than by developing an ongoing strategy designed systematically to reduce the incidence of nuisances. The approach we describe here is designed to accomplish that goal by identifying when a particular condition or series of events involving a property constitutes a chronic public nuisance, and addressing that nuisance by creating a regulatory framework for nuisance properties and their owners, under which they become subject to a *regulatory regime*; that is, a combination of inspections and obligations imposed on the owners of nuisance properties designed to prevent the nuisance from recurring, as well as incentives to encourage responsible landlord behavior.

³⁴ In practice, the municipality is likely to want to retain some flexibility, such as allowing additional time to correct where it is clear a good faith effort is being made.

LEGAL FRAMEWORK [*Black v. Village of Park Forest* (citations omitted)]

The basic standard guiding warrantless property inspections was set forth by the United States Supreme Court in *Camara v. Municipal Court of City and County of San Francisco*,³⁵ namely “reasonable legislative or administrative standards” and “neutral criteria” which have a rational basis. In its 1998 decision in *Black v. Village of Park Forest*, the Federal District Court provided an overview of that standard, and in rejecting key aspects of that village’s rental inspection program, demonstrated its application:

“Although there are few cases discussing administrative inspections of residences, the requirement of “reasonable legislative or administrative standards” seems to offer two types of protection. First, the requirement may serve to protect against properties being unfairly targeted for searches. Thus, the requirement may be read to demand that, absent traditional probable cause, the decision to search a property must be based on some “neutral criteria. Second, the requirement may impose an obligation to limit the scope of the inspections to what is necessary to achieve the legitimate goals of the program. In *Camara*, the Court noted that reasonable legislative or administrative standards, “which will vary with the municipal program being enforced, *may* be based upon the passage of time, the nature of the building (e.g., a multifamily apartment house), or the condition of the entire area, but they will not *necessarily* depend upon specific knowledge of the condition of the particular dwelling” (emphasis added). The Village argues that its inspection program is constitutional because probable cause is based on reasonable legislative and administrative standards, including the passage of time between inspections. In the view of this court, however, *Camara* does not establish that the passage of time between inspections will invariably be sufficient to establish probable cause for an administrative inspection of a residence.

One factor that *Camara* indicates may constitute a reasonable legislative or administrative standard is “the nature of the building (e.g., a multifamily apartment house).” As can be inferred from the language in *Camara*, it may be reasonable to subject multi-family apartment houses to more intense regulatory scrutiny because of the special problems they pose. Here, however, the Village conducts annual inspections of the interiors of only rented single-family homes. The interiors of units in multi-family dwellings are not inspected annually, nor are single-family homes occupied by the owners.

The Village argues that tenants, or more specifically, tenants of single-family homes, are not a protected class and so the Village need only show a rational basis for maintaining its inspection program. See, e.g., *Chicago Board of Realtors, Inc. v. City of Chicago*, (upholding differential treatment of non-owner-occupied properties against equal protection challenge). The Village argues that its 1979 Housing Code Study and a 1993 update of the Study support its decision to perform annual inspections of the interiors of only rented single-family homes. The Village notes that the Study and the update found that non-owner-occupied properties have a higher incidence of building code violations than owner-occupied properties. This might provide justification for treating rental properties differently from owner-occupied properties, but it does not explain why rented single-family homes are treated differently from rented units in multi-unit dwellings, particularly when the Study indicates that the greatest number of Housing Code violations are found in rental apartment units. See *Park Forest Housing Code Study* (1979), at 2 (noting that 1976 survey found that [the] “greatest number of code violations were found in rental apartment units, both old and new”)” (20 F. Supp. 2d 1218, 1225-27 (N.D. Ill. 1998).

³⁵ 387 US 523 (1967)

B ELEMENTS OF A RENTAL REGULATION ORDINANCE

This section will walk through the elements that may be appropriate for a rental regulation ordinance in a non-home rule municipality. The ordinance is designed to lay out:

- The rationale for the ordinance
- The ground rules the municipality will follow in identifying nuisances, and
- The procedures that are followed when a nuisance is identified.

The legal framework for these procedures is summarized in the text box on the preceding page.

While each ordinance should be tailored to the particular conditions and priorities of the municipality, it is critical that the ordinance not only address all three areas, but that it do so in a way that is *rational* and *consistent*; in other words, the findings should clearly establish a basis for enacting the ordinance, the ground rules should flow logically from the findings, and the procedures should be a rational and consistent way of addressing the conditions identified in the ground rules. An ordinance that tries to cut and paste different elements or features, without careful attention to the consistency and internal coherence of the different elements, may be either difficult to implement and enforce, or legally unenforceable. A recommended outline of the sections that should be included in an ordinance is shown on the following page. Each one of those section is discussed separately below.

OUTLINE: SECTIONS OF A MODEL RENTAL REGULATION ORDINANCE

1. Findings
2. Definitions
3. Landlord obligation to register (informational only)
4. Nuisance physical conditions
5. Other nuisances
6. Outcome of chronic nuisance determination; nuisance property registry
7. Inspection; re-inspection
8. Annual performance evaluation and property classification
9. Effect of annual review
10. Fees
11. Violations

C SECTION BY SECTION: MODEL RENTAL REGULATION ORDINANCE PROVISIONS

§1 Findings

The findings section should establish not only why a rental regulation ordinance is needed to serve the public interest generally, and the health and safety in particular, of the municipality and its residents, but *why the key features of this ordinance* are needed. Some of the critical findings that should be in this section include:

- a. Finding that nuisance conditions exist in the municipality, and that they harm the public health, safety and welfare
- b. Finding that rental properties account for a disproportionate share of the nuisance conditions, or other problems affecting public health, safety and welfare, or impose disproportionate municipal costs.³⁶
- c. Setting forth that a wide variety of different nuisance conditions, including physical conditions of the property, all harm public health safety and welfare.³⁷
- d. Setting forth the need for an ongoing regulatory regime (as distinct from one-shot or complaint driven enforcement) to reduce the number and recurrence of nuisance conditions in the municipality.
- e. Recognizing that most landlords are responsible owners, and that a targeted approach that focuses on problem landlords and properties is the most effective way to reduce the number and recurrence of nuisance conditions.

These findings must be carefully crafted. They form the justification or underpinning for the entire ordinance.

§2 Definitions

Definitions are a key part of any ordinance. They should include any basic matters that may be subject to interpretation, such as:

- Dwelling unit
- Owner
- Agent or representative of the owner
- Tenant

³⁶ The municipality should not assert that a disproportionate impact exists unless they can demonstrate it in the event of a legal challenge. An objective analysis of the extent to which rental properties do indeed account for a disproportionate share of problem conditions or municipal costs should serve as the basis for that finding.

³⁷ This is important, because many nuisance ordinances deal exclusively with ‘events’, such as police calls, illegal dumping and the like, and there may be a tendency to assume, unless the contrary is clearly stated, that that is always the case.

It may include any other matters that the municipality considers relevant. It is often better to define many important matters, however, in the substantive sections of the ordinance, such as what constitutes a nuisance. It is not necessary to define them here, or if included, it is appropriate to define them by reference (e.g., “Nuisance shall have the meaning set forth in § ___ of this ordinance”) to avoid duplication and any risk of inconsistency. Definitions should not include matters that are not germane to the ordinance.

§3 *Landlord obligation to register*

While the regulatory regime that is the heart of the ordinance is triggered by a nuisance condition or event, it is important (and within the legal authority of non-home rule municipalities) to require that *all* rental properties be registered for informational purposes with the municipality. The registration should cover the following information:

- The location of the rental property
- The number of separate dwelling units in the property
- The name and contact information for the owner of the property
- Where the owner is not local, the name and contact information for an agent or representative who can act on behalf of the owner³⁸

The fee for registration should be nominal, and designed to do no more than cover the municipality’s clerical expenses in entering the information into the municipal property database and, where appropriate, sending annual mail registration notices.³⁹

While a municipality is not *obligated* to establish a registration program, it is highly desirable for any municipality to do so. Registration serves the critical function of enabling the municipal officer to find responsible parties, if and when a nuisance condition arises that requires action. In the absence of a reliable property information database created through the registration program, the time consumed and difficulty of addressing nuisance conditions can make effective enforcement problematic if not impossible.

§4 *Nuisance physical conditions*

This section should contain two subsections:

- a. The first subsection provides the full definition of what physical conditions on a

³⁸ ‘Local’ can be based on the owner’s residence or place of business, and can be defined as in-state, inside Cook County, or X distance from the property. Given the small size of many Cook County municipalities, it is probably not advisable to define it as inside the municipality.

³⁹ Landlords should be encouraged to sign up to receive such notices on line, while if possible, the municipality should enable on line registration and payment through the municipal web site.

property, inside or outside the structure or dwelling unit, can constitute a nuisance. Table 4 has outlined the conditions what we would recommend that municipalities include in this section.⁴⁰ This is in addition to generally accepted nuisance conditions that may be present on the grounds of the property, such as abandoned cars, high weeds and vegetation, or piles of trash or debris.

The list of nuisance conditions in this section becomes the basis for the inspection regime established for properties that have been found to be maintaining chronic nuisance conditions, and placed on the nuisance property registry set forth in §9.

- b. The second subsection should set forth the definition of what recurrence or failure to correct renders a condition a chronic nuisance, and thus triggers the property being placed on the nuisance property registry in §9. As noted above, the recommended standard is that the owner has been cited for a violation based on the condition, and that the owner has failed to correct the condition within the time period provided for compliance.

Whether the municipality has decided to step in and abate the nuisance condition should not as a rule affect this standard. If, however, as a matter of urgent health and safety, the municipality is obligated to abate the nuisance immediately rather than giving the owner time to correct the violation, the threshold should be a single recurrence of the condition.

§5 Other nuisances

The ordinance may incorporate other matters generally recognized as public nuisances, including criminal activity and noise complaints, what we refer to above and nuisance ‘events’. Any such matters that the municipality considers appropriate should be enumerated and defined in this section.

As in §5, this section should also include the definition of what renders the condition a chronic nuisance. As noted earlier, the usual standard is X recurrences within Y days, with municipalities varying with respect to the specific standard adopted.⁴¹ The ordinance should make it clear that this refers to a recurrence of *any* event defined as a nuisance by the ordinance, not only a recurrence of the specific type of event that started the clock. As discussed above, ordinances that include police calls or arrests within the definition of nuisance need to be sensitive to the

⁴⁰ This is not the actual checklist of specific conditions, which should be developed administratively, and made available on line for property owners and prospective property purchasers in the municipality. See Appendix 1 for the checklist used by the Village of Palatine.

⁴¹ Based on a review of a number of ordinances, it appears that the most common patterns are those of either 2 or 3 events taking place within either 120 or 180 days. There is nothing obligatory about this standard, and municipalities may want to adopt more or less stringent ones based on their understanding of local conditions.

legal issues raised by such provisions.

§6 Outcome of chronic nuisance determination; nuisance property registry

This section sets forth the outcome of a determination by the municipal official that the property harbors a chronic nuisance as set forth in §5 or §6. Such a determination triggers a series of outcomes with respect to the property and the landlord, as follows (each becomes a separate subsection of this section):

- a. Authorizes creation of a nuisance property registry, and specifies that any property meeting the above standard is to be placed on the registry.
- b. Requires inspection of any property placed on the registry, and provides for re-inspection as set forth in §8.
- c. Requires good landlord training for owners of properties placed on registry⁴², as established by the municipality
- d. Authorizes levying of fines for chronic nuisances,⁴³ and may, for certain types of nuisance determination, reduce the fine if the owner participates in the voluntary crime-free rental housing program.⁴⁴
- e. Sets an administrative fee for placing property on the nuisance property registry.

These elements, in conjunction with the annual review and performance-based adjustments described below, make up the regulatory regime.

§7 Inspection; re-inspection

Once a property is placed on the nuisance property registry as set forth in §7, it is the subject of a health and safety or nuisance inspection, limited to but covering all of the relevant conditions enumerated in §5. This section sets forth the procedures associated with inspections, including notice to owners and tenants, and authorizes a fee that must be paid by the owner to cover the

⁴² Where the owner is located a substantial distance from the municipality, the municipality may allow the owner's local agent or representative to participate in the training and carry out other actions on behalf of the owner, subject to the owner providing a certification that that individual is authorized to act in all relevant respects on behalf of the owner, including incurring costs to make repairs, evicting problem tenants, and so forth.

⁴³ We recommend that any fines collected be escrowed, in order to create the opportunity to rebate them to the landlord based on subsequent good performance, as described in §10.

⁴⁴ Ordinance provisions or informal practices that allow the owner to avoid fines or other obligations by evicting the tenant of the unit should be avoided unless clear due process procedures are in place to ensure that such provisions are not unfairly or unreasonably applied.

cost of the inspection.

The municipality may conduct the inspections if it has the personnel to do so in a timely fashion. Alternatively, it may either (a) contract with a qualified private inspection firm to perform inspections; or (b) create a list of qualified firms from which the owner can pick one to perform the inspection. In either case, a set fee should be established for the inspection which is payable either to the municipality, or in the case of (b) directly to the inspection firm.⁴⁵ If (b), the municipality should also provide that if the owner does not have the inspection done within a certain period after being placed on the registry (as evidenced by the municipality's receiving the inspection report), that constitutes a violation of the ordinance, and the owner is subject to a penalty, as well as to having the municipality schedule the inspection.

This section should also provide for regular re-inspection in the event that the initial inspection, or the first re-inspection, identifies violations of any health and safety feature. The time between initial inspection and re-inspection depends on the nature of the violation. Owners should be given a realistic, but not overly generous, period in which to correct violations. Tenants should receive copies of violation notices issued and the timelines established by the inspector for correction of the violation.

Non-home rule municipalities can legally provide in their ordinance for regular inspection of all rental housing units. In the absence of evidence of nuisance conditions, however, such inspections can only be voluntary, in that the municipality lacks the authority to compel the landlord or the tenant to allow his or her property to be inspected. That authority is provided in home rule municipalities by the power to license, which allows the municipality to deny a license to a landlord who refuses to allow his or her property to be inspected.

§8 *Annual performance evaluation and property classification*

The circumstances that lead a chronic nuisance to be found, and a property placed on the registry, vary widely. The condition may be fairly quickly repaired, and not arise again; in other cases, it may simply be one of many recurrent problems associated with the property. It is very strongly in the interest of the municipality to motivate property owners to become more responsible landlords, by fixing the problems and making sure that they do not recur. The best way to do that is to conduct an annual review of the 'track record' of each property on the nuisance property registry, and adjust its status going forward on the basis of that review.

The circumstances that lead a property to be placed on the registry, and the subsequent outcomes, are likely to vary widely. Through the annual review, a property whose owner has cleaned up his act, and that hasn't caused the municipality any further problems, gets removed from the list along with a variety of other incentives for responsible behavior, while those that continue to cause problems remain on the list along with potential additional sanctions.

⁴⁵ If the municipality contracts with a single firm to perform all inspections, it can either collect the fee itself, and make periodic payments to the contractor, or have the contractor receive the fee directly.

This section spells out the procedure for the annual review, while §10 8 lays out the inspection requirements and the obligations of the landlord based on the category in which the property is placed as a result of the annual review.

In order to conduct an annual performance review, a municipality must have a basic property database. The database has two elements:

- The property database created under the registration program (see §3);
- Regular tracking of complaints, calls, violations and other property concerns.

While many municipalities use sophisticated database programs, this can be done – especially in a small community with a relatively small rental property inventory – with a simple Excel spreadsheet.⁴⁶ Which information is tracked is up to the municipality, and may reflect both what they consider important, as well as their capacity to create a timely flow of information from different municipal offices into a single database. We would recommend, if possible, that the database include the following:

- Nuisance conditions identified and cited
- Other code violations cited
- Timeliness of correction of nuisance conditions or other violations
- Criminal offenses
- Other nuisance event complaints or citations

The elements that are chosen by the municipality to use as part of the performance evaluation are referred to below as ‘performance criteria.’

The municipality may also want to include whether the property is current with respect to property taxes and other fees owed the municipality.

The municipality uses the annual review of this information to determine whether, and to what extent, the property was nuisance-free and the owner responsible during the preceding year, and in turn, whether the property is retained on the registry or removed. This determination has significant financial implications for property owners; In order to ensure that the system is rational and not arbitrary, the manner in which the municipality evaluates each property, and determines what that means in terms of future inspections and landlord obligations, *must* be clearly spelled out in the ordinance and *must* be non-discretionary. The procedure should also provide for adequate due process for both landlords and affected tenants to challenge incorrect information being used to determine the property’s license category, particularly if the system includes police calls or other third party complaints.

⁴⁶ We do not *recommend* this, but it can be done. The key thing is to be able to create the information needed for the review.

Exactly which criteria to adopt and how to score them is a matter for each municipality to determine. The city of Brooklyn Center, Minnesota,⁴⁷ which has been operating a similar system for a number of years, uses the following approach:

Brooklyn Center annually determines the number of property code and nuisance violations, and police service calls, for each property. They then use that information to classify each property from Type I through IV, as follows:

- Properties are first scored on the basis of the number of property code and nuisance violations; for example, to be considered a Type I property, a one or two family house must have had no more than 1 violation during the preceding year.
- The property score is then adjusted on the basis of the number of validated calls for disorderly conduct and Part I crimes. To retain the same ranking, a one or two family house must have had no more than 1 validated call during the year.

If a property has had 2 or 3 calls, its score is reduced by one category; if more than 3, by two categories.

An alternative approach is for the municipality to give a numerical score for each nuisance or other issue that occurred during the year, and place properties in different categories based on their total score.

We suggest that municipalities consider using a three-level system for scoring properties and landlords:

- Category A: Responsible landlords who no longer create nuisance conditions, or (a) do so minimally, and (b) correct them quickly and effectively.
- Category B: Landlords who have improved their performance, but still represent a problem to the community.
- Category C: Landlords who continue to cause problems and have shown no improvement over the prior year.

This section of the ordinance should include the following:

- a. Specification of the performance criteria that are used to evaluate properties; e.g., nature and number of nuisance conditions or events;
- b. The metrics for each factor that are used to evaluate properties and place them in one of the three categories described above;

⁴⁷ The full description of the Brooklyn Center scoring system can be found at <http://www.cityofbrooklyncenter.org/DocumentCenter/Home/View/118>

- c. The overall scoring system used to determine which properties are placed in which categories.

§10 Effect of annual review

This ordinance section follows directly from the performance evaluation described in §9, and addresses what happens as a result of the evaluation. The basic information required for this section can be put in a schedule or chart so that it can be easily understood. The discussion below presents what we recommend as a basic schedule of outcomes for the subsequent year based on a system that places properties into three categories, as well as potential refinements and additions to that schedule that municipalities may want to consider. Table 5 offers our suggestions for what incentives and obligations should flow from each category.

TABLE 5: EFFECT OF ANNUAL REVIEW

CATEGORY	OUTCOMES FOR YEAR FOLLOWING ANNUAL REVIEW
A	<ul style="list-style-type: none"> • Removal from registry • Any fines collected during preceding year rebated in full⁴⁸ • Eligible to participate in Good Landlord Program • No additional inspection unless nuisance complaint received
B	<ul style="list-style-type: none"> • Remains on registry for additional year • Must pay registry fee • Receives a rebate of one half of any fines collected during preceding year, with balance retained by municipality • Inspected annually
C	<ul style="list-style-type: none"> • Remains on registry for additional year • Must pay registry fee • All fines collected during preceding year retained by municipality • Inspected every six months • May be subject to additional monitoring or actions⁴⁹

Municipalities are encouraged to create Good Landlord programs, to provide incentives for Category A landlords, as well as landlords in the municipality who are not on the nuisance property registry. Many such programs exist in the United States and elsewhere, and include incentives such as the following:

⁴⁸ The municipality may want to remain a small amount to cover the administrative costs associated with the fine.

⁴⁹ Brooklyn Center requires that landlords with properties in the lowest of their four categories must work with municipal officials to prepare a mitigation plan.

- Access to free one-on-one technical help with specific management or maintenance problems.⁵⁰
- A designated police officer as an ongoing liaison with landlords, to assist with specific problems or concerns related to criminal activity.
- Regular forums between key municipal officials and landlords.
- Fast-track approval of permits for property improvements.
- Free advertising of available rentals on the municipal web site and in local newspapers, particularly free weekly merchandising papers.
- Discounts for good landlords on goods and services at local merchants or from local contractors.
- Free or low-cost equipment such as smoke or carbon monoxide detectors, security locks, etc., which the municipality may be able to obtain in bulk at low cost.
- Preferential access to purchasing municipally-owned properties

These incentives, as well as others, are described in greater detail in *Raising the Bar*.⁵¹

§11 Fees

Any fees imposed for initial registration or as a result of a property being placed on the nuisance property registry must be strictly limited to covering the cost of these activities to the municipality and no more. Article VII, §6(e) of the state constitution specifically bars “licens[ing] for revenue” which can only be done pursuant to specific authority granted by the General Assembly. A “license for revenue” has been defined by the courts⁵² as “an attempt by the governmental unit, which does not have the power to tax, to use its police power to raise revenue.”⁵³

Over and above the legal constraints affecting fees, it is important to remember that in setting fees that the goal of the regulatory system is to motivate compliance and responsible landlord behavior. As a general policy, fees should be set as low as possible consistent with sound fiscal management. The best case, from a compliance standpoint, is if the municipality has both the existing personnel and fiscal capacity to set the fee at a minimal level, and cover the cost of regulatory activity from general fund revenues. Since that may not be realistic, the fee should

⁵⁰ The municipality can line up a small group of people, including property managers, lawyers, and the like, who agree to be available for a modest amount of time for this program.

⁵¹ See pages 17-21.

⁵² *Forsberg v. City of Chicago*, 151 Ill. App. 3d 354, 365 (1st Dist. 1986) (citing *Paper Supply Co. v. Chicago*, 57 Ill. 2d 553 (1974)).

⁵³ Although we are not aware of any clear precedent or ruling in Illinois on the matter, it is likely that if a home rule municipality conducted a study which clearly established that rental housing units imposed a disproportionate impact on municipal costs in such areas as police, fire and inspections, the municipality could impose a fee on rental housing, either through the licensing process or separately, to cover those additional costs. A possible model for such an approach exists in a Utah statute discussed in *Raising the Bar*, page 20.

be set so that it covers the cost of inspections as well as the administrative costs of the program.

All fees that *are* charged under the rental regulation program, including re-inspection fees, late fees for failure to register in time, etc., should be placed in a single schedule attached to the ordinance.

In the final analysis, each municipality must adopt a schedule of fees that, while remaining carefully within the bounds of legal authority and reasonableness, best reflects their cost structure and business model. It is important to remember, however, that fees are not neutral; the level of the fees, and how and when they are assessed, will have a direct and powerful effect on the likelihood of property owner compliance. The fee schedule is as much a part of the overall rental strategy as are the substantive, performance-based elements of the ordinance.

§12 Violations

Although municipalities have found that their performance-based systems significantly increase compliance and reduce the incidence of problem properties, even under the best system not all landlords will always be compliance with the municipality's codes and standards. The ordinance must recognize this, and provide clear language setting forth the penalties that are associated with various levels of non-compliance.

The following are matters that *can be considered* penalties, in that they reflect charges associated with failure to comply with the requirements of the ordinance:

- Failure to file a new or amended registration application in timely fashion after acquisition of a rental property, or conversion of a property to rental use;
- Failure to file a complete application, or to submit the complete fee due in timely fashion;
- Failure to comply with a requirement of the program *unrelated to property conditions*; e.g., failure to attend the required crime-free seminar, failure to use the crime-free lease addendum, etc.
- Failure to correct violations found during regularly scheduled inspections of properties on the nuisance property registry in timely fashion;
- Failure to correct code violations found as a result of complaints (as distinct from violations identified during regularly scheduled inspections);
- Verified nuisance complaints or events other than code violations; e.g., trash dumping, excessive noise.

Many of these matters, particularly failure to correct code violations found as a result of complaints and verified nuisance complaints, may already be addressed in the municipality's code of ordinances. In that event, assuming that municipal officials are comfortable with the

current ordinance provisions, they should simply be added by reference in this section of the rental regulation ordinance.

We recommend that this section contain a schedule or chart of violations and penalties, so that an interested party can easily and quickly learn the effects, financial or otherwise, of each possible violation or infraction of the rental licensing ordinance or a related ordinance. Where the relevant penalties are in another ordinance, the schedule should reference the specific section and subsection of that ordinance; e.g., “see village code, Sec. _____”.

While most infractions and violations can reasonably be addressed through imposition of additional fees or penalties, a recurrent issue is how to address conditions where the level of chronic nuisance becomes such that is necessary to take more drastic action. In that respect, it is important to distinguish between two separate conditions: (1) conditions where the landlord has repeatedly failed to comply with the requirements of the ordinance, pay fees or penalties, etc., but the property itself is not unsafe or unhealthy for the occupant; and (2) conditions where the property is unsafe or unhealthy.

Where a property is found to be unsafe or unhealthy, there is usually no question that unless the condition can be quickly repaired (such as, in most cases, a malfunctioning heating plant) the property should be vacated. In some cases this can be temporary, to allow the landlord time to correct the problem, while in other cases it may have to be permanent, and the building may ultimately have to be demolished.⁵⁴

Where the conditions do not involve unsafe or unhealthy conditions, however, requiring that the owner vacate the unit, while seemingly a rational response, places a far greater burden on the tenant than on the landlord. Under these circumstances, the ordinance should not require that the property be vacated, but should provide for fines to the owner for operating a chronic nuisance property. In addition, where the grounds for revocation include health and safety violations (although not to the extent that the unit must be vacated) the municipality should consider pursuing receivership actions against such units in the court of appropriate jurisdiction under 65 ILCS 5/11-31-2. These actions have been extensively used in Chicago, particularly through the Troubled Building Initiative run by the Community Investment Corporation in partnership with the City of Chicago⁵⁵ as a way of getting problem buildings back into sound condition, and where necessary, responsible ownership.

⁵⁴ The extent to which a municipality can require the landlord under these circumstances to provide for either the temporary or permanent relocation of the tenant is unclear under Illinois law. While we suggest that this may fall within the scope of a home rule municipality’s authority, the case for a non-home rule municipality following suit is, unfortunately, much weaker.

⁵⁵ See <http://www.cicchicago.com/about-2/troubled-buildings/> for further information.

APPENDIX 1 VILLAGE OF PALATINE RENTAL HOUSING INSPECTION CHECKLIST



RENTAL DWELLING INSPECTION CHECKLIST Interior

**VILLAGE OF
PALATINE**
Neighborhood Services Division
200 E Wood Street, Palatine, IL 60067
(847) 202-6673

Smoke Detector/ CO Detector

- Functioning smoke detector must be present and functioning on every floor level within the dwelling
- Functioning smoke detector must be installed on the ceiling or wall outside each separate sleeping area in the immediate vicinity of bedrooms
- Functioning smoke detector must be installed in every bedroom
- Functioning carbon monoxide (CO) installed within 15ft of all bedrooms
- Hardwired smoke detectors must be maintained as such

Doors /Windows /Common Areas

- Doors leading into a garage must self-close and latch
- Apartment doors leading into a common corridor must self-close and latch
- Exterior door locks (interior keyed dead-bolts are prohibited)
- Windows and doors must be easily operable, in good condition and aligned to the frame
- Screens on all windows must be installed between April 15th to October 15th
- Balconies and joists are in good condition free from rotted material and capable of supporting the imposed dead and live loads.

Electrical

- No electrical hazards should be present such as inadequate service, deterioration or damage
- All Ground Fault Circuit Interrupters (GFI) are functioning
- Pull chain light fixtures are secure and string properly attached
- Breaker box is labeled to its contents
- No open slots or loose breakers in breaker box
- Garbage disposal is functioning and no loose wiring

Plumbing

- Water heating facilities shall be properly installed, maintained and capable of providing adequate amount of water at every faucet (hot water temperature must be maintained not less than 110F)
- All plumbing fixtures must be properly installed and functioning
- No visible water hazards should be present such as back-siphoning or cross connections

Interior Surfaces

- Walls and surfaces shall be maintained in good, clean and sanitary condition
- Walls and ceilings are intact and free from holes or water damage
- Kitchen and bathroom cabinetry shall be maintained in good, clean and sanitary condition
- Floors throughout living spaces are free from cracks and in good repair
- Stairs and walking surfaces shall be maintained in sound condition and good repair
- Handrails must be properly installed and secured to walls

Washer and Dryers (if applicable)

- Dryer must vent to the outside of the dwelling and be free of obstruction
- Area behind dryer and washer is clean, free from dust and other debris

Furnace, Water Heaters and Boilers (if applicable)

- Properly vented to the outside of the dwelling
- Vent pipes are properly attached
- Metallic pipe installed off the water heater relief valve (pipe extended to within 6 inches of the floor)
- No flammable storage located within 3 ft
- Free from rust or any defects

Air Conditioning Units (wall mounted)

- Units are in good working condition

- Unit cover is in good condition and properly installed
- No water leaks observed surrounding unit
- Electrical wiring is in good condition

Pest Control

- No infestation of cockroaches or other pests
- No infestation of mice or other vermin
- No infestation of bedbugs
- Surfaces are free from food or other debris that can cause infestations
- Units are free from rubbish and garbage

General

- All installed appliances (i.e., stoves, refrigerators etc) must be in good working condition
- Basements used as a sleeping space must meet existing code requirements.
- Heat must be maintained at 68 F from September 15th to May 1st
- Living areas should be maintained in a clean, safe and sanitary condition
- Storage throughout living areas should be limited to allow a 3 ft means of egress to each exit and to each room

NOTE:

This list includes most items covered in an inspection, but is not all inclusive.

The property owner or agent is responsible for notifying tenant at least 24 hours before an inspection.



RENTAL DWELLING INSPECTION CHECKLIST

Exterior

**VILLAGE OF
PALATINE**
Neighborhood Services Division
200 E Wood Street, Palatine IL 60067
(847) 202-6673

Building Exteriors

- Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road
- Screens on all windows must be installed between April 15th to October 15th
- Walls shall be free from holes, breaks, and loose or rotting material
- Gutters and downspouts are in good condition and draining properly
- Foundation walls shall be maintained plumb and free from open cracks or breaks
- Exterior surfaces shall have protective treatment which protects it from the elements
- Lights shall be in good repair and give off adequate amounts of light
- All apartment main entry doors shall self-close and automatically lock
- No graffiti or other vandalism

Decks/ Patios /Sidewalks

- Balconies and joists are in good condition free from rotted material and capable of supporting the imposed dead and live loads
- Hand and guard rails shall be firmly fastened and capable of supporting normally imposed loads
- Patios must be free from cracks or defects
- Sidewalks, walkways shall be kept in a state of proper repair

Driveways and Parking

- Driveways must be in good condition and free from cracks or defects
- Parking spaces must have clear visible markings
- Motor vehicles must be parked on an approved surface

Accessory Structures

- All accessory structures including detached garages, fences and walls shall be maintained structurally sound and in good repair

Garbage/ Refuse Storage

- Dumpster enclosures must be maintained, structurally sound and in good condition
- Containers must be free from garbage overflow and lids covered
- Exterior grounds must be free from accumulation of rubbish or garbage
- No Rodent harborage

General

- All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon

NOTE:

This list includes most items covered in an inspection, but is not all inclusive.

The property owner or agent is responsible for notifying tenant at least 24 hours before an inspection.

SOURCE: http://www.palatine.il.us/assets/1/neighborhood_services/Rental_Licensing_Packet_1.pdf

APPENDIX 2 CITY OF AURORA RENTAL LICENSE FEE SCHEDULE

RENTAL PROGRAM FEES



RENTAL LICENSE ANNUAL FEE		
<small>LICENSE FEE MUST BE PAID ANNUALLY FOR ALL PROPERTIES • LICENSE WAIVER APPLIES TO INSPECTION ONLY</small>		
DWELLING UNITS PER PARCEL	LICENSING PERIOD SEPT 1, 2015 - AUG 31, 2016	LICENSING PERIOD SEPT 1, 2016 - AUG 31, 2017
1	70.00	90.00
2	93.00	125.00
3-5	110.00	150.00
6-10	214.00	300.00
11-20	310.00	400.00
21-30	400.00	500.00
31-40	552.00	700.00
41-50	640.00	800.00
51-75	790.00	1,000.00
76-100	874.00	1,100.00
Over 100	1,026.00	1,300.00
RENTAL INSPECTION & LATE FEES		
RENTAL LICENSE PAST DUE FEES		
Rental License Late Fee over 30 Days Past Due	80.00	80.00
Rental License Late Fee over 60 days Past Due	160.00	160.00
MISSED INSPECTION APPOINTMENTS		
1st Missed Inspection - No Show	150.00	150.00
2nd Missed Inspection - No Show	250.00	250.00
3rd Missed Inspection - No Show	500.00	500.00
RESCHEDULED INSPECTION APPOINTMENTS		
Rescheduled Inspection - 1st time	Free	Free
Rescheduled Inspection - 2nd time	150.00	150.00
INSPECTION FEES		
Initial Inspection	Included in License Fee	Included in License Fee
1st Re-inspection (NEW FEE)	80.00	80.00
2nd Re-inspection	150.00	150.00
3rd Re-inspection	250.00	250.00
4th Re-inspection	500.00	500.00
Emergency Inspection: <small>includes but not limited to confirmed reports of: no heat, no water, no electric, non-working smoke/CO2 detectors, leaks and infestation</small>	200.00	200.00
UNREGISTERED PROPERTY FEE		
Unregistered Property Late Fee: <small>applies to property that has not yet been registered within 10 business days of becoming a rental</small>	150.00	150.00
OTHER FEES		
Landlord Training Class (Missed Class)	100.00	100.00
Lease Addendum (Missing at Time of Inspection)	100.00 per unit	100.00 per unit
Background Check (Missing at Time of Inspection)	100.00 per unit	100.00 per unit

SOURCE: City of Aurora, effective July 14, 2015. https://www.aurora-il.org/documents/propertystandards/2016_rental_program_fees.pdf